

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING

MARCH 17, 2011 7:00 P.M.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Brendan Sullivan, Chair

Constantine Alexander, Vice Chair

Timothy Hughes, Member

Tad Heuer, Member

Thomas Scott, Member

Slater Anderson, Member

Douglas Myers, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

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

CONSTANTINE ALEXANDER: The acting Chair will call this meeting to order, and as is our custom, we'll start with continued cases of past hearings and continued cases heard. Which means a certain panel has to sit on them. So we're going to start with those cases first and I'm going to call case No. 10034, 277-283 Western Avenue.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, Members of the Board. Attorney Sean Hope on behalf of the Petitioner. We have the owner Paul Cammaratta, and we also have project architect Mr. Peter Quinn of Quinn Architects. Happy St. Patty's Day to

everybody.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY SEAN HOPE: This is an application you heard before to convert a one-story building to a mixed use property. Before I get started, I just want to do a clerical clarification. In the file I submitted a memo which was a summary of the events that took place between our last hearing December 16th and then to today. Mr. Chair, in our office when we drafted the memo, there was actually a mistake on the dates. It was actually dated in December. I don't know if --

CONSTANTINE ALEXANDER: I don't recall seeing that memo.

ATTORNEY SEAN HOPE: It was on the first page. It was a typographical error and I just wanted to -- yes, right there. I just wanted to make sure if there was any confusion by the Board, I wanted to clear that up. It

was drafted March 14th and it was stamped as such. I wanted to get that out of the way.

This was a property that was constructed in 1927, and in the time between the last hearing I went to Historical and I found out that this was constructed as a commercial building. It was originally a furniture store with two general retail uses on the premises. That property's been used as a commercial building since that time until a few years back when the property fell into disrepair. Before the property was vacant it still had severe problems, and we have some letters in the file as well as testimony that were from the previous owners who actually ran different commercial uses there and owned the building and know the issues with it.

This lot is a non-conforming lot and it's also a non-conforming structure. The lot is non-conforming in terms of size. It's

undersized. As well as the structure itself is non-conforming as well as setbacks, FAR and particular use. Now, if the use was continued, we wouldn't be here for a use variance, because it would be grandfathered. But because it's been greater than two years, we're here now.

[At] the last meeting it was apparent that there wasn't full conversation had by the neighborhood. There was some attempts, but there wasn't a full understanding of the proposal. So, with the advice of the Board we held a meeting on February 8th. Now, we had it at the adjacent parcel, the Western Avenue Baptist Church. We had both direct abutters there as well as the members of the community who came to the meeting.

One of the first things we decided at the meeting was we needed to find out from the neighborhood whether the as-of-right use of residential was preferred or our proposal.

If the as-of-right use was deferred and they understood what that would mean, we'd talk about parking, impact of shadow, but that's the existing structure and we figured we'd have a lot more way to go.

It was unequivocal, and you'll hear testimony that people in the community as well as the direct abutters wanted the ground floor retail to remain. They actually wanted it to be restored because even when it was there, the properties themselves were deteriorating. Even though they were existing, it wasn't the type of structure that was going to be a benefit to the neighborhood.

Also when we talked about the residential on top, there was a preference for a mixed use development because they understood it would allow us to actually put the investment into the property to actually renovate it the way it should be renovated.

But the idea was about size and scope.

So initially in the proposal the FAR we had for the additional dwelling units was 0.89. We looked at the dimensional table and it was also made with comments from the Board that we actually wanted to limit the additional dwellings, what would be allowed if the site was actually vacant. We brought the FAR down to 0.75.

And when we had -- our initial --

CONSTANTINE ALEXANDER: 0.75 just for the residential?

ATTORNEY SEAN HOPE: Just for the residential. It's 1.5 overall. So the existing ground floor retail is 0.78. We're adding 0.75. But when we initially had our plans, we actually thought we'd step back the building away from Western Ave. which is a busy thoroughfare and we actually limited to create more setbacks to the additional buildings that would be a benefit. We

actually heard from the neighborhood that they actually didn't really want as great a setbacks because it actually pushed the building back towards them. So we actually split the difference and we actually pushed the building back out by -- essentially extended the building not to the length of the building, but we had about, was it three feet setback instead of seven foot setback.

PETER QUINN: We have seven on the front now.

ATTORNEY SEAN HOPE: Seven on the front now?

But either way there was some thinking that we thought initially that it was going to be the building they want.

The other part of the building was the roof style, and there was some comments about the aesthetics of how it looked. We thought if this was going to be a commercial retail store, we'd have more of a modern looking box

type, and then with a shed dormer on the back. It was a little awkward and there were some comments about that. So we presented to the neighborhood two different varying roof styles, one was a mansard type style. And you can see from some of the pictures there that there are some first floor commercial retail with residential on top with the mansard style.

But then also as you look down on Western Ave., you can also see examples of flat roofs. So because, you know, there was no really preference, primarily what we heard from the neighborhood is that they wanted to make sure that the retail that was going to go on the ground floor was retail that was going to be community retail. And they didn't understand the Table of Uses, so we actually went through and talked about the different uses that could be provided. They obviously understood that market forces

would determine actually what lasted. But we didn't go for anything that would allow for alcohol --

CONSTANTINE ALEXANDER: Wait a minute. That's not entirely true, Mr. Hope. That's one of the questions I was going to raise to you tonight. The relief you're seeking is to allow commercial retail uses on the ground floor. There's no limitation that you can't have a liquor store, you can't have a bar and grill.

ATTORNEY SEAN HOPE: In our application we actually specifically -- under 6.35 we actually specifically mention the sections, because there are certain sections that we could have the kind of relief for. So we attempted to limit ourselves in terms of the type of retail uses on the ground floor and we specifically asked for relief for those specific uses.

CONSTANTINE ALEXANDER: Could you

just review the uses for the Board, the uses that you're seeking permission for?

ATTORNEY SEAN HOPE: Sure. Yes, so we did restaurant cafe. We did barber shop. We did non-chemical laundry. We also did --

PAUL CAMMARATTA: Cafe?

ATTORNEY SEAN HOPE: Yes, cafe restaurant is one use. And general retail, which includes merchandise sale or like a variety store. And the last one was a bakery. And these are not to be made on-site. There's a footnote. These are all things that would allow -- these are things that were there before and they felt -- and we actually asked their opinions, what kind of things would the community use?

CONSTANTINE ALEXANDER: And the neighborhood had no objection to a restaurant that serves alcohol?

ATTORNEY SEAN HOPE: We didn't apply for that.

CONSTANTINE ALEXANDER: I thought you did. I thought I just heard you say that.

ATTORNEY SEAN HOPE: Not a restaurant that serves alcohol. And that's specific in the use table.

PAUL CAMMARATTA: Just a restaurant.

CONSTANTINE ALEXANDER: Just a plain restaurant.

PAUL CAMMARATTA: Yeah.

CONSTANTINE ALEXANDER: All right.

ATTORNEY SEAN HOPE: Also with reference to the church being there. So, you know, they did have the Ebony Club there and that was an established business --

TAD HEUER: You do know about the Grendell Finn (phonetic) case, right?

ATTORNEY SEAN HOPE: Yes.

So, but we really tried to limit the scope so that it wouldn't be a more fit that we come back and there would be any surprises.

I think the real thing that we had an opportunity is for them to actually understand the plans and look at -- we looked at shadow study. We also talked about impact. Another thing that was talked about was parking. And we talked about the as-of-right use. If you had residential, you would have to have a certain amount of parking. And if we had the mixed use, you still have the same Variance for that type of parking. I think one of the things that speaks for the Special Permit is that this property is located via on the bus line as well as ten minutes from Central Square and the Red Line. If you look at one of the goals for Special Permit for parking, they want to promote less vehicle ownership and access to public transportation. And Peter will speak more about this. I do feel by the size and scope of the residential that we propose as well as the proximity and the lack of parking,

if you're going to move into that type of property, then you're going to have to take the benefit of the public transportation. So we do feel that the property in terms of being marketable benefits from the fact that it's right on the bus line, close to the Red Line.

Before I guess I go any further, I like Peter to kind of walk through the specific dimensional and architectural differences from the last plan and how that shows on the plan that what we have today.

PETER QUINN: For the record, Peter Quinn of Peter Quinn Architects, LLC, 955 Mass. Ave., Cambridge.

As Sean said, we looked at a couple of different styles by looking at the context, and this was suggested by the Board. And we went back and saw that there's basically three types of buildings that tend to come out of a retail base. Either you have a gable end

or a mansard, as you can see up there on some of those examples. Or something that's more flat roof with a cornice. So we present to you both of the -- two of those. We didn't pursue the gable because it's very hard to get enough square footage on the third floor for the small footprint that we have. Therefore, the only two options that would really work that would give us viable bedrooms on the third floor is either a cornice line with a flat roof or the mansard.

The building, as Sean said, this addition is a 0.75 FAR addition, and we reduced the length of this thing by three feet in order to reduce our FAR. We also reduced the width of it by two and a half feet. By doing that we reduced the encroachment on the setbacks on the two sides, actually the front that's Dodge Street and the side that's the left side over here. Then we took the building and we shifted it forward and it had

been ten feet in order to comply with the Zoning By-Law, but to make less impact on the neighbors to the rear, we also, by shortening it, we were able to play with that length, reduce this to seven on the front, still make viable roof decks up there, and have about three, three and a half feet in the rear, various visibility trapezoidal for a landing at the top of the emergency stairs that we have. So that I think actually improved more for the neighborhood to the rear. That gives you an idea right here of how this -- there's the actual line of the roof right here. And the building's been pulled forward. Okay.

And that's it basically in terms of the changes.

CONSTANTINE ALEXANDER: So a slight question. I noticed when I'm looking at the plans, the flat roof alternative.

PETER QUINN: Yeah.

CONSTANTINE ALEXANDER: The first

floor of the residential with a brown I assume wooden door, you see that?

PETER QUINN: Yes.

CONSTANTINE ALEXANDER: Yes. You seem to have a roof over that where you don't have it on the mansard. It seems to be different.

PETER QUINN: Actually there is a little one here. It's just a vague projection. It's just a projection on the side. They're essentially the same.

CONSTANTINE ALEXANDER:  
Essentially the same?

PETER QUINN: Yes. And the materials in both of these are, you know, of course in this case we have, you know, an architectural shingle on the roof. But, you know, it's a clapboard siding, clad windows with wood trim or equivalent, and a nice dormers are all painted out on the roof.

CONSTANTINE ALEXANDER: What is

your preference between the two roofs?

PETER QUINN: I think the developer would like to work with this. He finds that vocabulary contemporary flat roof a little easier and cornus to be easier to work with. This one has a contextual it probably fits on the street. Actually, there's quite a bit of this on the street if you look here. That's all you see right in the immediate area are cornus line flat roofs. So this adds a little bit of variety.

CONSTANTINE ALEXANDER: You said the neighborhood did not necessarily vote, but the neighborhood didn't have a preference between the two?

PAUL CAMMARATTA: They did. A lot of the neighbors that we reached out to, they actually liked the mansard on the right better than the flat. I thought the flat was more in line with the current status with a lot of properties. But there are mansard

properties up and down Western Avenue.

TAD HEUER: Where's the mansard property that's the second down on the left?

PETER QUINN: Second down.

TAD HEUER: Where is it just for reference?

ATTORNEY SEAN HOPE: At the corner of Howard and Western.

PAUL CAMMARATTA: Exactly.

ATTORNEY SEAN HOPE: And there's a convenience store on the first floor and then the residential above. And then there's the Pizza Ring, which is on the first floor, and then it has a shed roof, a dormer on each side. Both of them are pre-existing.

PAUL CAMMARATTA: I mean they both -- I think going with some of the other properties.

ATTORNEY SEAN HOPE: Excuse me. The main reason we presented both, this is going to be in the neighborhood for a very

long time. And so when I say there wasn't a preference, there wasn't a general consensus was this doesn't work, this works. And so we wanted to leave it out, and tonight, and actually the pastor from Western Ave. Baptist he's coming tonight to speak. He's running a little late. But, you know, they're going to be impacted by this obviously directly. The main concern was to really understand what we were trying to achieve by that. I don't think they understood the as-of-right option. They didn't understand what we could do if we just went obviously as-of-right with setbacks not included.

PETER QUINN: I'll answer that.

The use of the mansard actually makes the building appear lower because you don't see as much wall line. It's just as much volume inside because of the way we do the mansard, but it -- you know, these two buildings are exactly the same height, but it just has a

visual sort of objective in the lower building. And, again, it does comply with the height limitation of 35 feet almost. It's the trick of the eye.

PAUL CAMMARATTA: Can I add one thing? In light of the Western Avenue reconstruction project, you know, this the timing of it kind of gels right in with what they intend to do in the next several months. So I think it would be a great add to the community, to the neighborhood.

CONSTANTINE ALEXANDER: And I think there was testimony or not testimony or a position you set forth last time that if we were to say Use Variances are not a great idea and you can go ahead and build this residential but no commercial, that the economics of it would not work out for the project. In other words, you need to have the commercial space to support the residential space to justify the renovations

that have to be done.

ATTORNEY SEAN HOPE: It's the other way around.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: We need the residential to support -- as you look down Mass. Ave. there's lots of empty retail storefronts. So the residential allows for the finance, the commercial. The commercial may come and go. And I think right now we may be at a lull --

CONSTANTINE ALEXANDER: Yes, but the point is that the commercial is non-conforming. And I just want to make the record clear, if we said to you, no commercial, you got to comply. No Use Variance, we'll give you a Dimensional Variances to allow you to do residential construction. I think the testimony we heard last time is if that were the case, the road we went down, you couldn't go forward

with the project. The economics don't justify that.

TAD HEUER: You can go forward with a residential by-right project, it's just --

ATTORNEY SEAN HOPE: We could, and Paul can speak better to the economics of it. It really has to do with the fact of this structure, it has no setbacks. It was a commercial building, and so in terms of marketability. You know, do you want to live -- how marketable would a building be? You know, you have a bus stop right in front of that. So you have a bus coming in front of your house as well as I think just the nature of Western Ave. in and of itself. And I think that's why you see the commercial on the first floor. And even if you look at the residential that's abutting the street, they're all raised up. So you see steps. You don't have any doorways right on the, right on the ground floor.

PAUL CAMMARATTA: Direct access.

ATTORNEY SEAN HOPE: Direct access.

So, it's a marketability issue. I also think it's a quality of life issue. You're going to live in a one-story brick building. And even more important we would have to seek relief, and the neighborhood was emphatic that they didn't want more residential there that they're probably not going to live in and that they won't receive any benefit from. And I think that's what really propels this idea for a mixed use as well as the fact that the building was in poor condition.

TAD HEUER: What if you did a demo build up?

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY SEAN HOPE: If we did build up, we'd still need a Variance because we'd be increase the massing on the non-conforming walls. But I think it goes back to what we asked the neighborhood, we told them

as-of-right what we can use. And so we really didn't want the neighborhood buying. This was tight lot on a corner lot. There's no room for any underground parking. We actually looked -- Paul had his engineer come in there. The water table is right below the surface with ground dirt floor. So there was no way to make that happen.

TAD HEUER: So just to clarify you couldn't get a -- even if you wanted to do a literally a by-right single-family within your setbacks, you know, ten by five, whatever you've got there, ten I guess, that wouldn't be economically viable either?

PAUL CAMMARATTA: A single unit would never sustain for any long time, for any long term anyways. The sustainability really comes from the second floor units, that will keep it going even if the retail sits vacant.

TAD HEUER: I'm not sure what you

mean by sustainability. If you sell a single-family house you sell it for three quarters of a million dollars --

SLATER ANDERSON: No commercial.

TAD HEUER: -- then you lease.

CONSTANTINE ALEXANDER: What we're saying to you, the City of Cambridge says this has got to be residentially zoned. Whether it's zoned 20 residential units, you can't have any commercial use. Which means what you could do, at least theoretically, is tear down the existing structure and build a single-family residence and build it in the fashion that you'll meet all the Zoning requirements where you don't have to come before this Board and get a hard time from this Board. Okay. But can that happen economically? If we were to say that to you, no commercial use, you can go back and tear down your building and build a single-family structure. What would happen? Can you

economically do that or no? It's just the cost is so prohibitive?

PAUL CAMMARATTA: Yeah, it would be -- exactly. To build a -- no, that's exactly. I mean, you can build it. You can definitely build it, but it would --

CONSTANTINE ALEXANDER: You can definitely build it?

PAUL CAMMARATTA: And render any profitability --

ATTORNEY SEAN HOPE: And also if you look at the setbacks you physically could build the structure, you know, that meets all the setbacks. But you would be building an unmarketable square box in the middle of that lot. They have two front and two side yard setbacks. (Inaudible). You could build a box but, you know, the idea you could sell it for a half a million dollars, is not really feasible. So practically you could do it, but the reason why it's not proposed or hasn't

been done it's because it's not realistic that you want to live within the confines of that. So to do an as-of-right project that you're going to be, you know, with a front yard setback and the rest like rear yard setback, you wouldn't be able to build a marketable building.

TAD HEUER: Particularly because this is a corner lot.

ATTORNEY SEAN HOPE: It's a corner lot, there is no parking, and you would be building a very odd shaped vertical building.

CONSTANTINE ALEXANDER:  
But -- okay. I'm going to keep going a little bit because I don't think the pastor's here yet and he wants to testify. I think it's also relevant, too.

SLATER ANDERSON: I am aware, thought, that the same -- actually, I think it's on River Street, the corner of River and Putnam, there was a vacant lot, probably not

actually different than this lot in size was vacant where a house did go up. I don't know if that's one or a two-family. And I don't know if they got relief for that or what.

ATTORNEY SEAN HOPE: Yeah, and in terms of economics, what you're also talking about is the cost to tear down the building, you know, purchase the land.

CONSTANTINE ALEXANDER: That's what I'm trying to get out on the record.

ATTORNEY SEAN HOPE: Oh, yes, right. I think Paul said it, but if you're not clear --

CONSTANTINE ALEXANDER: But the point is you could come before us and say we want to build this residential structure. We want to comply with the use requirements of Cambridge but we need some Zoning relief and impacts and the like. And we already have cases like that for residential structures. But what I'm looking to hear is

that even if that were the course of action you wanted to pursue, and we were to grant you the relief you would like, you still couldn't do the project because tearing down this commercial building and building a single-family structure, you could not get a price to get back your investment. Is that right?

PAUL CAMMARATTA: That would be about right. I would say yes. But the corner for a retail and where it is on Western Ave. really is a gem of a corner. I believe Mr. Atkins is here. He's been working the area. He knows the area very well. And you've got the biotech up at the corner. You've got a lot of new residential at the corner. And they're coming down to this one or two stores that are there.

TAD HEUER: Legally you're going to do a better arguing for A to detriment to residential value than commercial.

CONSTANTINE ALEXANDER: You're digging yourself into a hole.

PAUL CAMMARATTA: All right.

ATTORNEY SEAN HOPE: And also too, in 2001 when this areas was switched from a C-3 to C-1, a lot of that conversation, and Mr. Atkins and others can speak to it. This was about -- also brought about by the corner lot where Mahoney's was, it was an idea to put, you know, the --

CONSTANTINE ALEXANDER: That's farther down.

ATTORNEY SEAN HOPE: Yes, it is farther down, but that was around the same time when they were rezoning that portion of Western Ave., and then they also realized to rezone this portion, that that would allow for 85-foot buildings. There was an idea to zone this because it was mostly residential. So I don't -- I wouldn't want to say that the idea was to get rid of the commercial, because

there wasn't a lot of commercial. I don't think that was the intent. The idea this is an existing structure, so the existing use, and but for the disrepair, this would have been grandfathered. So all that together, but I wouldn't want on the record to say that the intention, the reason this was down-zoned to get rid of commercial. Obviously existing structures and existing uses would be continued to be allowed.

But to your point now that it's not allowed, and that's why we have to get the Use Variance portion of this.

CONSTANTINE ALEXANDER: Any questions further from Members of the Board? Further questions? Tim?

TIMOTHY HUGHES: No, I'm good.

CONSTANTINE ALEXANDER: I'll open it up to public testimony.

Is there anyone here wishing to be heard on this matter in support? Are you in

support of the project, sir?

LAWRENCE ATKINS: Surprise.

CONSTANTINE ALEXANDER: At least the last time you were here you weren't.

LAWRENCE ATKINS: Lawrence Atkins, 45 Hayes Street. I'm also the President of the Riverside Neighborhood Association. My last visit here -- and I want to thank the Board for postponing. The time for the events that have occurred since then have all been in a positive range. As I said before, that it was an opportunity for the abutters mainly. And the cognitive neighborhood to talk about this in a deeper depth, to get a chance to get in Paul and Sean's face to really emanate throughout so I couldn't hear people, who them people doing something over there. Which I am glad to say that it has. Paul and Sean have done a great job of expanding out. We spent a lot of time on the telephone. We spent a lot of time at Western

Ave. Baptist Church, Cambridge Community Center, meeting with abutters and anybody else who had concern.

On February 8th, that evening, we met at the Western Ave. Baptist Church with the abutters and all those who were concerned of the project. My role was to assist in mediating that meeting so that the conversations could be full, and any of the questions both sides could be plainly heard. I did encourage all components to move beyond this and have their private sessions, and any agreements they needed to come to feel free to do so. I have seen as many people as I saw the night before I come here, and it seems as though everybody is on board. For whatever reason they're not present here tonight. I know the church has a meeting and the queriness (sic) on this Board when they do things, sometimes coincide. I did hear that the minister is supposed to make his own

presence.

But as far as the neighborhood organization is concerned, we are -- our main task is to make sure that type of operation occurs. So that a project of any magnitude, small, medium-size, enormous can have the opportunity of the interaction that should happen. Yes, in the past we were originally dealing with the 85 feet on Charles River with the piano project by the university, Harvard at the time. And I see my former colleague in the back who helped out with that, too.

We were concerned then because it was 85 feet and the city took so long on bringing it down. Too concerned about not blocking us off from the Charles River. Our other concern on Western Avenue was to mediate and maintain as much surface level commercial activity as there was in the neighborhood because we had already lost a drastic amount due to the economy mainly and the opportunity

for any other people to move into the neighborhood who thus could. We would like to say that continued to happen, but half a million dollars is just somewhat numbers that the neighborhood that I'm accustomed being in is not truly attainable. But we welcome anyone who wishes to live in the area, and we compliment these gentlemen here who were adding on to it also. And the fact of the matter that the meetings, they made it clean and clear that the option of having us on the first level was not something that the neighborhood did want. And they did wholeheartedly say that they wanted to maintain -- we do have a church, we have a massive set of recreational going on. We have a restaurant up the street. But the idea of a flower shop, a dry cleaners, variety, AT&T. Any of those are options that we wish to maintain in the neighborhood. We're gonna grow. We're not gonna get any

smaller. Hopefully we don't get too big, because the density of the neighborhood now is pretty much there. And the fact that there is a public transportation unit, a good clear passageway for pedestrians, the light is getting better. The beautification project that we're all working on is going to add even more. So it's good to have nice foot traffic through the day, through the afternoon to draw us all together a little bit more to make us even a better community. With all that being said, I'm not going to be redundant at this time, the membership of the Riverside Neighborhood Association for developer to come into the neighborhood and try a successful means has been met. So I want to thank you for that. And Paul and them good luck and the rest of everybody else, make a happy transition and may we all have something to look forward to and the rest of the city follow the same format.

Thank you.

CONSTANTINE ALEXANDER: Thank you for your time.

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

BHUPESH PATEL: Hi, my name is Bhupesh Patel, architect in Cambridge that do a lot of retail, and I'm just generally a retail advocate. And since I live along the streets that other friends did not profit dealing with pedestrian and bike access on main street corridors, we're a very big advocate of basically making sure main streets have a lot of animation to them. And we already know there are several corridors in Cambridge that we rely on: Mass. Ave., Western Ave., all those corners are important. But I'd say four things that are really crucial with Western Ave. Western Ave. is not the major artery that goes through Central Square, but it is one of the three

major arteries. And there's a lot of retailers in Central Square that rely on periphery retail as more affordable retail that's used as incubator space. People out there will start out there businesses to make a go of it and they last a year. And then they move closer to the square for much more expensive real estate. And it's much easier for them to do that, then to locate in Union Square which is really cheap. And put a sign on the door when they close down a year later and say they're now in Central Square. But outside Central Square it's much easier to rationalize as an incubator space for future space in Central Square.

We have this problem in Harvard Square a lot. We sometimes make private negotiations with people to have six months free rent and it fails and it's a loss for everybody. Nobody wins in that process. So we're desperately looking for incubator

space outside of Harvard Square all the time. So this is a classic space very much like that. It's out there in the periphery and it's important for the Central Square retailers.

The second point I'd like to make is there's crossroads on Western Ave. and they always have involved retail businesses that have started and stopped there. And we know that Putnam is one of those crossroads. And we know that Howard is another one. And those are equal distance from this middle crossroads. So if we already have established businesses on both ends there and you're heading outside of Central Square, you don't want to hide that dead zone in between because you'll be less apt to go to Putnam. Which is the exact same distance for you in Central Square if you were going to Cambridge College. If Plough and Stars wasn't there, which is exactly where this business would be

on the same scale, you know, you wouldn't have that leap of faith to keep going down if you could imagine Mass. Ave. not being so popular, you wouldn't have that leap of faith to keep going down Mass. Ave. outside of Central Square to notice there's actually a college when you're out there. So, that's that dead zone that this is actually satisfied. It gets you to go passed Howard and go all the way to Putnam where you'll see even more retail because you'll pass this location. And it's clearly dead center between those two important crossroads.

That's pretty much it. I do want to point out one other thing since I've done a lot of big single-family houses that are historic, and it's a long process. And I've done three of them in Avon Hill which are all, all three of them were moved from Mass. Ave. to the Avon Hill neighborhood. And, you know, history's shown that we've taken a lot

of residential properties from the main street corners and moved them into the residential neighborhood because they're beautiful homes and people are looking for, you know, 3500 square foot homes where they can fit two and a half cars. They want four bathrooms, they want space for their nanny. And you can't do that unless you move out to Wellesley and build a new house. So they really make a go of it to do it in places like Cambridge and downtown Boston, but it's quite expensive. So, whenever there's a house that's on a main corridor like Linnaean Street, is a very second sort of minor arterial road, sometimes people approach a house and say let's gut renovate that house, and could you pursue what it would take to purchase that house? Well, Linnaean is not as much traffic as Western Ave. and we have a hard time negotiating getting people into that house that would typically buy, for you

know, a million and a half and put in a million dollars to make it a two and a half million dollars house, because they feel like with a family in that house there's a lot of traffic on Linnaean Street. I would rather find a house off of that minor arterial in the neighborhood. So, that's not as extreme as Western Ave., where there's much more traffic. So the idea of marketing a single-family house on Western Ave. that was renovated -- gut renovated like that, it's really hard. I can't convince clients that have been looking for two years for single-family houses to buy that house on Linnaean Street. That's why several houses on Linnaean Street that sit there so long. And the only way they sustain themselves is being rooming houses because they're so big and they're right up against a minor arterial. So just from a marketing standpoint, it's been really hard to deal

with big singles that are close up to minor or major arterial road.

CONSTANTINE ALEXANDER: Thank you.

TIMOTHY HUGHES: Thank you.

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

(No Response.)

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

The Chair is in receipt of one new letter. Mr. Hope, in your submission you said something you attached, letters of support, they weren't attached at least in my copy.

ATTORNEY SEAN HOPE: They may have been pulled out and stamped.

CONSTANTINE ALEXANDER: Maybe somebody pulled them out. Oh, the old ones that go back to -- this one, this one. They're all the old ones. Is that a new one?

Okay.

There are letters of support. I'm not going to read them. They're going to be part of our record. As I mentioned, they were letters of support for the project that was presented to us at the original hearing. These letters are from Larry Ward. It doesn't have an address. And from the trustee of Nicole Gittens, G-i-t-t-e-n-s, the trustee of Western Avenue Baptist Church. And also a letter from Mertin M-e-r-t-i-n Bets, B-e-t-s of Seven Dodge Street all of which are in support.

With that I will close public testimony.

Comments or questions from Members of the Board? Maybe starting with which -- when we take a vote, we're going to have to tie it to a certain set of plans, either the mansard roof set of plans or the flat roof plans. What is your pleasure, if any?

TAD HEUER: Mansard roof.

CONSTANTINE ALEXANDER: And I trust otherwise you're in support of the Petition?

TAD HEUER: Yes.

SLATER ANDERSON: I concur.

TIMOTHY HUGHES: I'm definitely in support of the Petition. I don't have a preference. I think the mansard probably has a little more character to it.

CONSTANTINE ALEXANDER: Brendan?

TIMOTHY HUGHES: But I can understand the developer wanting to build the other one.

BRENDAN SULLIVAN: I would echo Tim. I am in support of them doing something there. Either one is --

CONSTANTINE ALEXANDER: I'm with you, but I would lean toward the mansard roof. So I'm going to make the motion on the basis of the mansard roof set of plans.

Is that all right with you?

ATTORNEY SEAN HOPE: Yes.

BRENDAN SULLIVAN: The numbers are identical?

CONSTANTINE ALEXANDER: That's what their forms say, yes.

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 -- well, I'll get to the shape of the lot, but renovation of this retail structure and development of -- the land use development of this property requires a substantial investment. And a literal enforcement of the Zoning By-Laws would not make the project economically feasible.

The hardship is relating to circumstances of the shape of the lot the location, and its location is a corner lot.

If the setback requirements were complied with with regard to Zoning -- with regard to residential structures which is the Zoning for this district, that the structure that would result would be frankly not marketable. But even if marketable, not economically feasible to develop.

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

I think part of the purpose of this Ordinance is to develop a vibrant streetscape. And this project with its mixed use will do that. That this project has the support that's been fully vetted with the neighborhood and the abutters, and it has the support of the neighbors and the abutters. We've heard nothing to the contrary.

And that by in large although the

non-conforming commercial retail use will be continued, we also are adding to the residential housing stock of the city in this residentially-zoned district by adding two units.

So on the basis of these findings, the Chair moves that we grant a Variance to the Petitioner to proceed subject to the condition that the work proceed in accordance with the plans submitted by the Petitioner. They're prepared by Peter Quinn Architects. They're dated March 14, 2011. There is a cover sheet, A1, A2, A3 and A4 and A5. The first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

(Alexander, Hughes, Sullivan,

Heuer, Anderson.)

CONSTANTINE ALEXANDER: We now have to do the Special Permit. Under Section 6.35.1 we can grant a Special Permit to reduce the amount of parking in other words required by our Zoning By-Law only if we determine and cite evidence in our decision that the lesser amount of parking will not cause excessive congestion, engage in public safety, substantially reduce parking availability for other uses, or otherwise adversely impact the neighborhood or that such less amount of parking would provide a positive a positive effort environmental or other benefits of the users of the lot and the neighborhood.

And then we're asked to consider the following: The availability to serve both off-street parking in the vicinity of the use being served and/or the proximity of an MBTA transit station. And there are others I won't get to.

I would move that this Board make the finding that the Petitioner has submitted evidence that the lesser amount of parking will not cause excessive congestion, endanger public safety or substantially reduce parking availability for other uses or otherwise adversely impact the neighborhood.

In fact, that there is considerable, although not excessive, off-street parking in the general neighborhood. That the lot is located within walking distance from Central Square and the T station there. And that in any event, the reduction of the parking will allow this project to go forward and to improve the general neighborhood character, it will produce desired streetscape and commercial and residential activity that's desirable for the neighborhood. And is consistent really with the historical use of Western Avenue which has been generally a mixed use type of neighborhood.

So, I move that we grant the Special Permit on this basis. And we've got to make further findings, just give me a second.

That the traffic generated or patterns of access or egress will not cause congestion, hazard or substantial change in established neighborhood character. In fact, the traffic patterns which are longstanding in the neighborhood will not be affected by the inadequate by our Zoning By-Law on-site parking.

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

That in the general neighborhood both residents and commercial activities, and they have been able to drive without having parking issues.

And that no nuisance or hazard will be created to the detriment of the health,

safety and/or welfare of the occupant or the citizens of the city.

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

In this regard I would incorporate the findings we made with regard to the Variance. And basically say that the basic thrust of our Zoning By-Law will be satisfied by allowing this project to go forward even with inadequate parking. That that is the intent of our Zoning By-Law.

All those in favor of granting --

TAD HEUER: Wait a minute.

CONSTANTINE ALEXANDER: Go ahead.

TAD HEUER: That there's a bus line that services Western Avenue, and also there's a parking plan grade, parking space survey that's been submitted by the

Petitioner that indicates that on the blocks to either side of this on Western Ave. there is actually an availability of parking at all the relevant times of day that the -- at least the retail use would be used and additionally for any residents that would be in the residential buildings.

CONSTANTINE ALEXANDER: Good. Add that to the motion as well. Thank you.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted. Good luck.

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

CONSTANTINE ALEXANDER: Make it clear in the transcript and more important when the decision gets written, we want to be clear that all the Variances the Petitioner was seeking have been granted by this Board

subject to the limitations that the Petitioner had put forth with regard to the Use Variance; namely, only certain kinds of commercial uses can be conducted on the premises. Not --

SEAN O'GRADY: As outlined in the letter identified?

CONSTANTINE ALEXANDER: Well, it's in the application. I'll give you the section. It's in the --

SEAN O'GRADY: I just want to make sure I have it documented.

CONSTANTINE ALEXANDER: It's in the application. Where's the file? Okay.

Yes, 4.35-A, C, D, E, and R. Those are the only uses that are permitted in the Variance. Commercial uses.

SEAN O'GRADY: I thought we looked the other day and cited general.

CONSTANTINE ALEXANDER: That's what I thought, too. But Sean pointed out --

ATTORNEY SEAN HOPE: It's too broad  
and transparent and it wasn't there.

Thank you, guys.

(7:45 p.m.)

(Sitting Members: Constantine Alexander, Tad Heuer, Thomas Scott, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The acting Chair will call case No. 10055, 16 Fairfield Street. Is there anyone here wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY: Mr. Chair, on this case I think the Petitioner would request a continuance and we prefer to go ahead on 10066 which is the --

CONSTANTINE ALEXANDER: I don't have it here on my sheet.

ATTORNEY JAMES RAFFERTY: Well, you know what I'm confusing it with another case.

CONSTANTINE ALEXANDER: Yes. We'll continue the case as you requested.

TAD HEUER: We're talking about Fairfield Street?

ATTORNEY JAMES RAFFERTY: We are. My confusion, I'm sorry.

CONSTANTINE ALEXANDER: The floor is yours, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman. For the record, James Rafferty with Margherita Hull on my left and her architect John Altobello. The Board may remember us. We were here on January 27th with this matter. Ms. Hull owns a two-family house on Fairfield Street, and her application is a Special Permit seeking to enclose her front porch. Ms. Hull was here without counsel about two -- a little less than two years ago, in the summer of '09. And at that time she did not receive the four affirmative votes necessary to enclose her porch. Since that time she's taken a close examination of the comments of the Board, particularly the design comments about what the reservations were about the previous scheme, and she went and hired Mr. Altobello who came up with a scheme that is very

consistent with the bay, bow front nature of the house. And thus she returned here, filed a petition, and pursuant to Section 10.51, the Board on the 27th of January, found that there were material changes sufficient to not treat the matter as a repetitive petition. And we then, in accordance with the requirements of 10.51 appeared at the Planning Board on March 1st. And I hope there's a copy of the communication of the Planning Board on March 1st, voted unanimously to --

CONSTANTINE ALEXANDER: I don't think we have that, but I'll take your representation.

ATTORNEY JAMES RAFFERTY: I have my copy.

So thus we're jurisdictionally permitted to be back before this Board to proceed anew as it were with this issue involving the Special Permit.

The design, we could have Mr. Altobello go through it, but it's depicted rather effectively in the renderings that have been submitted with the application, because of the nature of the bow front, there's actually a reduction in GFA if you look closely at the numbers of the dimensional form.

Ms. Hull has lived in this house for many years. She's raising her daughter there. It really is her home. She intends to be there for a long, long time. And she's always thought that this was a rather modest improvement, but something that would allow her to get just a little bit extra space. And then in raising a young child in a house of that size, that little extra space does make a difference. She enjoys widespread support from her neighbors, many of whom are here this evening. She's also encouraged by the fact that her neighbor across the street was recently was able to obtain a Variance from

this Board to a glazed enclosure of their porch and also add a balcony.

CONSTANTINE ALEXANDER: A far different case than this one.

TAD HEUER: A glazier and enclosure and three-story interior living space.

CONSTANTINE ALEXANDER: Yes. And I wouldn't use it as -- I'm not persuaded that's precedent to this --

ATTORNEY JAMES RAFFERTY: Oh, I didn't use the word precedent. I'm very mindful of the unique nature of zoning cases. I was just saying that she was encouraged by the fact that was the case where the neighbors supported that, and in that case there was a hardship found and there was also Special Permit relief. No, I made that very clear to Ms. Hull that each case stands on its own. And I'm a big proponent and understand that.

My point is that it's an established neighborhood and that this project or that

this proposal is consistent with some of the recent modifications or modernizations that have taken place. And so it's in that spirit I make reference to it.

We could have Mr. Altobello if the Board wishes just to briefly walk you through.

CONSTANTINE ALEXANDER: I have a question, Mr. Altobello.

JOHN ALTOBELLO: Yes.

CONSTANTINE ALEXANDER: When you came before us before or you and your client, you were looking for the first decision which was -- it was substantially -- you gave us drawings which I thought made the point --

JOHN ALTOBELLO: Yes.

CONSTANTINE ALEXANDER: -- and we grant you the relief. I would expect that at time we would have architectural drawings with dimensions and a set of plans.

As you know, Mr. Rafferty, when we do

grant relief we tie them to a set of plans. We don't have any plans in our files.

JOHN ALTOBELLO: There are plans.

CONSTANTINE ALEXANDER: Not in my file.

JOHN ALTOBELLO: They should have been -- they were submitted.

TAD HEUER: Are you referring to the site plan?

JOHN ALTOBELLO: No, the floor plans. The -- that was submitted, the first floor plan, the second floor plan.

TAD HEUER: But there's no elevation, is there?

JOHN ALTOBELLO: There are elevations of all three sides, yes.

CONSTANTINE ALEXANDER: Wait a minute. Wait a minute. We have those, but --

ATTORNEY JAMES RAFFERTY: Mr. Chairman, I'm not aware of a process where you

supplement the application after the first -- I didn't hear any reservation expressed at the prior hearing about the adequacy of the drawings.

CONSTANTINE ALEXANDER: The point I was trying to make, the drawings were sufficient to demonstrate a different project than the one that got you around 10.51. But now when you're asking for specific relief, as you know, we got a set of architectural drawings with -- not those kind which are basic plans, not drawings. I'm using the wrong word. Not those basic drawings. I've got a question, and I want to ask Mr. O'Grady, if we were to grant relief subject to the drawings that we have, is that sufficient for his purposes to be sure that the project proceeds in accordance with what we think we're approving?

JOHN ALTOBELLO: Yes.

CONSTANTINE ALEXANDER: No, no.

You're biased.

Mr. O'Grady, you're familiar with the plans I trust?

SEAN O'GRADY: Yes. There are a lot of dimensions missing that would have been helpful. Given that the bulk of the house is there, there's things that I could work off of to probably hold them to.

CONSTANTINE ALEXANDER: If we were to grant relief, you would be okay, I mean, in terms of being able to understand and enforce our decisions.

SEAN O'GRADY: Yes.

TAD HEUER: The tax payer would be better served if your efforts were not having to be so expended?

SEAN O'GRADY: Absolutely. And we would hope that when the plans do come in, that they are fully dimensioned.

CONSTANTINE ALEXANDER:  
Mr. Rafferty, we don't have any plans. We

really do have a lot of drawings.

ATTORNEY JAMES RAFFERTY: Well --

CONSTANTINE ALEXANDER:

Mr. O'Grady has answered my question.

ATTORNEY JAMES RAFFERTY: Yes. I worked with Mr. Altobello before. I frankly filed the plans. I thought they met the test. First I heard about it was a minute ago, so I guess --

CONSTANTINE ALEXANDER: Well, we can go forward.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: But I think in the future I would be sure we have more detailed plans in our files with respect to the relief being sought than we have in this case. What we have this case is sufficient.

ATTORNEY JAMES RAFFERTY: Yes, I take that to heart and I apologize. I reviewed the plans and I thought they were fine. But I guess what the suggestion is --

TAD HEUER: There are no numbers.

ATTORNEY JAMES RAFFERTY: What's that?

TAD HEUER: There are no numbers. They're sketches.

CONSTANTINE ALEXANDER: They're drawings. They're not plans.

THOMAS SCOTT: We assume what they are, but it doesn't say what they are.

ATTORNEY JAMES RAFFERTY: Do you wish to defend yourself or should we --

JOHN ALTOBELLO: Basically the dimension -- the site plan -- may I have reference to my drawings?

CONSTANTINE ALEXANDER: Sorry. Here you go.

JOHN ALTOBELLO: Shows clearly what is being taken away and what is being added. I agree that it would be helpful to have dimensions on the actual architectural plans. I did not think that that was

required for this purpose, but I would be happy to do that at any point.

CONSTANTINE ALEXANDER: Well, we're not going to ask you to do it because if we did, we'd continue the case to hear it another day.

Unless other Members of the Board feel differently, I think if Mr. O'Grady's comfortable, I'm comfortable.

ATTORNEY JAMES RAFFERTY: I would think a condition if the Board were so inclined, obviously would be with the elevations. I mean to --

TAD HEUER: I don't want a condition supposed to come back.

CONSTANTINE ALEXANDER: I don't want to condition for elevations we haven't seen.

ATTORNEY JAMES RAFFERTY: Well, think I guess we're talking dimension elevations. I mean, we are dealing with an

established footprint and established porches. So the representation certainly here this evening orally and in the application materials is that we're talking about working within the frame of the existing porches. So, I guess the drawings don't show the height of those porches, I would agree that's relevant.

CONSTANTINE ALEXANDER: Well, again, let me ask if Members of the Board are comfortable going forward with the case on the basis of what we have in our files? I am.

SLATER ANDERSON: I am.

DOUGLAS MYERS: I'm less than happy about it. It's not right. It's not right.

TAD HEUER: I'll defer to the architect.

CONSTANTINE ALEXANDER: Okay. The architect. Would you like to see --

THOMAS SCOTT: I mean, I think the architectural depiction is definitely valid.

But again, it doesn't say what any of the materials are. We can only assume that you're matching the materials of the existing home. The trim, the clapboards. We assume that.

JOHN ALTOBELLO: Yes, that's correct.

THOMAS SCOTT: You know, it would be nice if the drawings actually said that. Dimensionally it would be nice to know that the addition is not coming out any further than the existing front porch.

ATTORNEY JAMES RAFFERTY: Well, I think the site plan depicts that.

THOMAS SCOTT: It depicts that, but there's no dimensional clarity to that. So -- or a note that says, it won't exceed that -- the existing depth of the existing porch. So, I don't know, do you want to take ten minutes to add some notes to the -- I mean, it's up to the Chair but --

CONSTANTINE ALEXANDER: If you could do it that way, I would certainly prefer that. I thought we would have to stop the case for now.

THOMAS SCOTT: It would just be nice to have the information I think at least noting that the materials will be complementary to the existing building. That the dimension won't exceed the existing porch lines or the existing footprint of the house and so forth.

JOHN ALTOBELLO: That is the intent.

CONSTANTINE ALEXANDER: Why don't we recess this case then for some later time this evening and to go back and take the plans that you submitted to us and put the additional detail. Anything else, Tom, you'd like to see on the plans?

THOMAS SCOTT: Yes, I think once we vote on this, it's the only thing that Sean has to go by in order to enforce the decision,

so I think it would be helpful. And I think it wouldn't take you that long to do.

TAD HEUER: For instance, I would just point out I'm looking at the proposed front elevation east, and I see a single door and part of another door. If I look at proposed floor plans, I see two presumably code size entryways both of which have front on to the house could be the size of doors. And to -- I'm not seeing -- I'm looking front on, I should see a door that size. I should see a door that size right there. I don't. I see half of a door kind of.

When I'm looking at this, clearly it's indicating that I should be able to see both of those doors next to each other because I I'm straight on. That's where the bay windows come on.

JOHN ALTOBELLO: They are.

TAD HEUER: I don't see that in the elevation.

JOHN ALTOBELLO: Okay, there is a door there.

ATTORNEY JAMES RAFFERTY: Is that because the lower portion of the railing is blocking it?

TAD HEUER: It can't be because it's written. Right?

JOHN ALTOBELLO: There's a door here and a door here (indicating).

SEAN O'GRADY: I think the width of the door may be hidden behind that post?

JOHN ALTOBELLO: It is. It's hidden behind the post.

ATTORNEY JAMES RAFFERTY: Are these existing doors or are they coming forward.

JOHN ALTOBELLO: These are existing doors.

ATTORNEY JAMES RAFFERTY: They're not being changed?

JOHN ALTOBELLO: No.

ATTORNEY JAMES RAFFERTY: So

there's nothing in the plan that changes the door?

JOHN ALTOBELLO: No.

TAD HEUER: But my confidence in the plans is not increased --

ATTORNEY JAMES RAFFERTY:  
Understood.

TAD HEUER: -- by the fact that the doors don't, in my mind, suggest that they're properly rendered.

ATTORNEY JAMES RAFFERTY: So,  
Mr. Chair --

CONSTANTINE ALEXANDER: I will recess this case, give you some opportunity to make more detailed -- to present more detailed information on the plans. When you're ready, come back and we'll take you at an appropriate time.

SLATER ANDERSON: Do you have a set to markup?

ATTORNEY JAMES RAFFERTY: Do you

have a full set?

JOHN ALTOBELLO: Yes.

CONSTANTINE ALEXANDER: Is that the same set that's in our files?

JOHN ALTOBELLO: I believe it is.

DOUGLAS MYERS: The details include specifications, dimensions?

JOHN ALTOBELLO: I will indicate dimensions on the plans.

SLATER ANDERSON: Scale?

JOHN ALTOBELLO: Yes.

SLATER ANDERSON: Have at it.

CONSTANTINE ALEXANDER: Okay?

The Chair will move that this case be recessed to a later time this evening.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: Thank you.

(Case recessed)

(8:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Slater Anderson.)

BRENDAN SULLIVAN: The Board will hear case No. 9880, 148 Larch Road. If you please introduce yourself for the record and spell your last name and give your address whoever is going to speak and whenever you speak.

JOELLEN GAVIN: Yes. Joellen Gavin G-a-v-i-n, 148 Larch Road in Cambridge. And if it's okay with everyone, I'll just read a quick statement, kind of an overview of why we're here and what we're doing.

We're here because we have a growing family and we need more space in our home. We have a six-year-old daughter that we adopted from China and we're in the process of adopting a second daughter. I'm a 23 year resident of Cambridge -- actually, I've lived at 148 Larch Road for 23 years. And my

husband is an eight year resident.

STEVEN WEINSTEIN: Nine.

JOELLEN GAVIN: Nine year resident now. Who also works in Cambridge, and we've chosen Cambridge as our home. So we currently live in a one plus bedroom. Our daughter sleeps in a converted porch that we were able to enclose because we got a Special Permit from this Board in 2004. And the end result of the enclosed porch is there. We need more room at this point, and so what you have is our plan to build out our attic space. To make this possible, we need a gift of extra FAR from you, an allowance that exceeds our current FAR. So we would need an additional 605 square feet of floor area. That's why we're applying for this Variance. Also with us is our builder, Will Betsch and we have -- well, he's part design and builder. But we had an architect draw up the plans. And that's it. We thank you for your

efforts. And we're here basically on hardship because we need more space for the growing family.

STEVEN WEINSTEIN: Thank you for the opportunity to present.

JOELLEN GAVIN: And maybe -- I don't know if it's appropriate at this time for Will to talk a little about the design.

BRENDAN SULLIVAN: It's your floor.

WILLIAM BETSCH: My name is William Betsch.

BRENDAN SULLIVAN: Spell your last name.

WILLIAM BETSCH: B-e-t-s-c-h. I also happen to be a Cambridge resident, but I'm here representing Steven and Joellen as a builder. I'm a licensed construction supervisor in Massachusetts, and I also hold a home improvement contractors license. Steven and Joellen invited me to assist them in the design process about 18 months ago, and

we worked together with an architectural designer through a six-month design process to find a solution, an architectural solution that would add two bedrooms and an additional bath to the present living space which is about 1100 square feet and only has one bedroom, full bedroom and a fairly cozy bedroom that their daughter is living in at the time.

JOELLEN GAVIN: Outgrowing.

Outgrowing at the moment, yeah.

WILLIAM BETSCH: So the design process basically is challenging because the spatial limitations on the site. Given the present height of the roof, we found that we would want to maximize the height of the structure. Presently it's 13 feet. And the new design measures 34 feet, 10 inches in height. Those additional 10 feet, two inches proved to be essential to making the design workable to the point of accessing the

third floor space. Specifically we found at the stair of the access point to the third level three-dimensional constraints for such that if we were to gain headroom specifically there at the margin of the floor plan, we needed the profile of the design as it is drawn which is a mansard section in order to make it more spatial.

BRENDAN SULLIVAN: When you go up the stairs now to the attic, the attic is unfinished?

WILLIAM BETSCH: At the moment there is no stair. So there's a pull down.

BRENDAN SULLIVAN: As you go up the stairs, you're not hitting the rafters, but they're close?

WILLIAM BETSCH: As I say, there is no staircase at the moment. So the new plan, as indicated in the drawings, if you compare the existing conditions with the new design, involves building new staircase that you see

drawn in the proposed design.

BRENDAN SULLIVAN: How do you access the floor attic now?

JOELLEN GAVIN: It's just a hole in the floor. We have to climb up there on a ladder to go through the attic.

BRENDAN SULLIVAN: So that in order to access it in the future, you're going to have to do a code compliant staircase?

WILLIAM BETSCH: That's correct.

JOELLEN GAVIN: Exactly. Yeah.

WILLIAM BETSCH: So, the other major influence on this design was the dormer guidelines that were given to us at the counter by Mr. O'Grady when we made some inquiries. So the design is carefully conceived in order to conform with the guidelines that are contained within the Cambridge regulations specific to dormers. And this of course is one of the reasons that we went towards this mansard roof as a

solution.

And beyond that I just want to say that over time that I've working with Steve and Joellen, I have become a friend as well. And I do sympathize with their current constraints. They're quite sort of squeezed in in their current space, and it seems quite clear that they would need additional space even were they not to add another child to the family, that --

JOELLEN GAVIN: The current child is growing.

WILLIAM BETSCH: Yeah. Absolutely, as Lily grows up, she's going to quickly outgrow the space she's in. There are about two aspects of the hardship. One is the spatial constrain of the site which is very narrow, and the current roof configuration would only permit, you know, when we looked at the potential of working underneath the existing roof

guideline -- roof profile section, there's a very narrow alleyway space available --

JOELLEN GAVIN: It's like a bowling alley.

WILLIAM BETSCH: -- on that third floor.

So, we are asking for an additional 605 square feet, which is the one area where the design is not in compliance. It is in compliance with regard to height.

BRENDAN SULLIVAN: Running it down from some of the numbers. The existing floor area -- it's a condo?

JOELLEN GAVIN: That's right.

BRENDAN SULLIVAN: So you own the second floor and the attic space and the eave.

JOELLEN GAVIN: That's right.

BRENDAN SULLIVAN: The third floor basically.

The existing floor area is 3212 square feet.

JOELLEN GAVIN: Of the whole structure. The whole house.

WILLIAM BETSCH: Both living spaces.

JOELLEN GAVIN: That's both living spaces. That's 146 Larch Road and 148 Larch Road.

BRENDAN SULLIVAN: So it's first floor and second floor. I guess where I'm getting, of this number what ratio of that is your unit on the second floor and what is on the third floor now that is there but not usable? Do you have that off the top of your head or not?

STEVEN WEINSTEIN: Our living area currently is approximately 1100 square feet on the second floor. And the attic space has a floor up there now but with no access.

TAD HEUER: How much of it is countable?

JOELLEN GAVIN: What they're

counting now is I think three --

STEVEN WEINSTEIN: Is it around 300?

JOELLEN GAVIN: Around 300. And it's that narrow like bowling alley space down the center. So, one-forty --

BRENDAN SULLIVAN: It's five feet.

WILLIAM BETSCH: The plain, horizontal plain measured it so five foot height.

STEVEN WEINSTEIN: If you stand in the middle and go all the way to the highest height, it's seven foot, eight just to the rafter so you end up with a very narrow kind of bowling alley, you know.

BRENDA SULLIVAN: Okay.

TAD HEUER: Did you condo-ize the structure?

JOELLEN GAVIN: Yes, I did.

TAD HEUER: Were you the sole owner beforehand?

JOELLEN GAVIN: Yes. Well, well,

it's complicated. My former husband and I bought the house as a two-family home in 1988. We lived there together, completely re-did the house, you know, gutted it and re-did the whole house and turned it -- we got a divorce in 1995. And at that point we sold it -- we turned it into condominiums. Sold the downstairs, and then I purchased the upstairs condo. So I've been living in that -- I've been living upstairs since 1988, since '95 as a condo.

TAD HEUER: So, you've acquired the value of the downstairs unit at least in part. And --

JOELLEN GAVIN: Well, at least in theory.

TAD HEUER: Right.

But I guess part of what I'm looking at is you have a one-family, you have a house that could be converted into a one-family very easily by taking that first unit back

if it were a rental.

JOELLEN GAVIN: If it were a rental, right.

TAD HEUER: You've converted it to a condo giving up the first floor and now you're asking essentially for that first floor back by adding it onto the roof. It would seem to me that really this was designed to be a two-family house that could be converted to a one family if you went down without any relief from us, but since you've gained the benefit on the first floor and now you're asking for the benefit back on the second floor, I'm not --

JOELLEN GAVIN: Right.

TAD HEUER: I'm struggling with the equities there.

JOELLEN GAVIN: I understand. And if I could speak to that I think maybe this is the appropriate time to talk about -- I mean, as you can imagine, it was a trying time

when we turned it into condominiums. But at the time we were very careful, very thoughtful about putting language in the condominium documents that state that the owner of 148 Larch Road, which was me, and I had no intention of moving anywhere at the time, would retain the right to build out the attic space.

TAD HEUER: Well, you retain the right as to your other co-owner. You don't have any right as to us, right? That's why you're here.

JOELLEN GAVIN: That's exactly correct. No, I don't have the -- I'm not saying you have to grant me the right. We're here asking for, you know, a favor.

TAD HEUER: Nor give you a right (inaudible).

JOELLEN GAVIN: No, but you know what I mean. We're asking for a gift of this FAR so no. But to retain -- I guess when we

did the condo documents, it was to, you know, make sure that at some point since I was losing -- not to get into too much -- losing all the equity in the house and buying the upstairs myself, that down the road I would be able to build out that attic space. Then as life progressed and here we are, you know, I got remarried. It's great. Adopted a daughter, phenomenal. And in the process, hopefully within the next 12 months we'll be adopting another child.

TAD HEUER: Can I ask you, most people when they have four people in their family and two young children, at a certain point they look for a bigger house.

JOELLEN GAVIN: Absolutely.  
Absolutely.

TAD HEUER: And one concern that I have is that in Cambridge right now, and it's not anyone's fault, maybe collectively everyone in the room if you all lived in

Cambridge, is that house values have gotten to a point where people are saying, well, I bought a thousand square feet, I paid a lot of money for a thousand square feet. I could buy a thousand square feet for a fifth of that, you know, if I just drove a couple miles out of the city. Now, I need to add on to that because I can't buy anywhere else. Every time someone adds on to that thousand square feet and makes it 2,000 square feet, it takes out of circulation another thousand square foot transitional piece of housing stock in the City of Cambridge. Essentially what we're doing is we're creating, at least from my view, if we're looking at it from the Board looking out for the City of Cambridge, we're essentially creating a lot of three, four-bedroom 2,000 square foot plus homes in a neighborhood that was largely designed to be a transitional two-family housing for families to come through and move on to a

larger house elsewhere in Cambridge. The fact that those larger houses are also out of reach, I'm not sure that it's sufficient justification to take those housing, you know, those smaller sized houses out of the circulation.

JOELLEN GAVIN: Well, I can see exactly what you're saying because it's happened on our house three times. The house across the street and two houses down from us on both sides of the street were two-family homes, one a rental. And they're now -- all three of them are at the \$2 million price to be sold. So Larch Road, it's definitely happening on.

STEVEN WEINSTEIN: The only other comment I would say, and before my time, we got married in 2002, so the -- and prior to it becoming a condo in 1993 -- in 1993 Joellen and her former husband came before this Board and asked permission to renovate the attic in

a similar but not exactly --

JOELLEN GAVIN: With dormers, yeah.

STEVEN WEINSTEIN: With dormers at a different time and that was granted.

Obviously with the divorce that was never able to transpire.

JOELLEN GAVIN: Right.

STEVEN WEINSTEIN: So not a perfect as a long time owner, but I just had to throw that out for just for context.

TAD HEUER: But even in the context of dormers if you stayed within our dormer guidelines and you somehow figured out how to get two, 15-foot dormers up there and we said okay, that gets you how many square feet roughly?

WILLIAM BETSCH: Well, what's accessible right now under the current roof is about 290 square feet. And I think with a couple of dormers, you might be looking at 500 square feet. 550 square feet. But --

TAD HEUER: You get 500 feet out of two dormers?

WILLIAM BETSCH: Well, you just mentioned two, 15-foot dormers.

TAD HEUER: Yes.

WILLIAM BETSCH: And I'm shooting from the hip here.

TAD HEUER: I'm talking about additional space. Not what you would have gained because you can use that 300 bowling alley. So what you would actually add to that 200.

WILLIAM BETSCH: Additional 200.

TAD HEUER: 200, right. And here we have a proposal for 600. The Board might be in the market for looking at dormers. We do a lot of dormer cases, and obviously all case by case. But 200 is kind of the upper, usable range of where we're granting in terms of FAR. 600 is a very large number for us to grant just anywhere in the city regardless of the size

of the house. And 600 on top of 1100 plus 300, you know, 20 some odd 30 percent increase is a very large number as well.

WILLIAM BETSCH: It is. If I could speak to that, yeah.

I grant you it is a large as of right? However, I just -- from the point of view of architectural consideration would ask you to compare -- I'd ask the Board to compare the existing elevations with the proposed elevations, and I think, you know, design is subjective, but I think that reasonable people might agree that the relative difference is minimal and it was designed specifically to minimize the visual impact and I think that the design itself --

CONSTANTINE ALEXANDER: I have a related question. I'm sorry, do you want to continue?

TAD HEUER: No.

CONSTANTINE ALEXANDER: I have a

question that's ancillary toward the point that Tad's raising. Your argument in your papers and tonight is we're a growing family, we need more space. We need more bedrooms. We're adopting a daughter.

JOELLEN GAVIN: Right.

CONSTANTINE ALEXANDER: And that's the kind of hardship that people bring down before this Board and we're often sympathetic to it. And I look at the plans. The plans show that most of the new space is being designed for a very large master bedroom suite. I don't see that much space being devoted to extra bedrooms for children. And I'm wondering what's the hardship? Whether the hardship matches up.

JOELLEN GAVIN: Yeah. Well, if you --

WILLIAM BETSCH: It does actually. The new plan creates two additional bedrooms if we -- essentially allowed that existing

child's bedroom becomes defunct in a sense as the children get older. The net result is that the bedroom that's currently on the second floor could be become a child's bedroom. There's an additional bedroom on the third floor that is another modestly sized bedroom for a child, and granted the master bedroom.

CONSTANTINE ALEXANDER: But to Tad's point you said you might need less space and not as much relief from us if you weren't building such a large master bedroom suite.

WILLIAM BETSCH: It's interestingly true. I want to emphasize that we did several, many other iterations in the design process and looked at different profiles. And it is true, once you go to a mansard profile and continue that geometry around the perimeter, it does create a certain amount of volume there. And we did find that in the end it did allow for a fairly generous master

bedroom suite. I will agree with you 100 percent. But really it was part of the process that was a feasibility study that was looking at access, height and the overall geometry of the mansard roof.

CONSTANTINE ALEXANDER: I just have a problem finding hardship under these circumstances. I don't see the hardship.

WILLIAM BETSCH: Yeah, the design is an outcome of a process where we were asking ourselves what is the minimal thing that we can do within the existing height limitations, with the dormer restrictions, and it will create access and the extra rooms essentially. There was a full-fledged set of drawings that we brought down for review. Sean was kind enough to look at those, and at that point in time he brought to our attention, because that design involved dormers, that this design, although it was similar to designs I've built in Cambridge

before, did not now currently conform with the Cambridge dormer guidelines. And that was the point at which we started looking at a mansard.

And as I mentioned earlier, once you go to a mansard, it does actually permit the plan that you can see in front of you. And I agree, it's a generous master bedroom, but I don't know if that's necessarily a negative thing. But that's for the Board to consider.

SLATER ANDERSON: Can I ask a question? Your unit is currently constituted as approximately 1100 square feet plus this inaccessible technical living area on the third floor?

JOELLEN GAVIN: Right.

SLATER ANDERSON: The first floor unit then, from what I see on the dimensional forms is about 2,000 square feet. I assume that includes the basement?

JOELLEN GAVIN: It does. The

owners of 146 Larch Road sleep in the basement. They have -- well, they reconfigured it down there. So I think they've made three bedrooms where it used to be two and now it's three. And then their first floor is their open floor plan of a kitchen and a dining room and a living room. And the front room which is a den, which is under our closed porch. Yes.

STEVEN WEINSTEIN: It's approximately 710 square feet.

JOELLEN GAVIN: The basement. The bedrooms in the basements.

STEVEN WEINSTEIN: In the basement.

JOELLEN GAVIN: I mean, with the mansard -- I guess from a layperson's point of view with the mansard, the space is the space. I mean, it's the floor. If it would make a difference to make a master bedroom smaller and the kids' rooms bigger, we can certainly move walls around there. I mean my

point is we're not doing it for resale, for making money or for -- you know, Steven works in Cambridge. Our daughter can walk to school. We're hoping to be there for a really long time.

TAD HEUER: Even as long as you're there for, as John Maynard Keynes famously said in the long run, We'll all be dead.

JOELLEN GAVIN: Yes.

TAD HEUER: Many of these houses predate --

JOELLEN GAVIN: Yeah.

TAD HEUER: -- most people in this room --

JOELLEN GAVIN: Absolutely.

TAD HEUER: -- and hopefully will post-date them.

JOELLEN: Yeah, yeah.

TAD HEUER: And we're looking at what the City Council has told us what the streetscape should be --

JOELLEN GAVIN: Yeah.

TAD HEUER: -- to the extent possible, not just for current owners but for the City of Cambridge.

JOELLEN GAVIN: Sure.

SLATER ANDERSON: When was the basement finished? Was it finished prior to when you sold it as a condo?

JOELLEN GAVIN: Yes, yes. It was finished but then redone by the current owners.

SLATER ANDERSON: But there was living space. Was that done as part of the condo conversion or had it been living space --

JOELLEN GAVIN: It had been living space since 1988, '89 when we finished the space.

SLATER ANDERSON: So you sold a unit that had roughly the 2,000 square feet at the time?

JOELLEN GAVIN: Exactly. Yes, that's exactly right.

SLATER ANDERSON: Thank you.

BRENDAN SULLIVAN: The whole thing appears very top heavy to me. Even the front with the French doors and the balcony on the front. I mean, it's, it's shouting. And it becomes a very grand master suite, which I understand you need more bedrooms and another bathroom. But this becomes very grand and really tips the balance as to, I think, what we like to allow No. 1.

And notwithstanding also, there is substantial opposition to it, and they're asking us to enforce the Ordinance. So it puts us into a more difficult situation. I haven't got to a comfort zone with it, No. 1. And then also the opposition to it. And basically the opposition telling us that they want us to adhere to the Ordinance. It makes it somewhat difficult. But the front is --

JOELLEN GAVIN: If I might speak to that.

BRENDAN SULLIVAN: -- is quite large. And I noticed that on the drawing, and again, the drawing is undated other than December '09; is that correct?

STEVEN WEINSTEIN: Yes.

WILLIAM BETSCH: Yes.

BRENDAN SULLIVAN: It's on the first page. But sheet A2.0, you know, you have sort of a line showing the existing side-view and obviously the additional roof, additional head roof. I don't see that on the front.

WILLIAM BETSCH: You're looking at sheet A2.0?

BRENDAN SULLIVAN: Correct.

WILLIAM BETSCH: Yes, this sheet indicates the new design. We're looking at the front elevation on the left side of that page. That's the new design. And the side

elevation, the new design on the right-hand side.

BRENDAN SULLIVAN: Correct. What I was looking for was the existing roof on the front.

WILLIAM BETSCH: The existing roof? You mean look for it superimposed on this drawing?

BRENDAN SULLIVAN: Right.

WILLIAM BETSCH: Other than the existing conditions drawing, I'd ask you to reference sheet two EX2.1. It shows the side elevation -- existing side elevation. And EX2.0 shows the front and rear elevations. So I bring to the Board's attention that it was intentional that the existing eave line, that elevation of the soffits was maintained.

BRENDAN SULLIVAN: I guess I was looking for -- you know, what you did on the side was take this and superimpose it on this.

WILLIAM BETSCH: I see a dotted line

on there to clarify. Understood.

BRENDAN SULLIVAN: Yes.

WILLIAM BETSCH: We did very careful site measurements to ascertain the existing heights relative to the existing grades, and so we have the intention of course to conform with the height situation. Maybe I would ask that the design issues brought into focus. I'm not quite sure what you're asking me.

BRENDAN SULLIVAN: What I was looking for was the existing superimposed on the proposed is all.

WILLIAM BETSCH: Which would surely help.

BRENDAN SULLIVAN: Which I can see this here, but I don't see them on the front. And to me the front is quite imposing and especially with that deck out there, it's really bringing an element out there that's not out there now.

JOELLEN GAVIN: Well, the reason we

did that is that's what used to be there on the second floor, a porch and French -- the big French doors. So we were trying to mirror the -- we're just trying to move it up to the third floor and mirror that. And then when we were granted the Special Permit to close in that porch, you obviously don't see it anymore.

STEVEN WEINSTEIN: And the door is obviously where the window is today.

JOELLEN GAVIN: Yeah, there are two windows.

BRENDAN SULLIVAN: Oh, I know. It just becomes --

STEVEN WEINSTEIN: And obviously that's --

BRENDAN SULLIVAN: -- large.

JOELLEN GAVIN: Right.

STEVEN WEINSTEIN: And that's an architectural detail more than a, you know.

BRENDAN SULLIVAN: Okay.

WILLIAM BETSCH: Again, I would just say this is a result of a design process, and part of that process was a survey that we made in West Cambridge in the neighborhood, and there are quite a few second empire houses that have mansard roofs in that neighborhood. So, to that extent we were hoping to be contextual to this design.

TAD HEUER: Can you, do you have addresses -- I mean, I'm thinking of the largest, and I'm not immediately seeing mansards come to mind. It's certainly not on Larch Road itself.

JOELLEN GAVIN: No, no, not on Larch Road itself. It would be Grozier and -- Lakeview is the bulk. Grozier, so, you know, two blocks over, three blocks over. But certainly in that West Cambridge Huron Village block is where we were looking also.

STEVEN WEINSTEIN: And we did look -- and we looked at as part of this design

process, you know, can we do this and get a steering and build, you know, the two bedrooms and a bathroom. And there wasn't a way to do it and conform to the dormer guidelines and be respectful to, you know, to that as well.

TAD HEUER: Doesn't a lot of that suggest that maybe the significant difficulty is because the city has asked that this kind of thing not be built and that's why there's so many problems with figuring out how you get there?

JOELLEN GAVIN: Well, I guess we felt hopeful because three other homes on Larch Road were granted. I think we felt hopeful because of that. Because two houses on Larch were turned into ginormous \$2 million single families. And we still want to keep it as, you know, still a two-family because there is no option to buy the downstairs at this point where people are

living there.

WILLIAM BETSCH: Well, I think, setting architectural styles aside, if you walk up and down Larch Road, you see that the norm is that the third floor has at some point in time been built out. So in a way is it out of the ordinary there on that particular street. They're all particular instances, of course, but I don't think in any ways it's different than the house immediately next-door and to the north where the third floor's been built out extensively, houses immediately across the street. So, if we're talking about context and what the city has previously granted, it surely is in keeping with those -- with that context.

STEVEN WEINSTEIN: And the challenge with our house, of course, and part of the hardship is our roof is very shallow. So, you know, at some houses it's a very steep pitch there's -- part of the hardship and

challenge is our roof is very shallow. So if we had a roof that's really steep, it's very easy to do a dormer and we would have alternatives because of that dimensional characteristic. We just -- there's no way we can do those options.

SLATER ANDERSON: Well, I think it would have been helpful to see some of these options that you considered not sufficient because I'm not totally convinced that, you know, with the dormer guidelines that you couldn't have gotten close to what you needed. But we've gone from third floor with, you know, to no access to a 600 square foot -- basically a new floor on the house adding to the third floor. And there's, you know, there's an architectural style to the existing house that's going to change dramatically with the plans that you propose, and it's a 50 percent increase in the size of the unit. It's significant, isn't it?

STEVEN WEINSTEIN: If we're 11 to 1200 feet on the first floor and we go to about 1900 feet --

SLATER ANDERSON: That's a unit size that you're increasing roughly.

BRENDAN SULLIVAN: Well, okay. You'll get a chance to come back to it on what you've heard to anyhow.

Any other questions, Tom?

THOMAS SCOTT: I mean, I see what they've done and I appreciate the mansard style because the whole intent of that style is to kind of conceal that third level with what appears to be a roof and just, you know, poking the windows kind of through the edges of the house. So I appreciate what they've done, but it just seems to be a little bit over the top. I'm curious, I haven't heard any of the testimony, so I'd like to hear the testimony from others, whether they're in opposition or in favor of the proposal before

I make a decision.

BRENDAN SULLIVAN: Yes.

JOELLEN GAVIN: We submitted, if I might add, which I hope you have in your packet to Maria, a signed petition of several of the neighbors, our across the street neighbor, our other next-door neighbor and actually our back neighbor and the Duncan MacArthur, former husband, builder of house, owner of two homes on Larch Road which are now -- with which his encouragement I'm here which are now the big giant single families.

BRENDAN SULLIVAN: Yes, I don't have those. Joellen if you could -- oh, I'm sorry, they are here.

JOELLEN GAVIN: Yes, oh, great. And I do appreciate and understand there is opposition to this and we've been working through it for 14 months diligently and thoughtfully, which we have all documented here if that is of any interest. And so I can

appreciate how difficult it must be, but you know, there are two sides to a story.

STEVEN WEINSTEIN: And we're really -- I mean, we're just trying to adopt another child and add two bedrooms for the children. There's no other --

JOELLEN GAVIN: And finally it's the ideal situation.

STEVEN WEINSTEIN: Right. And there's no other real mal intent. I mean, we're just here really trying to raise a family. I work in Kendall Square. Our daughter, you know, goes to school in walking distance to our house.

JOELLEN GAVIN: Lots of adopted kids on the street.

STEVEN WEINSTEIN: We have three adopted children on our street. You know, having that diversity is critical to us. You know, with adopted children. And, you know, there are very few neighborhoods that allow

us to do that. It's one of the reasons that we've been here.

JOELLEN GAVIN: That we squashed in.

BRENDAN SULLIVAN: Okay.

Gus, any questions at this point?

CONSTANTINE ALEXANDER: No, no questions.

BRENDAN SULLIVAN: We'll open it to public comments. And, again, we'll get back to you at the end for you to respond.

JOELLEN GAVIN: Okay.

BRENDAN SULLIVAN: Is there anybody here who would like to speak in favor of the application?

(No Response.)

BRENDAN SULLIVAN: I see nobody. There is correspondence dated March 11th. "We are in full support of the proposed renovation and zoning request to build out the attic space as submitted to the Cambridge City Zoning Board in December 2009." And

it's signed by an Elizabeth Keating, 122 Larch Road. The address is 502 Huron Avenue, 145 Larch Road. I can't make out the signatures. 149 Larch Road, 133 Larch Road, 134 Larch Road and 144 Larch Road voicing their support.

Is there anybody who would like to speak in opposition to the proposal? Would you please come forward. Mr. Santarowicz is it?

MITCHELL SANTAROWICZ: Yes.

BRENDAN SULLIVAN: Come up and take a chair if that's easier for you. Introduce yourself and spell your last name for the stenographer.

MITCHELL SANTAROWICZ: My name is Mitchell Santarowicz S-a-n-t-a-r-o-w-i-c-z. I live at 150 Larch Road which abuts 148.

TAD HEUER: To which side?

MITCHELL SANTAROWICZ: I'm on the right-hand side.

Let me start off by saying I do not

pretend to know all of the rules and regulations or codes or by-laws of the Building Department. However, I have been in the building trade and have worked with the Building Department building various kitchens, bathrooms and so forth most of my life. I may be going over some of the stuff that Ms. Joellen has already mentioned, however, some years back when Ms. Gavin bought the house from her -- and her former husband, they did a lot of renovation and also took three-quarters of the basement, for living spaces. Turning the basement space into living quarters they also added a large rear deck and a second floor porch which was not there before. In this renovation they also removed second and basement stairwells in the rear of the house after which they lived on the second floor and rented out the first floor for many years. And as she stated, probably in 1995 she turned it over

into condos. And in March of 2004 a Special Permit was granted to her to close in the front porch, turning it into a bedroom. During this renovation another permit was issued because they lacked a second floor egress from the second floor and had to put in a spiral staircase in the rear of the building. Aside from the fact that they lacked the proper setbacks from the property lines, I have many concerns about this project. Noise, congestion, peace and quietness will all be affected in this neighborhood. When I first read this notice in the Cambridge ad, it read to redesign a roof which sounds simple and straight forward, however, in fact, what is proposed here is to remove the entire roof and add a second story onto a two existing story building. This is a two-family residential area. Don't mind my throat, it's gonna be probably going.

To mention a few concerns, I have the largest and biggest tree on the street in front of my house. Along with this tree in full bloom and them adding a third story to a two-family existing house, this will take away all the light and sunlight I have enjoyed coming into my apartments. I feel this will decrease the value of my home, causing me to live in somewhat of an alleyway condition. I have pictures showing the sunlight coming in around eleven a.m. The light and sunlight is quite important as indicated by the number of windows on the left-hand side of her house. There are 20 plus windows on that house where I have only eight for the first and second floor apartment. The section of Larch Road has mostly two family houses on it. Some of which has been stated, have been converted into singles. Although there has been a very great deal of renovation and construction in this area, I know of none in the last 50 years

that were granted a permit to build a mansard roof. I do not feel this mansard roof nor conforms nor fits in with the area. Also, down the street where once the Russell School stood, new two-family homes were built there also, and they, too, had to be required to stay to the height of existing homes.

Finally, I have met with the same Zoning Board or a different group of people some years ago on this very matter. I do not know if this project was denied or rejected, however, more recently a permit was issued to grant -- to close in the front porch at 148 Larch Road. This too was for living quarters and a growing family. Now, again, they are asking to extend their living space. So my question to the Board is a simple one, can people keep expanding a condo after it has been registered and recorded as a condo?

I want to thank you for your time, your presence, and I hope and trust you will

finally and totally reject this project once and for all.

Thank you.

BRENDAN SULLIVAN: Thank you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Is there anybody else here who would like to speak to --

MITCHELL SANTAROWICZ: Would you like to look at the pictures?

BRENDAN SULLIVAN: If you want to hand those in. Thank you.

MITCHELL SANTAROWICZ: There's one picture in there that you'll notice a closed in fireplace or a closed in chimney. I would be looking at anywhere from a 10 to 12-foot wall out of my windows.

BRENDAN SULLIVAN: Okay, thank you.

ATTORNEY FREDERICK HAYES: Good evening, Attorney Frederick Hayes, Commercial Wharf in Boston.

BRENDAN SULLIVAN: Do you have a

card?

ATTORNEY FREDERICK HAYES: Thank you. I represent Kim and Brad Bernstein who own 146 Larch Road, the unit downstairs that's been the subject of some discussion. We're here in opposition to the proposal. I'm going to expound a little bit on some of the comments I think the Board has already made, but I don't believe that this proposal in any manner meets the requirements of the statute regarding the substantial hardship in that you've been provided with any evidence that would allow you to make detailed findings that would allow this Variance to be granted.

I think it's important to recognize that what these nice folks have said is that our roof is too low, is that we need to expand our living space because we have a current child and we might like to have another child. I have no quarrel with any of that.

Unfortunately as we know, the Variance law in Massachusetts is very specific. You're not allowed to simply say I have a personal hardship and therefore expand your property. Substantial hardship here, and the only thing that has been alleged, is that we have a house that's too small for our growing family. That is essentially what we've got. I suspect that if that were the basis upon which this Variance were granted, there'd be an awful lot of people in Cambridge coming before you with exactly the same problem. Because there are an awful lot of people in the city or the North End of Boston where I'm from, saying hey, I'd like to expand this because I'd like to have a child. The problem is that the hardship, if you were to call it a hardship, is self-imposed. And there's clear case law that if you have a hardship that you've caused on yourself, that is not a grounds for a Variance.

The other interesting thing about this is I think it's been alluded to before, this is already a pre-existing non-conforming structure. And what these folks are asking you to do is to add on to the non-conformity, increase the non-conformity which is frankly contrary to the run of the law which says that non-conformities should not be expanded but should be restricted wherever appropriate. They're looking to change the gross floor area, the ratio of the gross floor area to the lot area, the ratio of the usable open space of the lot. Most specifically the gross floor area by my calculation wouldn't be over one-third larger than allowed by the Ordinance once this is all said and done. It's as someone here said, a very large addition to this house. This is a two-family house which in effect may wish to make into a three-family house. I don't want to be redundant. I know the Board knows the legal

standards here, but realistically they are in the heavy obligation of showing to you that enforcement of the Ordinance would impose a substantial hardship upon them. And we're clear from the law that a substantial hardship is -- much as you might say this is unfortunate, that a substantial hardship in the law is not that you have a personal problem, that you have a financial problem, that you have a problem that is personal to you, the law is clear, if you have a personal hardship to the owner, that does not qualify as a substantial hardship. It's clear that if you have a need for the proposed use, that doesn't qualify for the proposed hardship. And it is also clear that the Petitioners bear the burden of meeting all the statutory criteria before you and proving each point so that you can make your findings. There is ample case law here that -- Gamacci (phonetic) case, for example, says there's

abundant literature that documents the difficulty of obtaining a lawful Variance in cases where the proposed hardship is something that's personal to the individual. And there's also very clear law that says you can't find a substantial hardship if the hardship has been imposed by the individuals themselves. And that's exactly the situation we're in here tonight, is that these -- this nice couple is coming before you and saying we wish to have more children, our house is too small. It's not -- we have a lot that we can't build on. It's not that we have a house that cannot be occupied. It's not that we have a house that will not fit the building code. It's that we need to expand and, therefore, we need to take this property which is already beyond the Zoning Code and make it even larger. Okay? I suggest that your allowing them to do that would be a -- not in conformance with either your Ordinance or

with Mass. General Laws 40-A.

They also have to tie in for you, and haven't in my opinion, that this hardship that they propose is somehow related to the topography, the soil conditions or it is somehow related to the land. None of that has even been attempted here. There is sort of an argument that we're being constrained because of the shape of the property.

However, in doing that, they also have to show you that the literal enforcement of the shape of the property is especially affecting this land and structures but not the area in general. And Mr. Santarowicz here pointed out to you, and I have photos here if you like to see, there is nothing particularly special about this house in this neighborhood. It is a two-family house. If everyone in this neighborhood also wanted to expand their family on this criteria, they couldn't do it.

Basically what you see in the petition,

with all due respect, is that we need to expand because we're going to have children. We can't tell you how our hardship is related to the soil conditions or topography and we can't tell you how it's different from everyone else in the neighborhood, only that we need this space. Again, as heartfelt as that may be, it's not a qualification under the law.

Finally, you would need to find that the desirable relief may be granted without either substantial detriment to the public good or nullifying, substantially derogating the intent of the Ordinance. And if you look at your Article 1.30, of course, one of the purposes of the Ordinance is to lessen congestion. It's to prevent overcrowding of the land. It's to avoid undue concentration of population all directly contrary with what these folks want to do.

Finally, my clients don't engage in

this process lightly. They're downstairs neighbors, they share the building. But they have substantial concerns that have been raised at various times that the construction itself, aside from the noise, aside from the dust, aside from the length of time which it would take, may cause them substantial structural damage, clearly would cause them a good deal of inconvenience. There's been a quote from a contractor that this work will take six months. As an attorney representing a lot of contractors, there's serious concern that that quote is to the amount of time that it's going to take is way understated. My clients have two small children. They live on the first floor and on the basement. They don't want to have this kind of construction around.

In addition, there is a very serious concern on the part of my clients that when the construction does take place, that it may

cause structural damage to their units specifically. I have some photos here of the neighborhood.

CONSTANTINE ALEXANDER: If that were to happen, your clients would have legal recourse. I mean, it doesn't mean you have a right -- that's not a Zoning issue.

ATTORNEY FREDERICK HAYES: Oh, no, no, I understand it's not a Zoning issue. But what I want to impress upon the Board is that we're not coming before you saying we simply don't like it. There are very legitimate reasons why this opposition is here aside from the fact that this is too big and doesn't qualify under the law. And one of those reasons is quite frankly, that the engineering studies indicate that the entire property may have to be shored up. There'd have to be holes dug to find out if we have to put up additional supports.

TAD HEUER: Wouldn't that be an

issue dealing with soil conditions and topography?

ATTORNEY FREDERICK HAYES: Well, no. We know -- I understand -- we're not saying -- I don't know that that is a fact and certainly has not been alleged here. And if there were problems with the soil conditions, it would be caused by their addition not by what we have here now. So, there are already cracks in the foundations at certain points. My folks feel that if this was goes forward --

BRENDAN SULLIVAN: There is a stream that runs underneath it.

ATTORNEY FREDERICK HAYES: What's that?

BRENDAN SULLIVAN: There is a stream that runs underneath it.

MITCHELL SANTAROWICZ: That's exactly right.

BRENDAN SULLIVAN: But that's another issue.

TAD HEUER: Perhaps you need to --

ATTORNEY FREDERICK HAYES: The point essentially is I don't think the legal criteria have been met.

BRENDAN SULLIVAN: Okay.

TAD HEUER: I have two questions. First, your clients, when they purchased the condo, they read the condo documents, right?

ATTORNEY FREDERICK HAYES: I assume they did, yes.

TAD HEUER: I would presume they did as well. And I think the law would presume that they did too. The condo documents, I've seen them, they're in the file, seem to clearly state that the upstairs owners have the right to seek relief from this Board to do --

ATTORNEY FREDERICK HAYES: Well, the condo --

TAD HEUER: I mean, isn't it kind of a situation where you're saying that they're

in this and all of a sudden it's being forced upon them. They were on notice that the condo agreement would allow the upstairs owners to at least try to do something like this.

ATTORNEY FREDERICK HAYES: Well, I mean the condo document is quite interesting. And I'll confess I've not seen one quite like this in a while. But it does say that we're anticipating that the upstairs unit could be increased and that it would reduce the master deed, the common areas from what where they are now to 50/50 units. There's a couple of problems with that:

One, it says that the trustee would sign any applications. Both of my clients are not trustees. You can pick and choose which one you want. One is at least in opposition.

Secondly, this document would purport to allow a less than 100 percent change in the common areas of the condominium which is in

direct violation of Chapter 183-A, Section 5 and there's case law that says you simply can't do that. You need to --

CONSTANTINE ALEXANDER: Well, wait a minute. I'm sorry to interrupt you. But these are issues about contract interpretation and condo document interpretation. That doesn't go to the Zoning issue.

ATTORNEY FREDERICK HAYES: I'm just answering.

TAD HEUER: He's more responding to my question which is more, you know, it seems you know, at least I want to stick to the grounds in the Ordinance rather than to reasons of, you know, this is going to be impacting on us where arguably there are issues in the condo documents that go through that.

My other question is when I look at our language for which was drawn from 40-A, we say

that you need to show a literal enforcement of the provisions of the Ordinance would involve substantial hardship, financial or otherwise, to the Petitioner or Appellant.

So, when you say financial isn't the reason, I think financial is a reason for us. Right? And when you say it's not individual, I think I know what you're saying, but certainly no one comes before us altruistically saying I have no interest whatsoever in making this addition to my house, it just happens to be that I own it. Right? I mean, at a certain point all requests are personal in nature.

ATTORNEY FREDERICK HAYES: I agree that all requests indeed are personal when it comes to the Board. I think the point is made in the case law is that simply because you have a personal hardship to the owner, Daud (phonetic) versus Board of Appeals, financial or pecuniary hardship to the owner

alone will not allow establish a substantial hardship, that's the ice -- Ever-pure Ice Manufacturing Company. I mean essentially what we're saying here is you've got to tie in your request for substantial hardship to something strange about the property.

What's wrong were the soil?

TAD HEUER: All you're saying it's necessary but not sufficient, right?

ATTORNEY FREDERICK HAYES: Correct.

TAD HEUER: You need all three --

ATTORNEY FREDERICK HAYES: You've got to do it all and clearly that's not happening.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Okay. You'll get a chance.

Anybody else wish to speak on the matter? There is a letter in the file. There was a letter in the file from Timothy Flaherty, 103 Fresh Pond Parkway, dated March

12th. "Please accept this letter written in opposition to the requested relief to expand the height and density the two-family home located at 148 Larch Road in Cambridge. I reside at 103 Fresh Pond Parkway which abuts the rear of both 150 and 148 Larch Road." And then he mentions about Mr. Santarowicz who he had some conversation with and that he supports your position in opposition to this proposal.

He mentions one issue here about a curb cut that was installed preventing you from driving your van into the driveway?

MITCHELL SANTAROWICZ: That's correct.

BRENDAN SULLIVAN: Okay. That's another one. I read this and I wasn't sure how that happened, but anyhow. Okay. Anybody else wish to....

(No Response.)

BRENDAN SULLIVAN: I see none.

I'll close public comments. You have the floor again.

WILLIAM BETSCH: Just initially I think one essential point of information I'd like to make. Counsel has stated that it is my client's intention to create a three-family house. I think it's clear to everyone on the Board that our plans do not indicate a three-family house. He said three-family house. And what we're just trying to do is expand the upper unit of a two-unit condominium. I hope that's clear.

Secondarily with regard to the concerns that he raised on behalf of his clients with regard to structural concerns, we have met with Brad and Kim on a couple of occasions, and in fact Steven and Joellen engaged the services of highly regarded local engineer Marvin Davidson who at those meetings -- at the meeting on February 11, 2010 specifically addressed their concerns and drafted a scope

of work proposal that would do, in his view, address all of those concerns. So I would like to submit to the Board copies of that scope of work proposal to -- just to indicate that Steven and Joellen had made a good faith effort to address those concerns.

BRENDAN SULLIVAN: Has there been any attempt to do a shadow study?

JOELLEN GAVIN: That -- actually, I'm glad you brought that up because we did a shadow study with the giant dormers that we were granted in 1993, Duncan and myself. We came before the Board --

BRENDAN SULLIVAN: On this proposal.

JOELLEN GAVIN: On this proposal?  
No.

BRENDAN SULLIVAN: Okay.

JOELLEN GAVIN: But it is relevant to say that the Board did grant us the Variance to --

BRENDAN SULLIVAN: But that's not the proposal that's before us.

STEVEN WEINSTEIN: The only thing I would say is if you look at the way the sun rises and sets --

JOELLEN GAVIN: That's what I was trying to say. It's south to north, not east to west.

STEVEN WEINSTEIN: Right.

JOELLEN GAVIN: The conclusion was no matter how high our roof was, it didn't affect the sun going in his window which was the conclusion. And it's in the notes from 1993 in your office. But we can certainly of course do another sun study.

BRENDAN SULLIVAN: I think he has a valid point. That was one of --

JOELLEN GAVIN: Yep, he raised it back then. Yeah.

STEVEN WEINSTEIN: But by raising the roof two and a half feet doesn't change

his light in his house at all.

MITCHELL SANTAROWICZ: It does.

BRENDAN SULLIVAN: Well, you say it doesn't, he says it doesn't. My suspicion is that it falls somewhere in between. It has got to have some affect.

STEVEN WEINSTEIN: I will say that one thing and that I realize, you can't judge our petition by any other house on the street. And I thought in the sense of fairness, there are a handful of houses on Larch Road who very -- actually very few houses on Larch Road don't have their attic built out. Mr. Santarowicz has 840 feet. He has that third floor that he is so saying we don't deserve. So in a sense of fairness I just -- I'm surprised he can say it so straight faced.

JOELLEN GAVIN: And I might also add that you can look at that picture I have there of our house, we're the only house on Larch

Road with that roof configuration in the front. I don't know what you call it, but it's that -- it doesn't have a point. It's kind of flat.

WILLIAM BETSCH: The ridge line is transferred on the elevation.

JOELLEN GAVIN: Right. We're the only house on that. No other house has that on Larch Road. They're all 99 percent are pointed. There's a cottage --

BRENDAN SULLIVAN: That's the way they were built, and they were all built prior to the existing Ordinance.

JOELLEN GAVIN: Right.

BRENDAN SULLIVAN: And, you know, our retort to that is maybe that's one of the reasons we have this book now.

JOELLEN GAVIN: Right.

BRENDAN SULLIVAN: Is because people built all those very large homes in the past and then all of a sudden it was let's stop

the madness. We need to put an Ordinance into effect that lessens congestion that was raised.

So, anyhow, any other things to --

WILLIAM BETSCH: Perhaps a relatively minor point, but since counsel did raise the question of project schedule, I would like the Board to appreciate that I prepared and showed to Brad and Kim a proposed construction schedule, a critical fast schedule that lays out a 24-week construction schedule. And we also agreed to time the project in such a fashion that the heavy work could be scheduled at a time when they were on vacation during the summer. So once again, we myself and Steven and Joellen I think made a good faith effort --

JOELLEN GAVIN: We met with them several times.

WILLIAM BETSCH: -- to meet with the downstairs neighbors and address all the

concerns. And of course we continue to do that going forward.

STEVEN WEINSTEIN: And I would just add to that, we've met with them personally four times and we've bent over backwards at considerable cost, in excess of \$10,000, to try and address all of their concerns by hiring a structural engineer, meeting with the architect and the builder numerous times. And all through this process they had a handful of concerns and every one -- every time we met with them, we tackled each concern one at a time. And we got to a point where we thought, you know, there was nothing left.

JOELLEN GAVIN: Right.

STEVEN WEINSTEIN: And so, you know --

JOELLEN GAVIN: We had a contract.

STEVEN WEINSTEIN: Right. We even got to the point where they encouraged us and told us at our expense please draft a

document, which we've done --

JOELLEN GAVIN: With a lawyer.

STEVEN WEINSTEIN: -- with a lawyer at our cost. And, you know, after that we can submit that if you like.

THOMAS SCOTT: I might add for the record that this document from the engineer is a proposal to do work. It doesn't address -- there was no investigation done.

STEVEN WEINSTEIN: It was a scope of work that was agreed to by Joellen and I --

JOELLEN GAVIN: And Brad and Kim.

STEVEN WEINSTEIN: -- and the Bernsteins on exactly what scope of work they would be comfortable with --

JOELLEN GAVIN: Before building anything.

STEVEN WEINSTEIN: Before moving forward, and to making sure as part of the exercise, we do a pre-build analysis of the soil. And that Marvin Davidson, a

professional engineer whose specialty happens to be foundation and soil work, would have, you know, oversight on the construction and make sure the construction was done properly and would sign an Affidavit as a professional engineer afterwards certifying that it was absolutely done correctly. And so that scope of work was written as a follow-up to a meeting among the five of us to address -- actually six of us, to address their concerns. And it was specifically crafted to do just that.

JOELLEN GAVIN: And they were comfortable with the engineer and signed on to him.

STEVEN WEINSTEIN: And they asked the engineer to draft that and for us to draft a document that would reference that as a guiding document to the construction. So there's been considerable effort to really bend over backwards, to do everything we can

to, you know, meet their needs and be respectful of that, okay? And here's a document that we presented to them.

JOELLEN GAVIN: At their request.

TAD HEUER: Which they didn't sign, right, I presume?

JOELLEN GAVIN: No, but we don't know why.

STEVEN WEINSTEIN: We don't know. They just went -- yeah.

And as to hardship, again, I'm not an attorney and I can't quote code, but I find the comment that we self-inflicted this as quite frankly a little disrespectful and --

JOELLEN GAVIN: Please. There's a human element of that.

STEVEN WEINSTEIN: I mean, this is a human element. We are asking for a gift. We do not deserve -- we have no right to any of this. We are asking for this because we would like to stay residents of Cambridge and

grow our family. If we had no children to our family, we -- our daughter is in a 12-by-6, 72-foot converted porch that had -- she can't live in. So it's not -- everything residentially and from a point of view is self-inflicted. We choose, right? I'm trying to figure out what you could possibly present to this Board that wouldn't be --

JOELLEN GAVIN: A choice.

STEVEN WEINSTEIN: -- that wouldn't meet your definition of self-inflicted. So hardship is, you know, is hardship. It's personal hardship.

BRENDAN SULLIVAN: Okay. Let me close the discussion.

Any questions by the Board?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: Slater, any questions at all?

SLATER ANDERSON: No. I guess just one. Were there ever any interim plans,

scaled back plans discussed?

JOELLEN GAVIN: Do you want to speak to that?

SLATER ANDERSON: For something that tried to work with the dormer guidelines versus --

WILLIAM BETSCH: Well, absolutely, yes. As I mentioned earlier, we completed a full set of documents, design documents that basically were working with dormers on the existing gable roof. And when we brought those down for a pre-review, again Sean reviewed those for us and brought it to my attention that the guidelines with regard to gables had changed in the last five years since I built a very similar design in West Cambridge, and that this design that I initially thought would be acceptable, would actually probably be rejected based on specifically the configuration of the dormers.

STEVEN WEINSTEIN: And the 15-foot limitation.

TAD HEUER: So couldn't you come back and do one that's 15 feet and then bring it to Sean and say --

WILLIAM BETSCH: We tried to --

JOELLEN GAVIN: We did try it with our architect.

TAD HEUER: You could fit bigger dormers but not smaller ones?

WILLIAM BETSCH: It had to do specifically to access at the stair and access at the bedrooms. And once the roof line was chopped up, these long continuous dormers were broken down into smaller dormers. This 15-foot restriction created a limitation on sort of three-dimensional volume that's available on the third floor. The extent that the dormer seemed to be unworkable for lack of a better word, three dimensionally.

TAD HEUER: You've also got space to raise your roof, right?

WILLIAM BETSCH: That's right.

TAD HEUER: So you could top your roof and then add dormers.

STEVEN WEINSTEIN: We don't get the dimension. Because you don't get the -- you know, once you get under five feet it's not functional because it's very, very flat. Raising it two feet when maximum height at the ridge is seven-foot, eight without any ceiling, there's absolutely -- there's no way. So what we ended up with these little six-foot cubbies.

CONSTANTINE ALEXANDER: I want to ask a question. But you originally brought down a dormer proposal.

WILLIAM BETSCH: That's correct.

CONSTANTINE ALEXANDER: And you found out that what you proposed would not comply with the dormer guidelines as they're

now in existence.

WILLIAM BETSCH: That's right.

CONSTANTINE ALEXANDER: Guidelines of course are only guidelines. How many square feet were you adding to the third floor under your proposal before you ran into this problem?

WILLIAM BETSCH: The initial proposal?

CONSTANTINE ALEXANDER: Yes.

WILLIAM BETSCH: I do believe it was about 500 square feet. I don't have the drawings in front of me.

STEVEN WEINSTEIN: It was about 100 feet less.

JOELLEN GAVIN: It was about 100 less, yeah, it was a little bit less.

WILLIAM BETSCH: The dormers were banked on the south facing side of the roof and basically was to dog house dormers connected by a shed roof, that type of dormer.

CONSTANTINE ALEXANDER: What I'm trying to get at there are ways of solving your needs for a growing family without building as much square space as you're asking for us tonight.

WILLIAM BETSCH: True. It is true. And there was also calculation having to do relative to the budget of the project and relative to the outcome. You know, that was part of our conversation.

STEVEN WEINSTEIN: But set with the 15-foot dormer configuration the requirement, one of the dormers has to have a stair. Has to be part of the access for the stair. You don't end up with any space. We bent over -- I mean, this was multiple months --

BRENDAN SULLIVAN: Well, it can be done.

THOMAS SCOTT: You said that this Board had approved a similar request?

JOELLEN GAVIN: Yes. In 1993 we were --

THOMAS SCOTT: What was the square footage of that approval and did it involve two dormers as well?

JOELLEN GAVIN: Oh, enormous dormers on both sides of the house, yes.

THOMAS SCOTT: The length of the house?

JOELLEN GAVIN: Almost the length of the house.

THOMAS SCOTT: So were they longer than 15 feet?

TAD HEUER: That's why we changed the dormer guidelines.

JOELLEN GAVIN: Yes, they were. Actually when we looked into this project, I brought this stamped document that said permit granted, and said can we do this now? It's been many years, but it was granted in '93. Is it okay if I use the same exact plan

and, you know, hire S&H Construction and we know and do with the plan now, and we were told the former guidelines had changed so that was no longer valid. I'd have to reapply again. So timing, timing, timing.

BRENDAN SULLIVAN: Well, do you --

CONSTANTINE ALEXANDER: Ready for a vote? No questions.

BRENDAN SULLIVAN: Somewhat.

THOMAS SCOTT: Just for my information, why wasn't that plan executed at the time?

JOELLEN GAVIN: Split up with my husband.

STEVEN WEINSTEIN: Divorce.

JOELLEN GAVIN: Messy, messy year. We should have worked fast. We wouldn't have been here, yeah. We should have worked faster.

BRENDAN SULLIVAN: Anything else? Tad, any questions?

TAD HEUER: No.

BRENDAN SULLIVAN: All right.

What's your thoughts then?

CONSTANTINE ALEXANDER: My thoughts? My thoughts is that I don't think they're entitled to a Variance. I don't think they meet the requirements for a hardship. I could be persuaded that there is a hardship, but the relief that they're seeking is just a portion of the hardship to the climate. I think there are other ways of addressing this that doesn't require the amount of square feet that's being added to the structure. And because of that, I think we are derogating from the intent or purpose of our by-law. I also question whether there are -- the hardship is owing to special circumstances involving this structure and not structures that we have generally. So on all said, I cannot support the Variance.

BRENDAN SULLIVAN: Okay.

SLATER ANDERSON: I tend to agree, and I just like that the gap between the existing condition and what they're asking for is too big of a gulp. I think something -- if we were looking at something to try to work with the existing dormer guidelines, I have -- I do feel that there's -- and I sympathize with the reality of this for people. We see this all the time where people in the city -- of the situation, the family situation, but it's, you know, it's something that we need to be consistent on. And I just think it's, it's too -- it's more than is needed to deal with what I perceive as a hardship that I've heard today, that you know, so maybe, you know, you work on something that might be scaled back. I can't say that we'd totally approve of what that plan would be, but we're beyond with what I'm comfortable with.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I mean, I'm close. I mean, I think the architectural solution is a really good one, you know, considering what it is you're trying to do. I think the shed dormers would look hideous on this house.

JOELLEN GAVIN: Exactly.

THOMAS SCOTT: But I'm a little bit sympathetic to the neighbor who's concerned about, you know, the sunlight in his home. And without seeing a shadow study, it's a little hard to know what kind of impact it would have on him. But I think, you know, I'm close.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: There's really no need.

BRENDAN SULLIVAN: Do you have an opinion or your view?

JOELLEN GAVIN: I'd like your opinion.

TAD HEUER: I think for the reasons I stated earlier, I can't get to a legal basis

for the same reason as Gus. It's such an -- and similar to the same reason as Mr. Slater. It's a huge ask for what the Board is here for which is to be a safety valve. We're not here to be adding entire floors on to houses. We're varying from an Ordinance in situations where the structure for no fault of the structure's own is creating a minor limitation that could be solved very easily, something that the drafters of the Ordinance wouldn't have thought of when they drafted it. That's why we say if you're in a neighborhood that's lots of standard building size lots and all of a sudden someone's chopped off a corner because you hit a huge rock. It's not your fault. It wasn't intended by the drafters of the Ordinance, but you've got to deal with it. That's what we're here for. People will say, you know, I need to be able to tuck in a bit of space around the back and invade upon my

setback, but I have a huge, you know, public park in the background and you're maybe in the setback another few feet isn't going to matter, that's kind of what we're here for. When you come in and say I need a bit more square footage or I need -- I want to convert some space in the basement and no one's going to see it, I'm not changing the envelope of the house. That's what we're here for. I don't think we're here to add 600 square feet on top of a house that was designed to be a two-family. And I think that the houses that are on the street are a reflection of pre-ordinance time by in large that we're trying to get away from. And unfortunately we're in a situation here where we have Petitioners who have a need for more space, have tried valently with their architect -- and I do agree with Tom, you know, in terms of solutions? That's where the solution is probably. But it's a nice

solution, but it's a solution that creates so many legal drawbacks in terms of the amount of what we're being asked to do and I think we are derogating from the intent and purpose of the Ordinance and I couldn't support it.

BRENDAN SULLIVAN: Okay.

Let me make a motion to grant the relief requested as per the proposal and the plans submitted.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner in that it would preclude the Petitioner from accessing and increasing some much needed space in the third level of the existing structure, their second level, and also providing additional space for themselves, children and also additional bath facilities and a laundry room.

The hardship is owing to the fact that

it's a substantial house on a not code-complying lot. Hence, it's a non-conforming house, and that the increased space which is desirable is in excess of what the Ordinance is requiring.

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

All those in favor of making those findings and granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: One.

(Scott.)

BRENDAN SULLIVAN: Not getting the necessary four affirmative votes, the motion is denied.

Further the Board finds that a literal enforcement that the Petitioner has not established that a literal enforcement of the

Ordinance would involve a substantial hardship.

The Board finds that the hardship is not owing to any circumstances relating to the soil conditions, the shape or topography which affects this particular structure, and not that the district generally.

And that the Board finds that the relief if were the Board to grant, would be a substantial detriment to the public good in that it would derogate from the intent and purpose of the Ordinance.

The Board notes substantial opposition from an immediate neighbor in the structure and also two abutting neighbors. And for this reason the Board denies the request.

Anything else to add to that?

CONSTANTINE ALEXANDER: No.

TAD HEUER: No.

BRENDAN SULLIVAN: Okay.

WILLIAM BETSCH: Thank you for your

time.

STEVEN WEINSTEIN: Thank you.

(9:15 p.m.)

(Sitting Members: Constantine Alexander, Tad Heuer, Thomas Scott, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will reconvene the case on Fairfield.

I trust you put pen and ruler to paper?

ATTORNEY JAMES RAFFERTY: Well not me personally.

CONSTANTINE ALEXANDER: I meant you collectively. I didn't mean you personally.

ATTORNEY JAMES RAFFERTY: We have. Mr. Altobello has -- we have a revised set of drawings that do depict the dimensions. We shared them with Mr. O'Grady, and we hope they achieve the --

CONSTANTINE ALEXANDER: Let me start with Tom.

THOMAS SCOTT: Okay.

ATTORNEY JAMES RAFFERTY: I might just by way of orientation with the Board. There's a photographic representation that really tells the story of what's happening here. The structure now has these two bow front set of windows. All that's happening in this case is that those two bow front windows are moving forward five feet. So the facades where the doors are on the second floor, they're unchanged. The first floor facade with the two doors. I know the

dimensions are important. There's no change to the doors. There's no change.

The proportions of the windows and the bows stay exactly what they are now.

Everything just moves forward five feet to the point where the existing front setback is established by the porch. And thus that's why it's a Special Permit case. There's no creation of any new violations. This is a front setback that's already established at this location. The Ordinance provides under Article 8.22.2C that one can proceed by Special Permit. And this is a Special Permit case. Unlike the case you've spent considerable time on, the Special Permit criteria suggests that the focus should be on the impact of adjacent uses. This case is somewhat distinguished by the fact that there's a plethora of letters of support from abutters who obviously don't see any of this as being impactful for them.

We have to the extent there's any dimensional change presented in the application, in fact the reduction FAR by the new geometry of the bowed windows that we clipped the tops of that. So it is that, it is that straight forward, and we're hoping that the Board would see it as a change in the building that is consistent with the style of the home and would warrant the Special Permit.

CONSTANTINE ALEXANDER: Well, I think the issue is, as you point out, is rather straight forward and I think specific. The Board turned this case down the last time because we felt that what you wanted to do would increase the massing on the street which would derogate the intent or purpose of the Zoning By-Law. But you've come before us now with a new proposal, which is the same dimensions virtually as Mr. Rafferty points out, but because of its design, it minimizes

the massing impact. It deals with our concern the last time of the massing by being a better design, which in turn -- your position is that it reduces the impact and, therefore, deals with the issue that thwarted the relief the last time, that troubled the Board last time. And that's the issue before us tonight, whether we agree with it it seems to me. I don't think there's much to be said beyond that. But anyway. And the fact that there are many letters in the file which I'll reference in a second, is helpful, but it's not responsive as you know. Zoning's not a matter of a Democratic vote. It's a matter of what the law requires, and what the five of us think the law requires.

In any event, is there anyone wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY: Can I just briefly --

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY JAMES RAFFERTY: I would only take slight exception with the notion that the standard before the Board now is whether one or two Board Members, because the Board did not vote unanimously in the prior case.

CONSTANTINE ALEXANDER: That's right.

ATTORNEY JAMES RAFFERTY: I don't think the standard in the case the Board felt a certain way. This application didn't receive four affirmative votes the last time, it was before the Board. There was concern expressed about that. But I agree with you, the Board's focus is whether or not the introduction of the bow window to the existing front setback is acceptable under the Special Permit criteria.

CONSTANTINE ALEXANDER: Okay, that's fair. That's a fair re-characterization. I accept that.

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

JEREMY GAULD: My name is jeremy Gauld G-a-u-l-d, 20 Fairfield Street. I'm an immediate abutter. I'm here to represent myself. I and my wife Catalina Gametti (phonetic). We were actually before the Board three years ago for a Special Permit at the time. I appreciate the Board's time now as well. But we fully support Ms. Hull's application here. We reviewed the design. It's consistent and we're excited about the construction and we support the permit with no reservations whatsoever.

JOYCE GERBER: Joyce Gerber, 10 Fairfield Street. I'm an immediate abutter. I've been her neighbor for over eight years at this point. I love the design, and I would be looking at it daily. It feels like it fits right into the neighborhood. It actually looks -- I think it looks like it fits in more

naturally than what actually exists at this time and I support her Variance or Special Permit.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard on this matter?

(No Response.)

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

MARGHERITA HULL: Two more letters.

CONSTANTINE ALEXANDER: The Chair would note for the record, and I'm not going to read them into the record, there are many, many letters of support. I don't believe there's any letters of opposition to the project from various parties, including the Mayor Maher of our city who also is in support of this.

So, that's the lay of the land. We have the plans before us. The issue is whether to grant a Special Permit. As Mr. Rafferty

points out, it's not a Variance case, but one of the things we have to deal with in dealing with a Special Permit and the finding we have to make is whether this new design would impair the integrity of the district or adjoining district or otherwise derogate of the intent or purpose of the Ordinance.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, may I just briefly conclude on that last issue? It's of critical importance. I know of the Board's concerns regarding porches and front porches.

CONSTANTINE ALEXANDER: Front porches.

ATTORNEY JAMES RAFFERTY: And I suspect that if this house didn't have a porch and the Applicant were coming in here to put a front porch on, the Applicant might hear this type of reservation that I've heard the Board express from time to time about the impacts of porches and people and noise and

all that. It should be noted that this design reduces the size of the front porch. The area that is now open to the front, which has been shown to be an area where concern has been expressed in the past about how those porches might adversely impact surrounding uses. To the extent that's relevant, this design by being the bow front forward and clipping off the bushes reduces by over half --

CONSTANTINE ALEXANDER: I think that's --

TAD HEUER: Usually our concern, if I'm recalling correctly, I think I am, is that our concern is about decks that are above certain levels and noise levels. Porches, I don't -- I cannot actually remember a situation, and maybe it was because I wasn't sitting, in which we've had addition of porches at the first level which otherwise didn't invade setbacks or anything else. Or

create a situation where we were adverse to them. I think generally our concern is the filling of porches and increasing the massing on the street beyond what is there. And you are absolutely correct as a technical matter under our Zoning By-Law, we're reducing the GFA here but we're reducing it by taking out what generally we would support, which is the kind of airy, light-filled porch, you know, in its ideal form and we're replacing it with building bulk. It's not a situation in which we are saying we're getting rid of GFA that is actually covered, enclosed, etcetera, and we're opening up the space. Strangely even though the GFA is going down, we're adding mass not taking it away.

ATTORNEY JAMES RAFFERTY: I'm mindful of that. But I would only say it must have been nights when you haven't been here, but I have had many structures here where the porches were not even the subject of the

relief being sought and there was a concern expressed about the porch particularly when is on the front of the house. I can think of two cases. I only offer that by way of suggestion because the issue around the intent of the Ordinance has to do with the impact of this -- that this change would have on surrounding uses. This will reduce -- I mean, as a matter of -- it's not a -- it's a factual matter. This will reduce an area of porch. The implication of that I agree with. It's a change, but I have very distinct memories of concerns expressed by certain members about front porches on structures, and I think they're warranted, and in this case it just so happens that the porch here is actually being reduced.

CONSTANTINE ALEXANDER: Yes, I don't want to belabor this because the hour is getting late, but the fact of the matter is if there were no porches on this structure

and you just wanted to build what you want to build now, I think the issue before us and the concerns that some Board Members may have would be very much the same. Too much mass of structure too close to the street. That's the issue of before us. You're taking the porch, which as Tad has pointed out, is open and airy and enclosing it. You're reducing the size of --

ATTORNEY JAMES RAFFERTY: A portion of it.

CONSTANTINE ALEXANDER: A portion of it.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: And you're reducing the overall size of the porches, but again we're still left with the final issue. Is there too much mass too close to the street? That's this proposal and that's what we've got to wrestle with and that's what we've got to take a vote on in my judgment.

But anyway. I think we've had public.  
Anything further, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: No thank  
you.

TAD HEUER: Are there other houses  
on the street in the general vicinity that  
have that -- I know there are other bow front,  
filled bow front on the street. Are they at  
their property line? I mean, I'm asking you  
to go beyond what you --

ATTORNEY JAMES RAFFERTY: Right.  
Well, we're not at our property line.

TAD HEUER: Right. But I'm asking  
in terms of close -- not property line,  
setback line.

ATTORNEY JAMES RAFFERTY: I think  
there's a pretty well established street wall  
on the street. I mean the houses were built  
around the same time. You can see the house  
next-door has a projecting bay, an enclosed  
projecting bay into the setback at about the

same location as we are.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: I don't know if that answers your question.

TAD HEUER: It does.

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

THOMAS SCOTT: I'll just say I think, you know, the tapered design of the architecture helps the mens being pulled forward to be less intrusive and less offensive, and I think the design works. So I'm not offended. And I think, you know, like you say, basically you're reducing some porch area where there's, you know, there could be people gathering and noise and so forth. So I think it's a positive improvement to the house in general.

CONSTANTINE ALEXANDER: Further comments?

DOUGLAS MYERS: Simply to clarify the record since I may be part of the points that Mr. Rafferty was earlier raising, I do remember a certain case in the eastern part of Cambridge where I did speak to an open space that I believe I construed as a deck that was going to be built over the street. But whether it was a deck or a porch, I certainly remember that occasion. And my objections didn't -- certainly were not intended to go to a porch per se, but simply what I thought was what I conceived to be as a deck that was going to be built on that particular structure. That's perhaps is neither here nor there, but I certainly support Mr. Heuer's interpretation of what this Board has generally done.

ATTORNEY JAMES RAFFERTY: Right. And I wasn't intending to isolate that issue, but I think the notion of living space, and this space is outdoor living space and the

impact of outdoor living space. But I agree with the assessment ultimately. But I think the design, it is a rearrangement of the bulk and mass. We're dealing with the same roof line and some of the other locations.

CONSTANTINE ALEXANDER: That's right. It does -- the design deal with the concerns that caused the Board to turn down the Special Permit last time. To me that's simple fact.

ATTORNEY JAMES RAFFERTY: Well, with all due respect, Mr. Chairman, I don't think --

CONSTANTINE ALEXANDER: You didn't get the sufficient votes and therefore it was turned down.

ATTORNEY JAMES RAFFERTY: No, but I don't think the standard before the Board tonight is whether this is different. We dealt with that when the case came back in. I think the comparison notion of whether --

CONSTANTINE ALEXANDER: Fine.

ATTORNEY JAMES

RAFFERTY: -- whether this is -- I mean, there were a series of votes, a variety of opinions expressed at that hearing, and I'm suggesting that the Board should base this decision on the criteria set forth in Article 10 with regard to the granting of the Special Permit.

CONSTANTINE ALEXANDER: I agree.

ATTORNEY JAMES RAFFERTY: There are five of those criteria. Four of them aren't worthy of discussion here around traffic and compatibility of adjacent uses. The fifth one suggests for other reasons the proposal would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or the purpose of the Ordinance. So, to have no dimension -- so the issue before the Board is we have this GFA. We have this established setback. Can

it be said that by enclosing it in this form, that the appli -- it is deviating or derogating from the intent or the purpose of the Ordinance.

CONSTANTINE ALEXANDER: That's right. I agree with your formulation. Comments?

SLATER ANDERSON: None.

CONSTANTINE ALEXANDER: Tad, comments? We go to a vote.

TAD HEUER: No.

CONSTANTINE ALEXANDER: Ready for a vote?

The Chair moves that the Petitioner be granted a Special Permit to proceed with the plans presented to this Board which I'll refer to in a second, on the basis that the proposed change to the front of the structure, the modification if you will, of the porches will not impact traffic on the street or patterns of access or egress or

cause congestion, hazard or substantial change in established neighborhood character.

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

That no nuisance or hazard will be created to the detriment, health, safety and welfare of the occupant or the citizens of the city. And that the use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

The Special Permit would be granted on the condition that the work proceed in accordance with plans submitted by the Petitioner. They are paper clipped together. They're one, two, three, four, five, six, seven, eight -- eight pages. And there are two photographs. Eight pages of plans. The first page of which has been

initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Scott, Anderson, Myers.)

CONSTANTINE ALEXANDER: Opposed?

TAD HEUER: Opposed.

ATTORNEY JAMES RAFFERTY: Thank you.

(9:35 p.m.)

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

CONSTANTINE ALEXANDER: The acting Chair will call case No. 10069, 22 Gurney Street. Is there anyone here wishing to be

heard on this matter?

For the record, your name and address.

ANDUS BAKER: My name is Andus Baker. I'll spell the first one for you, it's a little tough sometimes. A-n-d-u-s Baker B-a-k-e-r. And I live at 22 Gurney Street.

ROWAN MURPHY: And Rowan Murphy. The first name is spelled R-o-w-a-n Murphy and also at 22 Gurney Street.

JONATHAN AUSTIN: I'm Jonathan Austin. My office is at 38 Cameron Avenue and I live at 209 Brookline Street.

CONSTANTINE ALEXANDER: You're here seeking both a Variance and a Special Permit.

ANDUS BAKER: That is correct, sir.

CONSTANTINE ALEXANDER: Okay.

ANDUS BAKER: If I may, I'd like to just talk about a little bit of background on what we're asking for and why we're asking for. Would that okay? Jonathan's the

architect. Rowan is obviously my wife.

And what I want to say is that we live in Gurney Street which is in the Huron Village Neighborhood of Cambridge. We bought a two-family house about 13, 13 and a half years ago and love it there. And we have two sons ages 12 and 15. Did I get that right?

ROWAN MURPHY: Yes.

ANDUS BAKER: Sometimes I don't. And we kind of got to, you know, the point where we've outgrown the house and the current configuration. It is still a two-family. We haven't rented the first floor apartment for about five years. We kind of live in both apartments. Rowan works from home as a consultant, has an office there. And we have the kids kind of have a room, a den down there. So, you know, we kind of -- we were thinking what do we do? What are our options?

TAD HEUER: You thought of a mansard

roof and then you said no.

ANDUS BAKER: Yes, we actually want two mansard roofs.

So, we kind of thought for about three minutes about leaving Cambridge and moving to the suburbs, and that may be overstating it. We love Cambridge. We want to stay here. It's a great place and it's where our heart is and we're fortunate to live here. We then kind of really said well, what should we do? And really Rowan and I came to a point saying where we want to come and spend as much time as possible and we control the rest of our lives in this house so let's do something about the house. And the reason for that is that we're actively, you know, we're involved in the community. I coach and assistant coach for West Cambridge Little Baseball. I love going down to Tobin Field and coaching the kids. I'm a member of the Christ Church. Rowan's been active in the schools. And our

sons have gone to public schools here and really love it and have friends here. And so we decided to see how can we make our house more liveable. And then spoke to Jonathan who is a close friend who we've known for over ten years and so far we're still friends which is good. And we asked him to come up with a plan, and we gave him four criteria. We said it has to kind of fit with kind of be more suitable and kind of fit with who we are, and Jonathan knows us and knows how we live and what our values are. It has to be fit with the neighborhood. It has to keep with -- in keeping with the neighborhood. We have very strong relations with our neighbors, and that was important. It has to give us more access to the backyard. Right now we kind of live mainly on the second and third floor. It has to be energy efficient. The house is uninsulated for the most part. There's no heat in a lot of the rooms. And we have two

furnaces, the youngest of which 25 years old.

So Jonathan came back with what we felt was a good plan. We asked him to pair it back a bit so it was a bit more modest. And the current plan that you have in front of you slightly reduces the footprint a bit and reduces the floor area ratio a tiny bit. And we just said -- then we felt we liked it and then we realized that since the house was built in the 1920's, unlike many Cambridge houses it was a relatively big house on a relatively small lot. So we would need to come before all of you for a Special Permit request and a Variance request.

And so met with all our neighbors, and really had those computer renderings that you see Jonathan has copies of put together. So we wanted our neighbors to really see not just the plans, but the actual -- an image of how the house looked so that they not only would we get it approved when we came here, but

after it was built our neighbors would still talk with us and be on really good terms with us. And they all saw it. And my three abutters have written letters of support which I think you have.

And just to clarify, we're asking for a Special Permit to alter windows and porch structure in the rear setback and windows in the side yard setback, and then a Variance requested for a rear porch roof and I think it's --

CONSTANTINE ALEXANDER: And the Variance you need because you have an FAR problem and a setback, rear yard setback? Although the additional FAR is very modest the increase -- actually, it's a reduction.

JONATHAN AUSTIN: It's a reduction.

CONSTANTINE ALEXANDER: You're right, it's a reduction. But you're still over. You're almost -- you're at almost 1.95 in a district that is not supposed to be over

0.5. It's not conforming now. You're going to stay essentially the same way in terms of FAR non-conforming. You are now or will be a little closer to the lot line. You're going six inches closer --

JONATHAN AUSTIN: No, no. We're in fact reducing -- let me just explain.

CONSTANTINE ALEXANDER: That's not what it says on your dimensional form but go ahead.

JONATHAN AUSTIN: Well, the existing condition we are 23 feet, two inches to the lot line.

CONSTANTINE ALEXANDER: Right.

JONATHAN AUSTIN: And the requested condition is 23 feet, eight inches.

CONSTANTINE ALEXANDER: I'm sorry, I got it backwards, you're right. Okay.

JONATHAN AUSTIN: I made that same mistake as well.

So this is the front faces Gurney

Street, existing house, rectangular porch, screened-in porch at the top. What we're doing here is project out the same distance. We're beveling off the corners, open porch top and bottom.

This is the side that is, this is the side that is non-conforming in terms of setback which is changing the window arrangement on this side of the building to this to reflect the layout on the inside.

The rear of the house, a bit difficult to get fully back here. But this is, this is the rear porch, screened in porch here. Two porches either side with a stair in the center. And what we're doing is taking all of that down to the face of the building, making it a little narrower here and then making a stair.

CONSTANTINE ALEXANDER: You've got almost two floors of window, am I right?

JONATHAN AUSTIN: That's correct.

Just two floors of window just here. And the Variance request is that you see how we don't have a piece of roof just there. We'd like to put a piece of roof over there.

CONSTANTINE ALEXANDER: That's the rear of the structure?

JONATHAN AUSTIN: Correct.

CONSTANTINE ALEXANDER: And all that window -- additional window space faces on whoever abuts you and to the rear --

JONATHAN AUSTIN: Yes, Mr. Shiller's (phonetic) house.

CONSTANTINE ALEXANDER: And he is in support of it? I can see one issue. Usually when people come before us and want to relocate windows, they move them over six inches, they add a small window here. This is substantial change in window treatment. I'm not saying it's wrong --

SLATER ANDERSON: On two sides.

CONSTANTINE ALEXANDER: Two sides,

yes. This one struck me the most because it's too close to the lot line to start with, the structure is.

JONATHAN AUSTIN: I believe Mr. Shiller -- is he --

ANDUS BAKER: Yes, so you have a letter in your file. Our three abutters are Pam and Harry Irwin on that side. Rob Shiller and Peggy, Sue Jenson (phonetic) in the back. And then Lou Ann and Bill Poe (phonetic) on the top part of the street. And they've all -- they've all seen the plan and seen the drawings you've seen. And again, I want to make the point that I'm going to be here -- we're going to be here a long time. My goal is not to build something and have my neighbors mad at me for the rest of my life. So, we -- I spent a fair amount of time with Rob. He was immediately comfortable with this and sent an e-mail within, you know, within days supporting it.

TAD HEUER: I have one question just on the site plan, and maybe it's just I'm not seeing which dotted lines are which so maybe you can help me. This dotted line here is the existing from the corner; is that right?

JONATHAN AUSTIN: That's correct.

TAD HEUER: And are you, what is that, is that added building?

JONATHAN AUSTIN: No, no, it's just the roof overhang.

TAD HEUER: Okay.

JONATHAN AUSTIN: You can see it. You can see it right there. It's the roof overhang in this corner.

TAD HEUER: I see. So that's not intruding into -- there's nothing intruding into the front setback?

JONATHAN AUSTIN: No.

TAD HEUER: Other than what you've got there on the roof?

JONATHAN AUSTIN: We're not

changing that, that's correct.

TAD HEUER: Okay, that's fine.

CONSTANTINE ALEXANDER: Any other questions from Members the Board at this point?

Continue, sir. If you have anything more you want to add. You'll have an opportunity to close -- give closing remarks after we ask the public --

ANDUS BAKER: I'm sorry. I said what I had to say.

CONSTANTINE ALEXANDER: Fine by us. I'm not sure if people behind me will appreciate it. We appreciate it even more.

ANDUS BAKER: I guess the obvious point is thank you for your consideration. I appreciate the opportunity to appear in front of you.

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

(No Response.)

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

As the Petitioner has pointed out, there are letters of support in the file that I'm not going to read, they're part of our record, from three abutters, all of whom are in support of the relief being sought.

I'll give you an opportunity for any closing remarks you would like?

ANDUS BAKER: No.

TAD HEUER: Can I make one observation?

CONSTANTINE ALEXANDER: By all means.

TAD HEUER: The most technical of technical legal observations and it won't prevent me from voting in favor. The Statement of Deeds that you have are Notarized with an outdated Notary stamp.

The Notary has stamped them with her 2008 stamp, not her 2014 stamp which technically makes it deficient. I don't think anyone has ever cared, but you may want to have it stamped put in the folder post hoc.

ANDUS BAKER: I will take care of that immediately. Thank you.

CONSTANTINE ALEXANDER: This man in particular does read these files very carefully.

ANDUS BAKER: Makes me feel much better knowing that. Thank you.

CONSTANTINE ALEXANDER: Comments from Members of the Board?

TIMOTHY HUGHES: I'm good.

CONSTANTINE ALEXANDER: Ready for a vote? Two votes actually. And these plans are the final plans. We're going to tie our relief to these plans. Starting with L101, etcetera and L100.

The Chair first of all moves that the

Board make the following findings:

That a literal enforcement of the provision of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner needs additional space for their needs.

The hardship is owing to circumstances relating to the shape of the structure. The structure is a non-conforming structure.

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

In that regard the Chair notes the relief being sought in terms of its deviation from our Zoning By-Law is rather modest in contrast to other cases that have been brought before us this evening.

That there is support, unanimous support from abutters.

That what is being done will upgrade the

quality of this house and, therefore, improve the housing stock of the City of Cambridge which is always desirable from the Zoning and other points of view.

On the basis of these findings the Chair moves that a variance be granted the Petitioner on the condition that the work proceed in accordance with plans submitted by the Petitioner, prepared by Austin Architects. They are a numbered X101, 102, A102, A201, A202, A203, A204, A205 which are initialed by the Chair. And another set of plans that are L100, L101, A101, A201, A202, A203 also initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

CONSTANTINE ALEXANDER: Now we have to turn to the Special Permit. This Special Permit is regarding the relocation of the windows and the alteration of windows and porch structure in the rear setback and the windows in the side yard setback.

The Special Permit would be granted on the basis that the work being sought will not impact access or egress or cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation of a development of adjacent uses will not be adversely affected by what you propose to do.

That no nuisance or hazard will be created to the detriment, health, safety or welfare of the occupant -- provided you can live with all that open window space, that's your choice -- or the citizens of the city.

And that the use would not impair the integrity of the district or adjoining

district or otherwise derogate from the intent or purpose of this Ordinance as the Board had previously addressed with regard to the Variance just been granted.

This Special Permit would be granted on the condition that the work proceed in accordance with the plans referenced with respect to the Variance.

All those in favor say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted. Good luck.  
(Alexander, Hughes, Heuer, Scott, Anderson.)  
(9:50 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Thomas Scott, Slater Anderson.)

BRENDAN SULLIVAN: The Board will hear case 10047, 64 Dudley Street. Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: There's a letter in the file dated March 11, 2011 to Maria Pacheco. "Thank you for your time this morning. I would like to request a continuance of case 10047 until May 26, 2011. We are in the process of getting all parties on board. Thank you, Fabian." Last name is Flori F-l-o-r-i.

Sean, does May 26, 2011 work?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: At seven o'clock. I'll make a motion to continue this case until May 26, 2011, at seven o'clock on the condition that the Petitioner first of all post the sign. Second of all, post the sign and change the date to reflect the new time of May 26, 2011, and maintain that sign for at least 14 days prior to that date.

CONSTANTINE ALEXANDER: Make sure the sign also has the seven o'clock p.m. time on it, not just the new date. New date and

time.

BRENDAN SULLIVAN: Correct, thank you. And also the time of seven p.m.

All those in favor of continuing this matter.

(Aye.)

BRENDAN SULLIVAN: Five in favor.

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

(9:50 p.m.)

(Sitting Members: Brendan Sullivan, Timothy Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

BRENDAN SULLIVAN: The Board will hear case No. 10019, (sic) 66 Oxford Street. Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good

evening, Mr. Chairman, Members of the Board. James Rafferty on behalf of the Applicant. Seated next to me is one of the Petitioners, Joel Altstein A-l-t-s-t-e-i-n. Next to Mr. Altstein is the project architect, Robert Williams. And next to Mr. Williams is Irving Fischman. He's the construction coordinator.

We're not doing the continued case, I'm assuming, right? This is the regular --

BRENDAN SULLIVAN: What I did is I called case No. 10019. So is that going to be withdrawn?

ATTORNEY JAMES RAFFERTY: Not until you hear the next one.

BRENDAN SULLIVAN: Okay, so we're going to hear -- let me hear case 10066, which is a Variance to relocate the rear entry of the existing structure.

ATTORNEY JAMES RAFFERTY: Right. And by way of explanation, Mr. Chairman,

Members of the Board, the proposal -- the reason for this second case is two-fold.

One is there's a change in the nature of the relief being requested which necessitated a new application. There's also a reduction in the original program.

The application before the Board tonight seeks a very discrete form of Variance for setback relief to allow for the creation of the porch into a side yard setback into this the structure, and there's a Special Permit request related to windows and skylights along one wall, one of the walls the properties is non-conforming. This is a property on Oxford Street that's been an institutional ownership for many decades. It used to be owned by Lesley University many years ago. They sold it to the Jesuits who owned it for -- I'm going to guess about 30 years.

JOEL ALTSTEIN: Since '76.

ATTORNEY JAMES RAFFERTY: 1976.

And Mr. Altstein has purchased it.

The property is located in a Residence C-1 district. And based upon the lot area per dwelling unit, it could accommodate five units. Mr. Altstein is proposing to put four units into the property.

There's a provision, you know, in Article 5, 5.26 which allows for the conversion of dwellings when four criteria are met. The criteria: Conforming GFA, conforming lot, conforming lot area per dwelling unit, conforming parking and also conforming open space.

The prior case, a different architect was involved in the case and his calculations led to the determination that the property was actually non-conforming in terms of gross floor area. For a variety of reasons that architect was replaced, and an architect was hired to actually measure the property. We

later learned that the prior architect relied upon the Assessor's database which I can -- and I'm sure the Board is familiar with the different definitions of living space and the likes. Not a practice that should be encouraged. So Mr. Williams and his colleagues at the HMFH Architectural Firm have remeasured the building. And as a result of the remeasurement, it was determined that it does have conforming GFA and thus the relief in the other case, the 5.26 relief is no longer needed.

The relief that we're here on rather than talk about the relief we're not here on, involves this porch which is going to go into a notch in the back of the property. There are rear entrances in the property now that are going to be replaced. So this, this four-unit dwelling is proposed -- would have one entrance on the front door on Oxford Street and a porch area will be created for

an entrance that would accommodate the other three units. Currently, the -- there is rear access right at the edge of the property along the driveway. That will be removed.

The site plan reflects some other changes at the site. There's currently a two-car garage at the rear of the property and that will be replaced with four parking spaces. They conform dimensionally to the setback requirements and do not create any violations of the open spaces as well. And with four spaces and four units, they obviously meet the one space per dwelling unit requirement.

The Applicant has been in conversation with his abutters. One abutter is an institutional abutter, Lesley University that owns a dormitory on the other side of the driveway which happens to contain the non-conforming wall that both the porch and the windows will be located on. There's a

letter of support from Lesley University for that relief.

On the other side of the property is a condominium unit building, a multi-family building operated by HRI, Homeowner's Rehab. And there's also a rear abutter who's had interest in the case and has been helpful in offering his perspective, which has led to some design changes including the reduction of the program from five dwelling units to four dwelling four units.

So the two issues are the Variance for the setback. And the setback is occurring, as I noted, in an area where the setback is already established. So we're not creating a new non-conforming setback. We're extending a porch, a simple open porch that will facilitate egress in the property. It has the added benefit of taking that egress further away from the rear abutter and bringing it closer to the front. We think

having that level of activity in that location actually might be seen as more compatible with some of the surrounding uses.

It also has the opportunity to settle into a notch in the building now that exists and it frees up some turning radius at the back end of the building where the current rear entries are now by removing those entries. And those porches will have a more efficient operation of the driveway and into the parking area. Similarly the changes with regard to the windows, they're set forth in the elevation. And Mr. Williams could walk you through them. There aren't that many, but the property has, has changes in a number of the facades. They are conforming facades with the exception of that wall. And there's also along that wall a few skylights that are being introduced. And given where the skylights fall on the wall plate, it's our conclusion that they are close if not

possibly within the setback. So similarly related to the relief for the windows in the setback, the Special Permit is there. But I think --

BRENDAN SULLIVAN: Just running through some pro forma stuff here, Section 8.22.2 would allow the issuance of the Special Permit if the extension or alteration would not substantially be more detrimental to the neighborhood than the existing non-conforming.

In C of that 8.22.2C, the residential district which this is, this is a C-1 Zone, may grant a Special Permit for the alteration or enlargement of a non-conforming structure not otherwise permitted above provided that such enlargement or alteration of the non-conforming structure is not in further violation of the dimensional requirements of Article 5. So that by extending that wall, you could basically do that as of right except

now you're putting a bit of a roof over it which is adding 29 square feet. Is that where the Variance where you kick over for the Special Permit to Variance?

ATTORNEY JAMES RAFFERTY: Yes.

It's related to that. I think the setback may be part of that as well, but I don't know if we -- I hadn't thought of it that way. But I suppose one could make the case that an uncovered porch could be done by Special Permit and the covered porch --

BRENDAN SULLIVAN: Has to get a Variance because you're adding 29 because the house is already -- the structure is already over.

ATTORNEY JAMES RAFFERTY: Well, actually the structure isn't over. No, we're not seeking any GFA relief. No, it conforms to GFA.

TAD HEUER: He's adding area GFA.

BRENDAN SULLIVAN: That 29

additional square feet, which is the area underneath the roof is adding to an encroachment on Article 5 which would be the side yard setback.

ATTORNEY JAMES RAFFERTY: Correct. That is correct.

BRENDAN SULLIVAN: Okay. And also to allow for this particular rear entry at this location, your pleadings here result in the existing -- does not meet the egress requirements of the building code. Can you just elaborate that?

ATTORNEY JAMES RAFFERTY: Well, the structure today was built as a -- well, I mean it's been -- it was originally built as I assume as a single.

BRENDAN SULLIVAN: You're going to realign the chairs inside the building. And then hence that's where this entry makes more sense.

ATTORNEY JAMES RAFFERTY: That's

correct. Because that entry now has to accommodate entries from three units as opposed to being an entry from a single-family house.

BRENDAN SULLIVAN: Okay. Right, okay.

ATTORNEY JAMES RAFFERTY: There's only three units using that.

JOEL ALTSTEIN: Yes.

BRENDAN SULLIVAN: It's more central. Obviously it makes more sense, your entrance and egress out of the structure at this location than it does in the back of the building.

ROBERT WILLIAMS: Correct. And it's also the location of the existing stairwell worked out. So major structural changes.

BRENDAN SULLIVAN: Whereas if it were to remain in the same location, it would be very problematic time wise and

functionality wise. Okay.

Anything else to add?

ATTORNEY JAMES RAFFERTY: No. So that's the porch that would be coming out at the rear corner which is non-conforming in terms of setback as well. So we are removing that exit and sliding, sliding the porch in the entry into this area where the notched area where you see it. So it does, it does enhance the -- as I noted, the whole operation of the property and access to the rear.

BRENDAN SULLIVAN: Okay. Would you like to add anything? You can get a rebut, no?

ATTORNEY JAMES RAFFERTY: Someone told me if they wore green, they would fair well this evening.

BRENDAN SULLIVAN: That absolutely has no bearing. Any questions?

TIM HUGHES: No.

BRENDAN SULLIVAN: Slater?

Orange would be -- Tom, any questions at this point?

THOMAS SCOTT: Just on this where it says here new exit to side yard, is that -- I don't see it on this plan. Is that because it's in the basement?

ROBERT WILLIAMS: That --

BRENDAN SULLIVAN: That could be done as of right. It's the one onto the left side.

ATTORNEY JAMES RAFFERTY: It's a conforming wall.

THOMAS SCOTT: Okay. I'm just saying I'm seeing an inconsistency in the plan, that's all.

ROBERT WILLIAMS: Right. There was a discrepancy where we were in between determining where or not we were actually going put another entry in.

ATTORNEY JAMES RAFFERTY:  
Mr. Chairman, I should note that we -- I did

file a set of plans today which have, as part of a site plan, that includes granite edging along the parking for the parking spaces. That was done in response to a concern by an abutter that the parking be constrained, that it not get landscaped in a way that over time one could park in the setback area.

BRENDAN SULLIVAN: A more defined area?

ATTORNEY JAMES RAFFERTY: Exactly. So it doesn't appear in the original site plan, but it is a concern of the neighbor and we have amended the plan to reflect that and we presume upon the granting of relief, it would be tied to that particular plan that we've imposed that requirement.

BRENDAN SULLIVAN: Which plan is that?

ROBERT WILLIAMS: Yes. This one here.

BRENDAN SULLIVAN: I'll open it up

to public comment.

Is there anybody here who would like to speak on the matter, 66 Oxford Street?

(No Response.)

BRENDAN SULLIVAN: There are two correspondence in the file. One from Lesley University.

"Dear Members of the Board: Regarding the intended renovation of the building and property at 66 Oxford, we've had direct conversation with the developer and we feel the proposed plans will be a welcome upgrade and improvement to the neighborhood. We have no issue with the design proposed other than the installation of a chain and post fence referenced on the drawing between the subject property and our property at 68 Oxford Street. We would like that fence to be more substantial and better looking, such as wrought iron. We would like the fence to be four feet tall and run from a" -- you've

had discussions with them?

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: "And provide more of a physical barrier but not a visual barrier between the two properties.

Sincerely, George Smith."

There's correspondence in the file from Jane Carbone, senior project manager from Homeowner's Rehab. "Members of the Board: Peter Daly asked me to review the drawings you send us for 66 Oxford Street. As an abutting neighbor to the property, we have no issues with the redesign as proposed. We welcome the renovation to our neighborhood." Sum and substance of the correspondence.

Does somebody wish to speak on the matter?

KEITH LONG: You've got a number of folks. I'm happy to go last.

BRENDAN SULLIVAN: I'm sorry. Yes. Name and address.

KEITH LONG: Mind if I have a seat?

ATTORNEY JAMES RAFFERTY: Sure.

KEITH LONG: Good evening, Members of the Board, my name is Keith Long. I live essentially in the backyard of this project at 50-52 Wendell Street. To get you oriented I did bring a couple of pictures. The front the building is on Oxford Street. I'm sorry, I should start with you, sir. The garage in the backyard that my bedroom looks down on is the one they're going to take out. The non-conforming wall that they're talking about is on what I think of as the Lesley side of the building. This property does not have its own driveway. It has an easement over Lesley's driveway which it shares, and Lesley uses that same driveway for access and parking. Just to give you an idea of how it physically looks, this -- the building on the right is the 66 Oxford Street building. And the building on the left is the Lesley

building, and you're looking at the driveway that's entirely on Lesley property. The metal posts essentially are the property line.

Just to give you an idea of where my house is, if you stand at the back corner of the 66 Oxford Street property, that's my house. And behind the deck is my bedroom. If you look from my bedroom down at this side of the building, that's what you see. The cars that are parked there are Lesley cars. You see they're reserved parking spaces. They partially block the easement closer up. And then this is the side of the building, the non-conforming side showing the basement is not currently used.

And having said all this I should say I'm in support if certain mitigating conditions are made. My understanding was that they were, but I just wanted to roll through what the implications of this project

are and why I'm asking for this mitigation.

It's not a small thing to put an entrance on this side. Without this entrance you can't make this a four-unit building. Presently it's a single. It's been a single since it was created. This will make it a four. As I say, the interior configuration does not work without this new entrance, so we really need to evaluate their request in that context.

As Mr. Rafferty pointed out, the building is non-conforming because it doesn't have the required setback. It needs 16 feet. It has six. And the new entryway will eat up more of that setback. Yes, it fits into a notch, but it is non-conforming thus the Variance.

As I pointed out, the driveway is owned and used by the neighboring house, owned by Lesley College. 66 does not have a driveway of its own.

I was wondering if I could see the letter from Lesley just because there's an issue with the use of the easement, and I'm wondering if Lesley has now signed off on that? Mr. Chairman?

BRENDAN SULLIVAN: It's not addressed in the letter.

KEITH LONG: Okay. Yeah, it's something I mentioned to Mr. Altstein who I must say has been very cooperative in this. We started last November with a design that I thought was a complete non-starter. And I've been working with Mr. Altstein, somewhat with Mr. Rafferty on these issues. And I must say they have moved substantially towards, you know -- project I'm not entirely happy with, but I can live with. But -- and I do very much appreciate what they've done. And I think the design they've come up with these mitigations that I'll get to. You know, will work for me, not perfect but I

understand all the constraints.

What's essentially happening that impacts me the most is putting an open air parking area basically in my backyard. What had been a quiet backyard with a garage, now will be an open four car parking area. It's not just my issue, it's also the issue for Harry Smith who is the doctor who lives, you know, who is also an immediate abutter. And I suspect for the multi-family.

Just so you'll be oriented, Mr. Rafferty is very helpful in giving me a copy of the Zoning -- I'm sorry, the Assessor's map. My wife and I are here. We've been here for 18 years. This is Wendell Street. The 66 Oxford Street has got a sticky over it. The Lesley dorm, it's actually a house, it's actually right here on the corner. Harry Smith, the psychotherapist is here. There's a three decker here and I don't know the owners. And

then the affordable housing project, which I must say is the quietest building I have ever seen in my life. It's right here. It has a blank wall on the 66 Oxford Street entirely front entrance oriented. You know, never been an issue, never been a bother.

The other issue that I think, you know, I mentioned to Mr. Altstein is the use of the driveway, it goes right on to Oxford Street which is, you know, when the Harvard garage let's out, the business streets in Cambridge there's on-street parking all along that side up to and -- yeah, up to both sides of the driveway. So it's an access issue. Not my issue, but I think it's one that the Board, you know, might want to address.

The mitigation I would like to see, and I would hope Mr. Altstein and his partners would agree to, is to condition the Variance and the Special Permit on no further changes to the side or rear exterior of the building.

You know, I think this will make this a four, which it could not otherwise be. And I think it's fair that we should not be allowed any further exterior changes to the side or rear in the additions or the porches or whatever. I would ask you condition relief on no interior changes that would increase the number of bedrooms. Right now it has four, and this design will make ten. So it's a two and a half increase in density. So I would ask for that. So no additional bedrooms on this.

I would ask you to condition relief on curbing or other physical barriers. I understand the site plan shows some. I have not seen that that would confine the four parking spaces to where they're located. To where they're located on the site plan so that we don't have any sprawl or additional cars. So my concern is that it would become -- it's just so closely located to Harvard and to the

Square that it will become more than four on a regular basis which is just a real intrusion on the neighborhood. Again, remember this is putting parking area, an open air parking area in the backyard, the quiet backyards in the entire neighbors.

And I would also ask that you condition the relief on the installation of permanent maintenance of some visual buffering between these parking spaces and the neighboring properties. Some shrubs, you know, or something. There is a fence there, but it's a slatted fence, and I think it would be very helpful, particularly to Harry Smith, if there was, you know, a block of the headlights in his house. So with those --

BRENDAN SULLIVAN: How tall is the fence there now?

KEITH LONG: Less than six feet.

THOMAS SCOTT: It's about five feet.

KEITH LONG: Spiked fence if it was

higher.

BRENDAN SULLIVAN: Oh, I see. I was looking at another one. Okay, sorry.

KEITH LONG: I'm sorry. But it's a slatted fence, and intentionally so to allow air circulation in the backyards. So we would ask that surrounding the parking area there be a requirement of shrubbing, you know, and maybe something else just to block the light.

Clearly the impact of the parking area is light and noise. Clearly if it gets to be more than four cars, the issue is density.

Those are my issues. Happy to respond to any questions the Board Members may have.

BRENDAN SULLIVAN: Go back to your first, you said no changes to the exterior rear of the building.

KEITH LONG: Yeah.

BRENDAN SULLIVAN: Now, what is proposed? The garage is coming down.

ATTORNEY JAMES RAFFERTY: That's correct.

BRENDAN SULLIVAN: And the dog house, is that coming off at all?

ATTORNEY JAMES RAFFERTY: I don't believe so. But Mr. Williams.

ROBERT WILLIAMS: Yeah, that was not intended --

ATTORNEY JAMES RAFFERTY: Could you just walk the Board to the rear elevation, and Mr. Long just so we're in agreement. We understand the concerns.

ROBERT WILLIAMS: So the rear elevation, the only change we're proposing is to --

ATTORNEY JAMES RAFFERTY: I'm sorry, Bobby, is existing on there?

ROBERT WILLIAMS: This is existing. And this is proposed.

ATTORNEY JAMES RAFFERTY: Okay.

ROBERT WILLIAMS: So we're changing

the configuration of these two windows.  
We're adding --

BRENDAN SULLIVAN: So the small one which is a pantry or something, that gets the garage and you've got this one.

ROBERT WILLIAMS: This window will be a bathroom. So it's a limited small window as well. And the two other opening remain. This would remain. And we would remove the porch on the back here that we discussed before.

ATTORNEY JAMES RAFFERTY: And, Mr. Chairman, I'm sure the Board -- this is a conforming wall, so these windows aren't subject to relief, but we understand the abutter's concerns so we're prepared to accept the condition that says that those proposed elevations will be essentially -- the rear elevation will remain in that way. Correct?

ROBERT WILLIAMS: Yes.

BRENDAN SULLIVAN: The side entrance is sort of the tail that's wagging the dog in a sense here.

KEITH LONG: Well, it is the dog. It is in fact the dog. Without this entrance the design doesn't work.

JOEL ALTSTEIN: There is one comment that he said that it was four existing and it's actually nine bedrooms existing. It's just what's actually four bedrooms.

KEITH LONG: I can only tell you what it says on the property database, sir.

TAD HEUER: Oh, well.

JOEL ALTSTEIN: You heard it.

KEITH LONG: Well, no, that's the dimensions. If I could respond quickly to that. I've lived there for 18 years and I swear I never seen more than a handful of people there. The only noise we've ever seen is when they cheer when the Red Sox hit a homerun.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: But I do think that Mr. Altstein did have the benefit of touring the property many times, and he owns it now. And if there are only four bedrooms -- I've been in it, there's a whole bunch of other rooms, I'm not sure -- with closets --

BRENDAN SULLIVAN: I appreciate the admission, but the -- that information is not reliable to be honest with you.

KEITH LONG: Well, we can agree that the basement was not used because the basement windows were all blocked. And they're now proposing to put three bedrooms in the basement.

JOEL ALTSTEIN: That's not true. The basement was actually used. They had the chapel was there. And the --

BRENDAN SULLIVAN: Okay. Keith, have you discussed your list with counsel; is

that correct?

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: And you're nodding yes to those items?

ATTORNEY JAMES RAFFERTY: I think these are all matters that have been discussed and agreed upon prior to this evening's meeting.

JOEL ALTSTEIN: Yes, I think we spoke about that before.

BRENDAN SULLIVAN: You have not seen the site plan with the --

KEITH LONG: I have not. I had a meeting Mr. Altstein. And as I say, he's very responsive. You know, I understand he has constraints.

ROBERT WILLIAMS: The granite curb would go around.

KEITH LONG: Okay. The other issue would be some kind of shrubbing or visual barrier. My house is here. Harry Smith's

is here. This is again residential structure.

BRENDAN SULLIVAN: Okay. We're going to hold that thought for a minute.

Is there anybody else wishing to be heard? Yes. Introduce yourself. Please spell your last name and give your address for the record.

CAROL WEINHAUS: W-e-i-n-h-a-u-s Carol. I live at 64 Oxford Street.

I have lived in the building since 1978. So, first of all, I would like to say that Mr. Altstein has been wonderful in terms of working with the abutters and the people and talking about their concerns. The process is really -- he's been a pleasure to work with on this. And I really like the way the plans are right now. He showed them to myself and to another abutter Heather Barney yesterday, and I like the plans where they are. He's listened to a lot of our concerns about the

garbage and about parking and all that stuff.

In addition, in our discussions Mr. Altstein said that he would preserve the large oak tree that's right at the border of the property that I live in which is 64 Oxford Street. And that he would take care in the construction not to damage the oak, which I know is really wonderful that he has committed to doing that.

The two issues -- and I should also say I really like what I've heard today that he's committed not to do a humongous build out, that it's part of the Variance thing to not do one of these massive build outs in the neighborhood, so it's really appreciated.

The two things that I would like to request, is that the fence with our property which is kind a chain link hurricane, and Mr. Altstein has said he was thinking of changing it, is that he leaves it at the current height, which is depending on the

ground, about 44 to 45 inches. And that he leaves it in some way so that it's open, you know, much in the way that Lesley requested the front? And it really has to do with safety issues and not creating some dark, unsafe spaces behind my building which has 17 units. And so, I would appreciate if we could do that just at our property line. It makes it much safer.

And the other thing I was hoping to request is that when they look at putting in the air conditioning units, because of the configuration of the houses, the brick building has essentially -- it's an L-shape so there's two walls, plus Heather Barney's house and the Jesuit house, it creates this kind of echo chamber, so I would hope that when they do the air conditioning units they don't put them there, perhaps on the Lesley side. But if they are put somewhere, that there's really noise mitigation because of

the structure. And Mr. Rafferty will know from the Harvard negotiations that our neighborhood had that, you know, noise and the way these things bounce around with the parking garage which doesn't happen now because we did a lot of work with them.

BRENDAN SULLIVAN: There's a Noise Ordinance which addresses that issue.

CAROL WEINHAUS: Yes. So, I'm just hoping that would be -- you know, those are my two only requests. They've been lovely and a pleasure to work with. And I wholeheartedly support what they want to do, the number of condos, all that stuff inside. I think they've done a beautiful job.

BRENDAN SULLIVAN: So you want a fence that's open. You want a fence that's closed. Okay.

CAROL WEINHAUS: There's different needs, you know.

BRENDAN SULLIVAN: Why don't you

just swap fences?

CAROL WEINHAUS: There's different needs and it's taking what's essentially there --

BRENDAN SULLIVAN: I understand.

CAROL WEINHAUS: And, you know, it's not making it that it's essentially worse.

KEITH LONG: Where are you, Ma'am? Just so I can understand.

CAROL WEINHAUS: I'm at 64 Oxford Street.

KEITH LONG: You're the quiet one.

CAROL WEINHAUS: What do you mean I'm the quiet?

KEITH LONG: She has a blank wall on that side as well.

CAROL WEINHAUS: Sir, you're not -- I beg to disagree with you. There are issues with noise. When workmen have worked with radios on the garage at the Jesuit building, the echoing was just unbelievable.

So what did not seem bad at ground level, was just horrible for the people in our building. So I hope that you would let us speak for our issues.

BRENDAN SULLIVAN: Okay, thank you.

KEITH LONG: I was saying your building was quiet.

HEATHER BARNEY: I'm Heather Barney at Three Hammond Street. I'm an abutter. I live in the three-family that's right next to that. So, I've been also working with the developer and it's been, it's been a real pleasure. I am -- so we've discussed something. We mentioned the fence. I'm -- I'll work with a design that is aesthetic. It would be fine if it's tall or short. So that's not -- that's not really an issue for me. I just want to make sure that the cars aren't driving in where with their headlights facing my windows because it's -- it's the living space in the back.

TAD HEUER: Where are your windows?  
Show us on there.

HEATHER BARNEY: And they're not.  
They've been changed. He actually changed  
them for me on previous discussions. So I'm  
in the three-family here, yes. So the cars  
are presently designed to park this way.

And my biggest concern that I mentioned  
in our first meeting, and I forgot to mention  
yesterday, is about the drainage from the  
parking. That the parking lot will be just  
five feet from the foundation of my hundred  
year old structure, and it's really important  
that I don't have flooding there. So if  
there could be some kind of a drainage away  
from the boundary of the property, that would  
be great.

TAD HEUER: Do you have problems  
with flooding from that area now or are you  
just concerned that as it's paved, it would  
move in the garage.

HEATHER BARNEY: It's soil now.  
It's soil. So a lot of the water is absorbed.  
So it's with it being paved I'm not quite sure  
of pavement.

JOEL ALTSTEIN: Is it soil or is  
it --

HEATHER BARNEY: It's mostly soil.  
The garage is --

JOEL ALTSTEIN: Behind the garage.

BRENDAN SULLIVAN: There's a  
building code requirement that it not be  
pitched toward your property anyhow.

HEATHER BARNEY: Or to have a  
drainage system put in so the water as it runs  
from the driveway or the snow melts, it melts  
into a drain that goes away from my structure  
would be --

BRENDAN SULLIVAN: Okay.

HEATHER BARNEY: I don't have  
flooding now and I don't want flooding.

BRENDAN SULLIVAN: You don't want

that. All right. Thank you.

HEATHER BARNEY: Yeah. And the other thing is trees. That would be great to have any kind of shrubbery and trees to encourage that parking space as almost a -- I don't see it being a problem, cars coming in and out. I don't really think they'll be coming in and out that much. But to have it be a little wildlife sanctuary even though it's a parking lot. It is a possibility with the circumference of the parking area. And Joel has agreed to look at landscaping. And I think our communication is good enough that we can work that out in the future.

And the other thing was just garbage. That there be an enclosed area for garbage so that there won't be any odor.

ATTORNEY JAMES RAFFERTY: It's depicted on the plan.

HEATHER BARNEY: They have the most up to date green garbage not visible to the

back of the house because we live in the back of the house.

BRENDAN SULLIVAN: Thank you.

Is there anybody else who wishes to speak on the matter?

SEAN O'GRADY: I would just say that the usual statement that I mean there's a lot of conditions being proposed. Conditions of maintenance, of landscaping, of fencing. Things that aren't in Zoning aren't in the Building Code. Behaviors about how the parking lot is people driving in and lights and how many cars are in there, it's just, this is really too much to ask.

BRENDAN SULLIVAN: A lot of those issues that were raised are very valid, but they are outside of Zoning, outside of our purview and not. Those are outside of Zoning and not proper for us to make condition on relief. But that does not preclude you from entering written agreements. There is an

appeal appeared that will run should relief be granted that would offer legal advice, but it does allow you an opportunity to firm up some of the these agreements.

KEITH LONG: Can I respond to that just briefly, Mr. Chairman? Looking over the Special Permit conditions in 10.44, I notice you may impose conditions such as screening of parking areas or other parts of the premises. Modification of exterior features, limitation of size, number of occupants. You do have, I believe, under the Zoning Ordinance, the power to do things that we've requested.

BRENDAN SULLIVAN: Yes.

KEITH LONG: I think the issue raised by the --

BRENDAN SULLIVAN: If they were coming down for relief for parking or a proposal for a parking area -- and I understand what you're saying, that it

appears that it's coming down to a very narrow issue, but it's really a larger issue. But what we have in front of us is whether or not to allow for the site entry with a roof over it and also to relocate some windows.

KEITH LONG: Which is effectively approving the overall project.

BRENDAN SULLIVAN: It may have an ancillary and a larger effect, correct. But legally, we have very narrow parameters.

KEITH LONG: Well, obviously the Board is, you know, very familiar with what they can do and can't do. I think you can -- I think the effect is larger than that.

ATTORNEY JAMES RAFFERTY: In interest I think we would commit to a landscaping screen as the intention to create landscaping around the parking edge. I think Mr. O'Grady's comment about the issue of permanent maintenance. He's on the enforcement side and he says, you know, five

years from now a hedge dies can you call the building inspector and allege a Zoning violation because it hasn't been replaced. I think -- I know in Mr. O'Grady's experience that sort of difficulty arises. But as far as a condition, and the four conditions here that we have agreed to with regard to the exterior of the building, that the rear exterior being unchanged beyond the proposed elevation, the interior changes to the number of bedrooms, we're content with the plan. We've shared it with the abutters. We're showing -- we're depicting in the site plan the granite curbing that will constrain the parking. And the fourth issue concerning a landscape edge around the parking. We would design it that way and install it at the outset. I think we would just expect as good neighbors it would be maintained without requiring a permanent maintenance requirement.

TAD HEUER: And I've heard a lot of different fencings in different places. What are your proposals for fences and where are they? Just so I know.

JOEL ALTSTEIN: It's an interesting question.

HEATHER BARNEY: Yeah, there's different fences on all the edges.

JOEL ALTSTEIN: I think it really needs to stay fairly loose until we sort of sit down and decide on the exact fence. And certainly we hear what they're saying and we've been responsive, but I don't know whether I can be married to 44 inches, you know. We can talk about it, general heights. Lesley has a requirement also. So we were talking to them also.

CAROL WEINHAUS: I mean, my question was if Lesley could ask for a fence thing, can a neighbor ask for a fence thing?

JOEL ALTSTEIN: Well, they're

asking.

ATTORNEY JAMES RAFFERTY:

Absolutely.

CAROL WEINHAUS: So, I was asking for something similar to what Lesley's asking for.

ATTORNEY JAMES RAFFERTY: Right.

And I think what the Applicant Mr. Altstein is saying, you know, somewhere in there it says good fences make good neighbors, and he believes that we have a number of abutters and they experience the property in different ways, so -- safety concerns, parking concerns. Lesley has visual concerns. I think Mr. Altstein wants to listen to all of them and come up with a cohesive plan.

JOEL ALTSTEIN: I think we can work it out.

BRENDAN SULLIVAN: That and good behavior will make it successful.

JOEL ALTSTEIN: We've done it

before.

BRENDAN SULLIVAN: Okay. Let me close public comment.

Any questions by the Board at all? Any parting shot? Final comments?

ATTORNEY JAMES RAFFERTY: No, thank you.

BRENDAN SULLIVAN: Nothing?

ATTORNEY JAMES RAFFERTY: I'm feeling in such good shape why would I speak now?

BRENDAN SULLIVAN: Okay. Tim, what's your.

TIMOTHY HUGHES: I'm good with it.

SLATER ANDERSON: Fine.

THOMAS SCOTT: Okay, with it.

BRENDAN SULLIVAN: And?

TAD HEUER: It's fine.

BRENDAN SULLIVAN: Okay.

We're being asked to relocate a rear entry. I make a motion to grant the relief

requested to relocate an existing, to relocate the entry to the side portion of the building and a roof structure over it as per the proposal.

We're going to use these drawings, but this site plan; is that correct? I'm sorry, I lost it all here somewhere.

ATTORNEY JAMES RAFFERTY: No, those drawings.

BRENDAN SULLIVAN: Those drawings.

ATTORNEY JAMES RAFFERTY: And that site plan is part of those drawings.

BRENDAN SULLIVAN: Okay. So these are not valid?

ATTORNEY JAMES RAFFERTY: Does that show the granite curbing?

KEITH LONG: It does, yes.

BRENDAN SULLIVAN: I make a motion to grant the Variance first. The building of a side entrance as per the plan as shown with the roof structure overhead. The Board

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

The Board finds that it would preclude the Petitioner from relocating a more centrally located entrance/exit from the building. It would eliminate an existing entrance which does not meet current egress requirements of the Building Code.

The Board finds that the hardship is owing to the siting of the structure on the existing lot which predates the existing Ordinance.

And that the Board finds that desirable relief may be granted without substantial detriment to the public good.

And that the granting of this relief is fair and reasonable and would not nullify or derogate from the intent and purpose of the Ordinance.

And that the work be in accord with the

drawings as shown.

So this is what -- this does not have elevations on it. This is what I'm trying to get at.

ROBERT WILLIAMS: So this is a complete pack. If I could just take this out. This has what was previously submitted, the plan. The only thing that's changed is the site plan where we added the granite and I just re-added the updated plans. So I just struck through in a sense, following the plans which are here. A2.1 and A2.2, and all the elevations that remain.

BRENDAN SULLIVAN: Good.

ROBERT WILLIAMS: That should be a complete set.

BRENDAN SULLIVAN: Let the Board be in accord with the drawings submitted entitled, "Oxford Street Condos" designed by FAR Group and dated February 11, 2011 and initialed by the Chair.

All those in favor of granting the relief --

JOEL ALTSTEIN: Should we say designed by --

ATTORNEY JAMES RAFFERTY: He's only saying what's on the plan.

BRENDAN SULLIVAN: All those in favor of granting the Variance for the side entry.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor. Variance is granted.

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

BRENDAN SULLIVAN: And now the Special Permit for relocation of windows, doors and side lights which actually would be that door in that entryway; is that correct or not?

ATTORNEY JAMES RAFFERTY: I think the door, it faces towards the rear, so that

doesn't violate the rear setback. But it might be a non-conforming wall because it's into the side yard setback. So that probably is included, but there are other additional windows in that wall that are covered by the Special Permit.

BRENDAN SULLIVAN: And that would be the elevation on sheet A6?

ATTORNEY JAMES RAFFERTY: Or is it A8? With the non-conforming wall we're adding the windows. The elevation is not occurring --

BRENDAN SULLIVAN: A6.

ATTORNEY JAMES RAFFERTY: You're right, Mr. Chairman, A6.

BRENDAN SULLIVAN: I'll make a motion to grant a Special Permit for the relocation of certain windows, doors and skylights on a non-conforming wall as shown on sheet A6. Drawings Entitled, "Oxford Street Condos" designed by the FAR Group,

dated February 11, 2011 and initialed by the Chair.

The Board finds that the requirements of the Ordinance can be met.

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

Continued operations of the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

And that there would be no nuisance or hazard created to the detriment, health, safety, welfare of the occupants of the proposed use or the citizens of the city.

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

Now, are there any additions that we

should put in?

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, we do have the four agreed upon conditions that were stated. I'd be happy to --

TAD HEUER: So, I have and we can trade here. No additional bedrooms beyond those indicated. Is that where we're going?

ATTORNEY JAMES RAFFERTY: Yes. I had them in the order that they were -- I had no further changes to the rear elevation other than depicted in the plan.

Two, no interior.

KEITH LONG: Rear side. The side of the rear facing me what's on your plan.

ATTORNEY JAMES RAFFERTY: Yes, I believe. That's the rear of the house, right, is that what you're concerned with?

KEITH LONG: Right. But it's that side and rear. Not just the rear side but it's the side side. Happy with what you're

doing on the side.

BRENDAN SULLIVAN: Shown on sheet A7.

TAD HEUER: I think he's saying you can see this -- or anything he could see by standing at the rear of the house which may not be necessarily on the rear facade. Is that right?

ATTORNEY JAMES RAFFERTY: Okay, right. So the side facing Lesley is subject to the Special Permit so that's conditioned anyhow. We're not going to be able to change that because that's the non-conforming wall.

BRENDAN SULLIVAN: Correct. And what we're saying is that we're accepting what is shown on the sheet A7 and there will be no changes to that.

ATTORNEY JAMES RAFFERTY: Right. And in a sense what the Applicant is saying they're accepting a limitation on a conforming wall that otherwise they wouldn't

be constrained by.

BRENDAN SULLIVAN: That's right.

ATTORNEY JAMES RAFFERTY: The other wall is non-conforming and we're constrained by the Special Permit.

KEITH LONG: And the site plan?

ATTORNEY JAMES RAFFERTY: No. 3 was the parking area to be as depicted on the site plan with granite curbing to limit -- to prevent parking into the setback. And only in the area depicted on the site plan.

And the fourth was to --

BRENDAN SULLIVAN: Which is shown on sheet A0.

ATTORNEY JAMES RAFFERTY: Shown on the site plan.

BRENDAN SULLIVAN: Sorry. Which is shown on Sheet A0.1 the curbing.

ATTORNEY JAMES RAFFERTY: And the fourth condition would be the installation of landscaping along the -- in the setback area

where the parking is occurring to create a visual screen for abutters.

JOEL ALTSTEIN: The only question that I would have is I don't know what the distance is between the curbing and the fence.

BRENDAN SULLIVAN: Five feet.

JOEL ALTSTEIN: It has to be five feet? And we put landscaping in there.

ATTORNEY JAMES RAFFERTY: You're required to put landscaping in there.

JOEL ALTSTEIN: All right.

BRENDAN SULLIVAN: Okay. So we're good.

THOMAS SCOTT: Is that on all three sides of the parking field?

JOEL ALTSTEIN: No. I think it's certainly on the back side and it's on --

ROBERT WILLIAMS: Three sides.

BRENDAN SULLIVAN: It's on three sides as per the -- again, what is shown on

sheet A0.1, the curbing plan.

ATTORNEY JAMES RAFFERTY: Right.  
Those are the four conditions.

BRENDAN SULLIVAN: Okay.

So those conditions are now part of the record and part of the Special Permit.

All those in favor of granting the relief.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

(10:45 p.m.)

(Sitting Members: Brendan Sullivan, Timothy Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

BRENDAN SULLIVAN: The Chair will call case No. 10019, 66 Oxford Street.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman. The Applicant withdraws that case.

BRENDAN SULLIVAN: On the motion to withdraw, all those accepting the motion?

(Show of Hands.)

BRENDAN SULLIVAN: Five in favor. The case is withdrawn.

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

(10:45 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10067, 1663 Mass. Avenue. Is anybody here interested in that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of a correspondence on the letterhead of Ottenberg and Dunkless, Counselors at Law addressed to Maria Pacheco dated March 17, 2011. "As a follow-up to our discussion, I have attached two originals of a letter, one for Ranjit and one for the BZA explaining our withdrawal of the application for the Special Permit. Please be sure that this letter is given to Ranjit and the BZA early today so that I misunderstand the situation there will be a time for us to proceed with the hearing. Very truly, Robert Dunkless."

The letter of reference is dated March 17th to the Commissioner and to the Board of Zoning Appeal: "Gentle persons: This letter is a follow-up with my discussions with Ranjit Singanayagam on March 16, 2011. As you know, this firm represents Hi-Rise Bake Bread Company. Hi-Rise intends to

operate a restaurant at 1663 Mass. Ave. owned by Lesley University. The restaurant will consist of 59 seats. We had earlier believed that operation of a restaurant with 59 seats, which includes a 16 seasonal outdoor seats located entirely on the landlord's property at 1663 Mass. Avenue would require a Special Permit for relief from the City of Cambridge parking requirement. We submitted an application for a Special Permit to the Board of Zoning Appeal to reduce the number of off-street parking spaces for the operation of restaurant. On March 16th, Ranjit informed me that this matter had been reviewed by the Chairman of the Zoning Board of Appeal and City of Cambridge's Legal Department, and it been determined that the Variance granted to Lesley in 2008, which is case No. 9631 by the Board of Zoning Appeal in conjunction with the construction of the property at 1663 Mass. Avenue provided an

exemption from the parking requirement for all retail uses at the property which would include the operation of a restaurant as contemplated by Hi-Rise. Ranjit informed me that the Chairman of the Zoning Board of Appeal had determined that no Special Permit for parking relief is required to operate a 59 seat restaurant. In reliance on this determination by the City of Cambridge that a Special Permit for parking relief is not required, Hi-Rise is hereby withdrawing its application for a Special Permit for parking relief at 1663. If, however, my understanding of this situation is somewhat not accurate, please contact me. We will proceed with the application. On behalf of Hi-Rise, it is requested that the fee, \$1200 or appropriate portion thereof paid in connection with the application for this Special Permit be refunded. Thank you for you assistance in this matter, Robert

Dunkless."

What they wish to do is withdraw because it has been determined that they do not need relief and that they could proceed as of right.

All those who agree with that determination --

CONSTANTINE ALEXANDER: Except we're not voting on the refunding of the fees?

TIMOTHY HUGHES: Yes, we're not.

(Show of Hands: Sullivan, Alexander, Hughes, Heuer, Anderson.)

BRENDAN SULLIVAN: The second part of that is to refund either the \$1200 or a portion thereof.

We had some discussions with the Commissioner and he felt that it was somewhat appropriate to refund a portion thereof.

CONSTANTINE ALEXANDER: I for one don't think it's good practice for us to start refunding fees, and I don't know how we would

figure what portion we should refund to them.

BRENDAN SULLIVAN: Well, in their defense they were not sure that they needed -- they were told that they were going to require a Special Permit, so they went ahead and filed. And then after filing, then it was a determined that they didn't need it. So, if that determination had been made in proper time, then they would not have spent the \$1200.

CONSTANTINE ALEXANDER: What they're suggesting, the lawyers are calling it estoppel because they relied on advice from public officers. The law is quite clear, you have no right to rely on that. They have counsel. Counsel should have made his own determination as to whether he needed relief and rather than filing and paying the fee, he did it at his own risk. I would oppose any fees.

TAD HEUER: He also has the right to

appeal the decision of the Building Commissioner which he chose not to do.

BRENDAN SULLIVAN: Right. So you're --

TAD HEUER: No.

BRENDAN SULLIVAN: -- no?

TIMOTHY HUGHES: I don't think it's necessary to even address that in the request for withdrawal. We can vote on a withdrawal without addressing his request for a fee reimbursement.

BRENDAN SULLIVAN: Well, the Commissioner has asked that we take it to a vote in response to that request. It's the purview of the Board to either waive it or reduce it.

TIMOTHY HUGHES: Is it really?

BRENDAN SULLIVAN: Yes.

TIMOTHY HUGHES: First time since I've been sitting here.

BRENDAN SULLIVAN: We have the

authority to do it, not the Commissioner.

TIMOTHY HUGHES: We have the authority?

BRENDAN SULLIVAN: We have the authority on page 14 of our outdated rules of procedure that the Board can waive any and all filing fees. So your feeling is.

TIMOTHY HUGHES: I'm going to abstain.

BRENDAN SULLIVAN: Your feeling is?

SLATER ANDERSON: I'm pretty ambivalent about the whole thing. I don't know. I feel like, you know, their counsel should maybe have done a little more counseling for this.

BRENDAN SULLIVAN: Okay.

SLATER ANDERSON: So I think the city can keep the money.

BRENDAN SULLIVAN: All right. So, on the motion to withdraw -- I would make a motion then, not to refund any of the filing

fee.

All those in favor of that motion.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

One abstaining. Okay.

(In Favor: Sullivan, Alexander, Heuer, Anderson.)

(Abstain: Hughes.)

BRENDAN SULLIVAN: Matter is withdrawn but the fee is kept.

(10:50 p.m.)

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

BRENDAN SULLIVAN: Case No. 10068, 7 to 9 Foch Street.

(No Response.)

BRENDAN SULLIVAN: Is there a letter

in the file?

SEAN O'GRADY: I would hope so.

BRENDAN SULLIVAN: You're under the understanding that they wish to continue?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: That was the understanding?

SEAN O'GRADY: Yes. My understanding is that on April 14th they are going to be coming for a case, their plans have changed enough where this advertisement no longer is quite appropriate.

CONSTANTINE ALEXANDER: In fact what their wishes are is irrelevant. They haven't posted a sign with regard to the Zoning By-Laws so we have to continue the case.

SEAN O'GRADY: Well, that's true.

BRENDAN SULLIVAN: When does this have to be heard by?

SEAN O'GRADY: Is it there?

TAD HEUER: No.

BRENDAN SULLIVAN: Is there a stamped date?

TAD HEUER: February 18th.

BRENDAN SULLIVAN: Let me make a motion to continue the matter as per the Petitioner's indirect communication to Inspectional Services that they will be coming back with a modified plan which may necessitate a re-filing.

Regarding this matter we will continue it on the condition that the Petitioner sign a waiver of statutory requirement for a hearing for a decision to be rendered thereof and that they post the notice on the property and change the time and date of the hearing to when they are coming back. Do we know?

SEAN O'GRADY: April 14th. That will be within the 65 days?

BRENDAN SULLIVAN: Until they change the date and time of the continuation

of this hearing until April 14, 2011 at seven p.m.

CONSTANTINE ALEXANDER:

Mr. Chairman, if the motion is made on the basis that we're continuing on the condition that they sign a waiver of notice and they don't sign the waiver of notice, then we're back -- we're going to be back in the 65 day requirement for a decision. I'd rather we make the motion that we're going to continue this case because they have not complied with the requirements of our Zoning By-Law with regard to posting a sign. And that the continued case must be advertised to changing the date and time is subject. But I don't want a condition that --

BRENDAN SULLIVAN: The reason we're continuing it is failure to post.

CONSTANTINE ALEXANDER: Failure to post, yes. And therefore we can't --

BRENDAN SULLIVAN: And also lack of

appearance and communication. Let me amend that --

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: -- motion then to reflect that. I think that's very good.

All those in favor of that motion.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

SLATER ANDERSON: This is continued, not heard?

BRENDAN SULLIVAN: Yes.

(10:55 p.m.)

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

BRENDAN SULLIVAN: Let me call case No. 10070, 1350 Mass. Avenue, New Cingular

Wireless. Introduce yourself for the record.

FRANCIS KELLEY: For the record, my name is Francis Kelley. I'm an employee with SAI Communications. I'm here representing AT&T New Cingular Wireless.

BRENDAN SULLIVAN: Now, are you familiar with the issues that have been brought up regarding the status of the existing antenna?

FRANCIS KELLEY: Yeah. Well, I -- you know, I was the one that included the old decision in the package, you know, so we were aware of it. It does reference. I think you're talking about is condition No. 3 in the original approval from 1999. You know, we did some research in the file room next-door and we weren't able to find anything else. We -- you know, on it. I actually hadn't looked through the minutes. We couldn't find those. But, we did

have -- there was a building per -- so the condition No. 3 is the one at issue which said the Variance shall terminate in three years.

BRENDAN SULLIVAN: Right.

FRANCIS KELLEY: And actually it might have been a typo, because of -- what was actually granted was a Special Permit and not a Variance. But, you know, granted it could be referring to that.

BRENDAN SULLIVAN: There still was a clock running.

FRANCIS KELLEY: And there was a clock running. You know, if it actually was referring to this the Special Permit, which it might probably have referred to. So we may have a situation where the installation was -- at no point did the city take any action to try to remove anything that was up there. Everything stayed up there. In 2005 we actually went back and swapped some antennas up on the rooftop and were granted a Building

Permit from Inspectional Services for the configuration that's up there now.

So I guess the question that you're gonna have is whether we've advertised for what we're proposing to do. Whether, you know, I don't think you really want to go back -- this is a very important site because of its height up there. That if the -- and I don't even know what the process would be if you tried to get us to take it down. We did get a Building Permit. And assuming that it's a very important site for AT&T. It's a very high building. If you didn't have that you would have to have a whole bunch of other sites. But, you know, just looking at our application, what we had in the description is not factually inaccurate. We said that we proposed to alter the telecommunication facility approved by the Special Permit granted which, you know, which is what we're doing. Whether that was, whether that was up

there legally at that point we've, we've -- our description, I believe, is accurate of what we're doing. I believe that if a resident looked up there and tried to figure out what we're proposing to do and, you know, that we're -- according to what's up there, whether it's up there legally or not, we're doing what we're saying.

BRENDAN SULLIVAN: I think you're acting in good faith. I think, though, the main issue is that whether we can grant relief to alter something which has expired basically. And not -- obviously there's also language in here from the Planning Board asking for revision.

FRANCIS KELLEY: Let me deal with that. I know we did meet with the Historic Commission and were granted a letter of appropriateness for what we're planning to do there.

We met with the Planning Board. They

want us to do some changes up there. And we agreed to do them. What they want us to do is to -- the existing antennas are up on the concrete face that's, it's concrete that's faded to a much darker shade than was originally put up. And they want us to try and to paint to match. Texture it because it's little spotted concrete up there. And actually lower the antennas.

BRENDAN SULLIVAN: They would want you to do what I would want you to do at a minimum anyhow.

FRANCIS KELLEY: Okay. So we are -- AT&T is in agreement that we would do everything that the Planning Board is recommending. We'll lower the antennas one foot so that -- I think that right now that they're even with the top of that section. But everything looks straight up because you don't get too far away because all the buildings are pretty close. That when

you're looking up from closer away, it looks like they're sticking above the building. And if you look at the pictures that were included, it kind of shows them in there. We'll agree to lower them down. We'll paint them to match. What we're going to end up with is an installation that, you know, the relief that we're asking for is not a relief that is an amendment to the -- it's a Special Permit under that footnote 49. That's the permit that we're asking for. And there's -- even though in the description we're describing it as amending this other permit, the actual way -- the permit doesn't allow for an amendment. It's a Special Permit. It stands on its own. So the question is whether we meet the criteria that's established in there. And I think if you look at it, with us painting the antennas to match, dropping them down lower, we're going to also look and see if there's a

possibility that we might be able to mount some of those antennas closer to the building because I --

TAD HEUER: There is a possibility you can do it. I know it can be done actually.

FRANCIS KELLEY: There is. We're going to look at it.

BRENDAN SULLIVAN: That's all well and good, but the issue is whether or not No. 1, we can even proceed with this because the existing installation up there has expired. And I guess where I'm going is that it really should be a re-file and all of this stuff grouped together. And the issues that were raised by the Planning Board be addressed. And Mr. Heuer was just saying that yes, it can be -- there's new equipment out there that can get it very flat to the building.

CONSTANTINE ALEXANDER:  
Mr. Chairman, I think first of all, I agree

with what you're saying. But I hate to be the skunk at the lawn party. There's another reason why I don't think we can't hear this case tonight, and it's because it's in Harvard Square. And under our Zoning By-Law we're supposed to follow the Harvard Square Development Guidelines. And the Harvard Square Development Guidelines require, I'm reading from it, that any development requiring a Special Permit or a Variance, regardless of size, must be reviewed by the Harvard Square Advisory Committee for an advisory opinion. I don't think we've had that -- you've done that. Not Historical. It's Harvard Square Advisory Committee. So I think we have to have that done. It hasn't been done. We've enforced this against other Petitioners, not telecommunications but we have enforced this.

BRENDAN SULLIVAN: Right. I was going to note that you received permission of

appropriateness from them but it's the other level of bureaucracy that you have to cross that hurdle also.

So, I guess my recommendation would be that these installations, plural, at this location be all wrapped up into one application and it be re-filed.

CONSTANTINE ALEXANDER: And you seek an advisory opinion from the Harvard Square whatever the name of is -- the Advisory Committee. Another piece of review by another Board and/or approved. And they'll have to render an opinion to us before we can act on this petition.

BRENDAN SULLIVAN: Sean, were you going to say something?

SEAN O'GRADY: No, I just -- kudos.

TIM HUGHES: Kudos, didn't they change that yet under the Ordinance?

CONSTANTINE ALEXANDER: Not as far as I know.

TIMOTHY HUGHES: I just got a whole bunch of new pages that I didn't put in the book yet, no?

BRENDAN SULLIVAN: I think what you're hearing is that this thing needs to be tidied up and this needs to be put into a far more concise and legalize all the other stuff that's up there, too. Otherwise we're just we're all over the place. And, again, as Mr. Alexander said, that there is another hurdle that really needs to be done also.

TIMOTHY HUGHES: I'd like to weigh in here if I could. I agree with Gus, although, you know, how I feel about that advisory committee. I don't think -- I don't necessarily agree that this is mis-advertised in terms of the illegal equipment, because that portion of the illegal equipment if, you know, "illegal equipment" that is affected by this is going to be replaced. And then in that case,

you're taking down the illegal equipment, right? The stuff that stays up there, that's old and maybe on a run out Special Permit or Variance, depending on how it's been worded, maybe that needs to be dealt with. But I think that could be dealt with separately from this Special Permit here.

CONSTANTINE ALEXANDER: Tim, I agree with you. I don't think you have to re-advertise because of the issue about the lapsed Special Permit. I think you have to re-advertise because -- or you have to not re-advertise, continue the case one, because of the Harvard Square stuff.

And the other issue we should see, in response to the Planning Board, you've got to be changing the location of them, the painting, closer to the -- we need new photo simulations and a new set of plans.

FRANCIS KELLEY: Right. I'm fine with that. If you tabled this, we'll get you

some new plans that show -- that show the revised drawings. We'll get you the revised photo sims and we'll tidy up the language in there to --

BRENDAN SULLIVAN: I would still like to get an opinion from the Law Department as to the status --

SEAN O'GRADY: On the re-filing.

BRENDAN SULLIVAN: -- of the existing. I mean, we'll continue this matter, okay? Proceed forward, cross the other hurdle, tidy up the presentation. But, the existing equipment is sort of, that status is somewhat in limbo right now. So, if you want to sign a waiver of --

SEAN O'GRADY: Yes. Just to be totally above board, my advice to you is going to be that if the requirement is to seek advice from the Legal Department, I can't speak for their timeline on that advice, and so you may want to re-file for your own

purposes.

FRANCIS KELLEY: If I re-file anyway how long --

TAD HEUER: You may want to re-file for practical reasons, having this application look like what we're going to see two cases from now which is here are all the antennas, here is everything we own on the structure, here's what we're going to do to reconfigure everything and you can see it all in one set of photo sims rather than, you know, these are three that we're moving as part of this piece and seven others or nine others or however many others that Cingular has on that we'll be talking to you about a few weeks from now.

FRANCIS KELLEY: They're all going to be moving.

TAD HEUER: If they're all going to be moving at once, as a practical matter and not as a legal matter, I also tend to agree

with Gus that if you're looking to amend by getting rid of stuff that's illegal and you're looking to legalize it, this small installation, small row of antennas, you can probably go ahead with that. I think as a practical matter you may get a better reception from the Board if it's all more in one application so we can actually see one time on one photo sim everything that was being changed.

BRENDAN SULLIVAN: That's correct.

TAD HEUER: I think as a practical matter as Sean said, that may arrive to us all at the same time anyway.

BRENDAN SULLIVAN: So, Sean, we can continue this matter until?

TIMOTHY HUGHES: Is this a case heard?

BRENDAN SULLIVAN: It is. I would say it's a case --

CONSTANTINE ALEXANDER: No, not

heard.

BRENDAN SULLIVAN: Not heard.

CONSTANTINE ALEXANDER: We only talked about jurisdictional matters.

SEAN O'GRADY: Have an opening on April 28th. What I don't know is whether or not if he were to re-file, we can get him on the 28th. But then we can continue it on if we need to.

BRENDAN SULLIVAN: Let's go to the 28th. So, this matter will be continued until April 28, 2011 at seven p.m. provided the Petitioner sign a waiver of the decision for a hearing, and change the posting sign to reflect the new date of April 28th and the time.

All those in favor of continuing the matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes,

Heuer, Anderson.)

FRANCIS KELLEY: Thank you.

(11:10 p.m.)

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

BRENDAN SULLIVAN: The Board is going to hear case No. 10071, 64 Inman Street.

BERNARD CUDDY: We are Brenda Stanfield and Bernard Cuddy, husband and wife, both reside at 64 Inman Street.

BRENDA STANFIELD: Unit 2.

We have lived in our unit for 25 years on the second and third floor of 64 Inman Street. And for 25 years we have not had direct access to the rear of our property to the backyard without going down the side stair and across part of the parking lot through the back gate to the backyard. Five years ago we added -- sorry, 20 years ago sorry, we added a French door in our kitchen which was on the only vacant wall. The kitchen cabinets are on the rest of the wall, to let light in and so that we could observe our children in the backyard and stuff like that. And finally after 25 years now we would like to build a ten-foot by ten-foot

deck off the rear of our house. And the reason we're here for the Variance is that it is non-conforming to the current setbacks which are -- you do the calculations, they're about 17 and a half feet on either side of our house. The existing corner of our house where the deck would start, which is kind of determined by where the door is in the blank wall, is about seven-foot, eight from the property line. And I know it's not totally relevant because our property is 50 feet wide so that part of the property is conforming. But the 50 -- no, sorry, it's late. The 50, 20, whatever -- about the non-conforming width -- anyway. The house itself is a pre-existing non-conforming structure, and there are actually parts of the house that are much closer to the property line than this corner of our house. We --

BERNARD CUDDY: Where the deck would be.

BRENDA STANFIELD: Where the deck would be. We would entertain moving the deck, but the whole back of our house is only 17 foot six wide and to move the deck over, we'd have to totally renovate our kitchen and move the door. And, you know, a ten-foot by ten-foot deck is not that large. So to shrink it and make it smaller would kind of render it kind of useless. We might have well put a stair down the backyard. So....

BRENDAN SULLIVAN: On that note, could you do a deck as of right even if it meant shifting that door?

BRENDA STANFIELD: Well, we have to renovate the kitchen completely because there's really -- there's the door and then -- well, I have a plan which shows the configuration of the house somewhere in here.

Our kitchen is here. The washer, dryer's there and it's kind of wrapped around. So, corner to corner it's like 17

foot, six on the outside.

BRENDAN SULLIVAN: Okay.

BRENDA STANFIELD: So, corner to corner it's like 17-foot six on the outside. So without renovating the kitchen, and then to move the deck over, then I'd also be shading my neighbor's bedroom window, which this is -- in front of this window is a closet. It's built. So it's really not in use at all.

BRENDAN SULLIVAN: You occupy the entire house?

BRENDA STANFIELD: No. I have a downstairs neighbor on the first floor. She has a letter saying she supports --

BRENDAN SULLIVAN: Condos or tenant?

BRENDA STANFIELD: They're condos. We have the upper two floors and she has --

THE STENOGRAPHER: You need to speak up, please.

BRENDA STANFIELD: I'm sorry.

Anyway, if we move the deck over, it would totally shade our neighbor's window and I think she would be concerned about that.

BRENDAN SULLIVAN: And the violation is that you are basically putting on a deck which then the area below that becomes floor area. Is that --

BRENDA STANFIELD: Well, we've deck below. We have a --

CONSTANTINE ALEXANDER: They're in a setback, too.

BRENDA STANFIELD: We have a lower deck, but it's only 12 inches off the ground, so it do not require a permit.

BRENDAN SULLIVAN: Okay, I'm sorry. You're in compliance on that issue.

BRENDA STANFIELD: Yes.

BRENDAN SULLIVAN: It's the setback.

CONSTANTINE ALEXANDER: It's the

setback.

BRENDA STANFIELD: It's strictly the setback on that left side of our house.

BRENDAN SULLIVAN: One of the few houses that comes down to compliant FAR.

BRENDA STANFIELD: We are. It would be easier for us to add 150 square foot room on each floor as long as we had the proper setbacks, than it would to add this little ten-foot by ten-foot deck.

BRENDAN SULLIVAN: Now, you've been in the house for how many years?

BRENDA STANFIELD: 25.

BRENDAN SULLIVAN: And at that point was it a condo then or did you --

BRENDA STANFIELD: We owned the entire house at one point, but -- actually, we bought it jointly.

BERNARD CUDDY: The bottom floor was a rental initially, and then we turned in into condominiums.

BRENDAN SULLIVAN: Condos.

BRENDA STANFIELD: Reducing the mortgage.

BRENDAN SULLIVAN: Okay. Is there anything else?

BRENDA STANFIELD: No. I mean, we think we're adding something visually nice on the back of the house. Before the door was there, it was just an absolutely big blank wall except for two really strange little windows.

CONSTANTINE ALEXANDER: Brendan, I have a question I'd like to ask the Petitioner. I'd like to get something on the record.

Your abutter with whom you've been in correspondence with and opposes the relief you're seeking. You wrote an e-mail to this person. And I'm quoting, "According to the head of the Zoning Board, my request is not unreasonable in light of the fact that most

properties in Cambridge, including your own, is in violation of the current zoning, thus the Variance is required."

Now that's a serious charge.

BRENDA STANFIELD: Uhm.

CONSTANTINE ALEXANDER: And because if the head of the Zoning Board did have this conversation with you, it would be improper. And I was until a month ago the head of the Zoning Board, and I never had any such conversations with you.

BRENDA STANFIELD: My total apologies. I wasn't sure of his title. I went in to speak with Ranjit about -- and he was pretty confident that it shouldn't be a big issue. So, I apologize for the title.

CONSTANTINE ALEXANDER: I'm not personally offended. I didn't want to leave it unanswered on the record.

BRENDAN SULLIVAN: I sort of took it as misspeak.

CONSTANTINE ALEXANDER: I wanted it on the record.

BRENDA STANFIELD: I was a little disturbed on the e-mail so I probably was not thinking straight.

BERNARD CUDDY: I sort of wanted to point out that we'll be in compliance or actually compatible with almost every other house next to us because -- if we had a deck, because they all have decks.

BRENDA STANFIELD: Well, here look at the other -- I mean, actually. There are two decks there. There's a deck there. I mean, there are sort of decks all down the -- we're the only ones that don't have an upper level deck on our -- on the rear of our house right now.

CONSTANTINE ALEXANDER: Do you have use of the backyard, though, don't you?

BRENDA STANFIELD: We do share it equally with our downstairs neighbor.

CONSTANTINE ALEXANDER: So, it's not a matter that you don't have open space.

BRENDA STANFIELD: No.

CONSTANTINE ALEXANDER: Where is the hardship?

BRENDA STANFIELD: Well, the hardship is that we could move the deck except that it would require total renovation of our kitchen.

CONSTANTINE ALEXANDER: That is a hardship not to have a deck. You could have no deck, too.

BRENDA STANFIELD: Oh, that's true.

BERNARD CUDDY: We're not claiming a hardship that we don't have a deck. It's just --

BRENDA STANFIELD: Right. We'd like to build the deck.

CONSTANTINE ALEXANDER: You should understand before you go too far on this. To get a Variance one of the legal requirements

is you have to demonstrate a substantial hardship. If you don't, we can't -- we don't have the authority to grant you the relief you want.

BRENDA STANFIELD: Well --

CONSTANTINE ALEXANDER: So don't talk -- I don't want to talk about no hardship.

BRENDA STANFIELD: All right. The only thing I can say is that if we could move the deck so that it was conforming to the setbacks, it would be conforming and we wouldn't have any problem getting a permit because we're well within the FAR, and all the other setbacks work. We can't move it, however, without -- and I, you know, I guess the legal, you know, technically by the letter it is not a terrible -- yeah, we could just not have a deck.

CONSTANTINE ALEXANDER: I mean, to have a hardship, you have a right, you need

a deck. You have no open space to the like, and to put the deck somewhere's else as a matter of right, would require you to reconfigure the kitchen is substantial. That's not the case. You have access to the backyard.

BRENDA STANFIELD: Well, sort of. We have to go down off a side door and out the parking lot.

CONSTANTINE ALEXANDER: That's an issue for us. We have to --

BRENDA STANFIELD: We have been there 25 years without direct access to the back -- to the rear of our house, and it would be a nice thing to be able to have. We're -- well, we intend to stay in the neighborhood forever. We'd like to be able to go out and have breakfast.

BRENDAN SULLIVAN: Let me open it public comment. Is there anybody here who would like to express an opinion regarding 64

Inman Street?

Please come forward, state your name, please spell your last name for the record.

ANDREA VOLPE: I'm Andrea Volpe V-o-l-p-e. I live at 66 Inman Street. Thank you for clearing up that misunderstanding. That was my concern as well in terms of the tenure of the notion of the pre-approved deck. I do want to comment that the use of that language, even if it was in error, lent a note of pre-approval to the entire proceeding and --

CONSTANTINE ALEXANDER: Well, let's not go there. If you don't mind, Mr. Chairman. We've gone down this road as far as we need to go down. Let's move on to the merits of the case.

ANDREA VOLPE: Okay. Well, I have two things to say that I've also said in writing. There are two substantial issues here.

First one is that I am the only residential abutter affected by this deck. The deck is non-conforming. I mean, the property line is non-conforming along its entire length. If you look at the photographs that I've submitted, you'll see a view of my backyard --

TAD HEUER: You mean the house is non-forming as to the property.

ANDREA VOLPE: I'm sorry, yes, the house in relationship to the property line. That's right, thank you.

And so what this means in essence is that the nature of that non-conforming problem which is seven feet of space and primarily one and a half feet of setback distance gets air rights. So that now there's a ten-foot by ten-foot deck that makes my backyard, my patio, my back door, the entire back of my house a fishbowl. And I want to call your attention to the second

photograph in the package which is the view from my kitchen window which gives you a sense of what I will see when I look out that window. And then also the fact that they already have a 13-foot by -- no, 16 by 30 foot deck on their first floor that they just rebuilt last summer. So, they have ample outdoor space. In fact, they have more outdoor space in a neighborhood that's already incredibly dense because of the 19th century housing stock. So, I will be disproportionately affected because the other abutters are primarily commercial. They don't use their properties on the weekends, in the evenings. And because this deck is really about a foot and a half off the fence line, there is already.

BRENDA STANFIELD: No, no.

ANDREA VOLPE: Excuse me, I'm still speaking.

BRENDA STANFIELD: The lower deck is a foot and a half.

ANDREA VOLPE: Yes, because this first floor existing deck is about one and a half feet off the property line. There is already a great deal of encroachment and privacy is minimal as it is. It's going to be worse than that adverse effect.

And the second part of this is that I don't think this is a hardship. I don't think it meets your test of what a hardship is. A deck is an amenity. It's not a requirement. They have lived there for 25 years. I lived in my home for 17. They commissioned the design for the condo design of the property. Ms. Stanfield is an architect herself. They had the forethought to put in a sliding glass door, but they could have designed their kitchen at the time in a way that when it came to the time for them to want to build a deck or afford that deck, they wouldn't have had to come before of the Board for a Variance.

And this is -- there are no other

non-conforming decks to my vision in the neighborhood. They're all within footprints of the existing buildings. And this essentially extends the non-conformity. It basically gives it approval. It increases the non-conformity. And my use of my backyard in terms of the current use is really compromised by this.

And I will add altogether that I was never consulted on any of this. I simply got the notice from the city. There's been no attempt to work out a design or make any attempt to have it be something that's less effective on this property line.

BERNARD CUDDY: There was no attempt on your part to contact us.

ANDREA VOLPE: Actually, I did. I wrote. Actually, I did.

BRENDAN SULLIVAN: You'll get a chance to respond.

I read your letter in great detail.

This photo here sort of resonated with me that the deck coming out would obviously block light, air, sight. The next page obviously, your back porch again, sort of resonated with me because by putting a deck on there and then again it sort of blocks --

ANDREA VOLPE: Yes.

BRENDAN SULLIVAN: -- sort of that view. And so I saw that you had a very valid argument for not wanting the deck there. And so I put myself sort of in your kitchen, your back porch and would I want to see a deck there? And I guess the answer probably would be no.

Where you sort of lost me, Ms. Volpe, was your correspondence where you basically said well, if we can get some agreement on some parking then I will withdraw my objection. Which tends to make me feel that maybe your objection is not as strong as it would appear. And I'm just wondering that

you would withdraw your objection.

ANDREA VOLPE: Well my initial --

BRENDAN SULLIVAN: If you would consider formalizing the easement, then I would not stand in the way of the Variance. If that is any interest, why don't you make a proposal, we could see what can be done otherwise I strongly oppose it.

BRENDA STANFIELD: May I say something?

BRENDAN SULLIVAN: No, hold on. I don't know if that gives you a position.

ANDREA VOLPE: Well, let me give some clarification to that. Because the e-mails were my attempt to try to negotiate a compromise that would get us both something that we both wanted. Which is they clearly want a deck. The situation in their background, I'm sympathetic to the fact that they've lived there as long as they have. They're pretty tightly -- they've raised two

kids in that space. It's a pretty tight space. There is an existing problem that has been in position for 17 years since I've owned the house. Which is that there's a curb cut that has some partial access on their property. We've never been able to come to any agreement about using that parking space in a way that would make it more conducive to my access to it. And this seemed to be an appropriate time to try to make sure that everybody got what they wanted. I did consult a lawyer to make sure that making that offer was appropriate. I was confirmed that it was. I made my best effort at that, because I thought there could be some possibility of some mutuality here. This will cause some problems. I was trying to make my best attempt to open some discussion and negotiation about the both neighbors getting something that they at least wanted. When it became clear that that was not going

to happen, you see in the e-mail that she says she's not interested. I then had to take a different position which was simply to protect my privacy. I have no expectation at all that this will go any farther. I take them seriously when they say they're not interested in negotiating. In fact, you'll see in the e-mail as well that Ms. Stanfield said that in fact they were considering building a fence down the entire property line to their front where there is no fence right now in the front yard. So if she were to follow through on that, there would be no access. The curb cut would be a moot point. So at this point I've given up on the curb cut. I've been around it a million times. I can't make it work. It's, it's not gonna happen.

BRENDAN SULLIVAN: It's just that everything else resonated to me and then that e-mail also resonated when you made that --

ANDREA VOLPE: I hope this has

clarified it a little bit, especially in the light of the fact they do have the prerogative to put a fence down the entire property line and then it's really a moot point. There's no addressing it in any other way. I have not spoken to these people over ten years since the death of my husband when they harassed me about it.

BRENDA STANFIELD: Oh, my gosh.

BERNARD CUDDY: Please, please.

BRENDA STANFIELD: Oh, my gosh.

ANDREA VOLPE: I don't have any --

BERNARD CUDDY: Please, please, please. This is an outright lie.

BRENDAN SULLIVAN: If is there anybody else who wishes to speak on the matter?

BRENDA STANFIELD: I have a letter to my neighbor that she had to go home. She has to travel tomorrow. She had to go home to sleep. She wrote a letter. And it

partially addresses Andrea's issue about the parking because she didn't think about the fact that my neighbor had a say in the parking issue as well.

BRENDAN SULLIVAN: Let me read this into the record. It's Reverend?

BRENDA STANFIELD: Reverend Renata Rose.

BRENDAN SULLIVAN: Renata? Renata Rose, 64 Inman Street, No. 1, which is the first floor?

BRENDA STANFIELD: Correct.

BRENDAN SULLIVAN: Dated March 17th adding a deck on the second floor on the back of the house of 64 Inman Street. "I hereby declare that I support the desire of Brenda Stanfield to add a deck on the second floor to her kitchen. I heard that our neighbor next-door wishes to object unless we agree to give her parking. I oppose such an unreasonable request since most of the time

I spend most of the time in my kitchen. This would be greatly disturbing regarding the parking space."

BRENDA STANFIELD: She has -- her kitchen window looks out over --

BRENDAN SULLIVAN: Anyhow, for the record, that she is in support of your adding the deck. There's some other personal information which is not necessary for us.

BRENDA STANFIELD: Renata's -- no, but it speaks to one reason for putting a fence down there. We've extended a fence on the other side of our driveway because of the garbage cans left by -- on the rise and made full view of Renata's bay window in her living room. The parking area that Andrea would love to have off street, the front of her car would be right in front of my neighbor's kitchen sink window which is where it spends -- there's a reason why you put windows in kitchen sinks, and she just strongly

opposes to that. She would like to look at landscaping and flowers and shrubs.

BRENDAN SULLIVAN: The parking is not really the issue before us. However, it does kind of add a certain flavor to the discussion.

BERNARD CUDDY: May I add something to this?

BRENDAN SULLIVAN: Yes.

BERNARD CUDDY: The space that exists between these two houses is partly on her property, but it's also partly ours. It's probably just about half and half.

BRENDA STANFIELD: Well, it's more ours.

BERNARD CUDDY: All right, well whatever. And the curb cut was put in there by the people who lived in the house she's living in now.

BRENDA STANFIELD: Years ago. Years and years ago.

BERNARD CUDDY: Years ago. And when we moved in, we had an agreement with them that we would take what was left of the blacktop in between the two houses and we would make it a common yard. All right? So we made it a yard and Andrea has made a suggestion several times that we make it a parking space for her. All right? So it's an interesting concept to make a parking space for her with our property. There was no mention ever of sharing the parking space. It's just for her convenience, all right. And so of course it's a --

BRENDA STANFIELD: I'll also say that we have always, without question allowed Andrea to park there during snow emergencies, realizing the tightness of the conditions in our neighborhood. I mean, we've never made any issue of that whatsoever.

BRENDAN SULLIVAN: Okay. Enough with the parking.

BRENDA STANFIELD: Right, right.  
For the record, we have never, ever harassed  
her, ever.

ANDREA VOLPE: I would like to say  
one more thing, and I think the point made  
about the first floor condominium owner and  
her kitchen is a really good one. And it was  
not one that I had considered adequately. So  
I think that essentially makes that parking  
even more DOA than I thought it was when I came  
in.

BRENDAN SULLIVAN: Okay, thank you.  
Nobody else wishes to speak for the  
matter. There's no other further  
correspondence. I close public comment.  
You have the final words.

BRENDA STANFIELD: Only that I think  
if you look at what we are proposing to build  
in terms of a design, that it's really  
attractive and it will add to sort of the view  
of the backs of the houses. Andrea's a

little bit concerned about her view. We do have a huge maple tree there that we cut back in order to accommodate it, but when the tree was there, you couldn't really see through the tree from her property because the branches hung down all the way down to the fence and she never asked me to trim them back so that she could see further. So I mean, we did cut it back so actually more light will get through there now into the backyard, too.

BERNARD CUDDY: Can I add one more thing? Our kitchen window is on this side of the house. If you look out our kitchen window, we don't have a picture. But if you look out our kitchen window over here, we see her third floor and her deck.

BRENDA STANFIELD: Her deck looks right down into our yard and into our kitchen. Talk about a fishbowl. We live in Cambridge so we accept the tightness. We never had a problem with it.

BRENDAN SULLIVAN: Okay.

ANDREA VOLPE: My third floor deck is not out of confirmation.

BRENDAN SULLIVAN: All right. I'm going to close off further discussion.

Questions by the Board?

TIMOTHY HUGHES: Questions?

BRENDAN SULLIVAN: Any questions?

TIMOTHY HUGHES: No, it's all out there.

BRENDAN SULLIVAN: Slater, do you have any questions?

SLATER ANDERSON: I have no questions.

CONSTANTINE ALEXANDER: No.

TAD HEUER: No.

BRENDAN SULLIVAN: Any discussions then? Gus?

CONSTANTINE ALEXANDER: Well, I have to say, I mean, I don't -- I just don't think you're legally entitled to a Variance.

It's not a debate.

BRENDA STANFIELD: No, I understand.

CONSTANTINE ALEXANDER: I'm expressing my views. There's a legal standard. I mean, right or wrong it's there. And there's no hardship. You want to build an amenity. And you can live very well in this property without this amenity. So I don't see what the hardship is. And I'm also troubled by the fact that the person most affected by the Variance you're seeking is opposed to the relief.

Now, I take this opposition like the Chairman has suggested, with a big grain of salt because it looks like the objection was designed to be a bargaining chip to get something else. With that said, so I discount quite a bit of the objection. But nevertheless, if you build a deck, whoever occupies Ms. Volpe's property is going to

have a deck too close to the lot line in a very congested area of Cambridge. That's my problem. We're just going to make things closer and closer and tighter and tighter. And I think you need a good justification for it. And legally I have to have a justification and you haven't established it in my judgment.

BRENDAN SULLIVAN: Tim, what's your thought?

TIMOTHY HUGHES: Go to somebody else. I'd like to see the application. I want to just read their statement on hardship on the application if you don't mind.

BRENDAN SULLIVAN: Slater?

SLATER ANDERSON: Yes, I think it falls short. It sounds like there is a, putting aside cost factors, there's a feasible way to do a deck eventually that would be in compliance.

BRENDA STANFIELD: There really

isn't. Yeah, well, cost factor right, if we send 10, 20 --

SLATER ANDERSON: That's --

BRENDA STANFIELD: Well, we can't do it. My husband's retiring and our kids just graduated from college. And it's just that we thought finally we could build a ten foot deck. Sorry.

SLATER ANDERSON: It's, you know. It falls short.

BRENDA STANFIELD: We'll die first I think.

SLATER ANDERSON: It would be nice to have, I'm sure, but it does affect the neighborhood.

BRENDA STANFIELD: I will say that our kitchen --

BRENDAN SULLIVAN: Wait. I've closed that off. So we're --

Your thoughts.

TAD HEUER: (Inaudible).

BRENDAN SULLIVAN: I value your input.

TAD HEUER: I don't know whether to say a box on all your houses, or I mean, I'm troubled by -- I think as a legal matter, there I would agree I don't think it gets there. And I'm very troubled that being used as a -- that this will not end as we walk out of this room is what I'm the most troubled by. Frequently this is a forum that is useful for people to air grievances and then come to agreements or at least understandings other people's point of view. I don't see whatever we do that happening here. I'm saddened by it.

BRENDA STANFIELD: Me, too.

BRENDAN SULLIVAN: Judge Baker's not even center is coming up short tonight. Tim, what's your.

TIMOTHY HUGHES: I'm not troubled by the negotiation part of it. The idea that

somebody -- the neighbor wants to get something. Indeed an amenity of, you know, a valuable amenity is wanted by another neighbor, you know. That doesn't bother me at all. I mean, that's the nature of -- that's us human beings, we negotiate, you know. I am troubled by the lack of hardship, the legal standard. That's my problem.

BRENDAN SULLIVAN: Okay. Let me make a motion to -- personally myself I think that these two photos will add a direct impact on the next-door house. It really does come out and block I think a very nice view.

BRENDA STANFIELD: You should see the view.

BRENDAN SULLIVAN: A literal enforcement -- let me make a motion to grant the relief requested as per the application and the drawings submitted entitled, "Cuddy-Stanfield residence 64 Inman Street"

dated February 1, '11, initialed by the Chair.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude them from locating the deck as per design of the second floor to allow them some outdoor space.

The Board finds that the hardship is owing to the size of the lot, the placement of the house they're on, which is inherent side yard setback with violations which predates the existing Ordinance.

The Board finds that the 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.

All those in favor of making those

findings and granting the Variance.

(No Response.)

BRENDAN SULLIVAN: Nobody in favor. Not receiving the necessary four affirmative votes, the Variance is denied.

Let me make further findings that the Board finds that the Petitioner has not found, has not proven that a literal enforcement would involve a substantial hardship. That an alternative code-compliant -- Ordinance-compliant solution is possible albeit somewhat expensive, but it is a possibility.

The Board finds that there is no hardship demonstrated relating to the soil conditions, shape or topography of the land, and particularly to this structure, and not to the district.

And the Board finds that desirable relief cannot be granted without substantial detriment to the public good, and would have

a direct affect on the neighbor to the immediate next-door, to the left.

And that the Board finds that relief cannot be granted without nullifying or substantially derogating from the intent or purpose of the Ordinance.

Thank you.

(11:40 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10072, 1815 Mass. Avenue.

Mr. Kelley.

FRANCIS KELLEY: Good evening. For the record, my name is Francis Kelley. I've work for SAI Communications. I'm here representing AT&T.

BRENDAN SULLIVAN: Just pro forma stuff, Mr. Kelley, that you're representing New Cingular Wireless, and they are a duly licensed FCC holder for this type of installation?

FRANCIS KELLEY: That's correct.

BRENDAN SULLIVAN: And the answer is yes.

That it is not in a residential zone, hence we do not have to make further findings under that Section 49, of 4.32G.1 footnote 49. Okay.

FRANCIS KELLEY: Right. Just some background on this site.

Sprint came before your Board and the Planning Board last summer with antennas on

this site and both boards had issues with the existing location of the AT&T antennas. Lesley College met with Community Development and went over where they would prefer the antennas to be located and they contacted AT&T. And we took -- we knew we were going to be rolling out this other project, and we told them we would incorporate the changes that they were looking to do. So, you know, what we're looking to do here is -- the issues with the existing -- there are currently nine existing antennas. After we do our installation we're going to have nine antennas. We're swapping three antennas. We're moving a whole bunch of them around. It's kind of confusing. But what we're going to end up with is three antennas on the face that faces Commonwealth -- Massachusetts Avenue.

BRENDAN SULLIVAN: Commonwealth Law.

FRANCIS KELLEY: Yeah. It's getting late. And then three antennas on both the north and south side of the building. So when you're coming from Mass. Ave., from either way you'll see it. And all of those antennas will be placed inside the reveal which is the red brick section. None of them will be on the yellow brick. We're removing two antennas that are on the corner of the building which is -- which kind of sticks out. And, you know, so all of our antennas are going to be in the red brick. And I'll just stop talking and let you guys ask me if you have any questions.

TAD HEUER: So, I very much appreciate that you went to Lesley and worked out this plan. It's what I think we express to Lesley's representative when Sprint was here that we were hoping to see the antennas moved into the reveals and made more orderly.

A couple of minor questions. On the

south elevation, and maybe on the north elevation as well, on the upper left and the right, the antennas seem to be not centered in the reveal. Is there a reason for that? Is that existing mounts or --

FRANCIS KELLEY: There's going to be new mounts there. The problem that if they're not centered, the brick sticks out in the reveal, and the antennas are crooked for the direction that they're going to have to point. And if they were in the center, they would be shadowing from the brick there. So it's a reflection of the brick being in the way.

TAD HEUER: Okay. And is there anything on the east elevation at all? Either yours or --

FRANCIS KELLEY: Right now there's -- we have four antennas on the east elevation right now. But when it comes out, we're not going to have any.

TAD HEUER: Okay.

The paint to match on those antennas right now is pretty hideous. Can you -- and part of it I think is there was an attempt to paint them with grout lines, but the grout lines stand out like a sore thumb.

FRANCIS KELLEY: Right.

TAD HEUER: I presume that the paint to match will be an updated 2001 version of painting to match with experience commensurate.

FRANCIS KELLEY: Yes. We're not going to be putting any -- those aren't our antennas that had the grout lines on them. But the -- we're going to paint them all to match one color of color that's going to match the brick of the color.

TAD HEUER: And do you -- these are pipe mounted?

FRANCIS KELLEY: They're pipe mounted, right. They're going to go on new

mounts. We're gonna go with the closest mount that we can get to put them in.

TAD HEUER: I guess I would ask, I can't imagine it's difficult, that those be painted to match in order to try to match -- I mean, frequently we'll see the antennas painted to match but not the mounts.

BRENDAN SULLIVAN: All exposed equipment?

TAD HEUER: All exposed equipment.

FRANCIS KELLEY: All exposed equipment.

TAD HEUER: And to the extent that your wiring has to be revealed, any possibility of casing is the way you encase a wire on a roof for instance inside a tubing or something else just to minimize, you know, to the point that we've gotten to now where everything's lined up on that building, everything is going to be painted to match, would seem to be a shame to, you know, to have

exposed wiring to the extent that it could be covered. And just the extent it can't I understand.

FRANCIS KELLEY: You know.

TAD HEUER: I don't know if there was any. I think to the 1350 building where there's a lot of exposed wiring at the bottom of the antennas, and I don't know if that's similar.

FRANCIS KELLEY: Well, I think what's going to happen is the antenna's coming from the top.

TAD HEUER: Yes, I'm looking at if you're going to get that, I prefer not to have that.

FRANCIS KELLEY: Right, right. I think what we're doing on these is a -- there are going to be coaxe cables come in from the bottom of there and it will be cleaner than that.

TAD HEUER: Is it possible to encase

them? I mean, in a situation where more is actually less, it's presumably less visually intrusive if you cover that with something that's, you know, three feet of paint to match fiberglass. I can't imagine that on your coaxes you have any problems with transmission which is why you can't do certain things with your antenna itself.

FRANCIS KELLEY: You know, one of the things that they might be able to do, too, is I think that there's, they can have different ports where they can actually have them come in from the middle so they're not coming in.

TAD HEUER: Okay.

FRANCIS KELLEY: And I -- it really doesn't show a detail of that.

TAD HEUER: Right.

FRANCIS KELLEY: In the plans that I was looking for.

BRENDAN SULLIVAN: What the problem

is, Mr. Kelley, is that we're being hit and we're pushing back on what appears to be just very utilitarian installations. That they must have 100 million of these antenna still in storage someplace. They're utilizing them. I can't believe there isn't any other technology that isn't nicer looking, cleaner looking. And I guess the question, and I asked a long time ago to one of your brother telecom presenters, is would this be allowed on Beacon Hill? Have you ever made --

FRANCIS KELLEY: Yeah. They probably look to enclose it or put some....

BRENDAN SULLIVAN: Right. Or Lexington or Concord or any of those places, you know. So, what we're trying to do is just trying to clean-up a lot of this stuff because it just becomes a very quick and dirty installation and away we go. And so, it looks ugly.

FRANCIS KELLEY: Right. And, you

know, I think that the changes we're proposing here is really going to clean it up substantially on it. And, you know, as far as the, you know, I think we can work with staff and come up with a something that they will agree to on what the coaxe -- if we give them a detail of how we're going to deal with the coaxe. I have no problem if it sticks out on the bottom to putting some sheathing down over it that would extend down over the antenna. But I'm just not sure of what the actual detail of how it comes in and whether we can do it in a way that's not visible on it.

TAD HEUER: And I would add --

BRENDAN SULLIVAN: You know, engineering would say it's possible. Marketing and the accountant will say, oh, you're kidding me. And, you know, this is going to add so much expense. Well, I'm not concerned about the expense. I'm more

concerned with visual impact, and that you guys can afford it and I think that it needs to be done.

FRANCIS KELLEY: Yep. I have no problem doing that. And I don't think AT&T is going to have a problem.

BRENDAN SULLIVAN: Because going forward there will be more than a push back from this Board. We just won't accept it. So that message needs to be brought back to them, also. These guys are very serious about it. And we need to do a best of a stealth installation as possible or this is going to be our last installation. And I don't care what number G it is that you need to get on-line, you know? It ain't gonna happen. So I think that message has to get back to the accountant or the accounting department and marketing.

FRANCIS KELLEY: Yes.

TAD HEUER: You mentioned that there

are nine AT&T antennas?

FRANCIS KELLEY: Yeah. It might not be correct in there. If you look at A1 plan, and it was confusing. It was confusing for me looking at it. That one, that best shows -- the A1. If you look at the existing penthouse roof plan and then the proposed, that shows it the best.

TAD HEUER: So.

FRANCIS KELLEY: And that dish is not our dish. It's someone else's.

TAD HEUER: Right. Three on the north.

FRANCIS KELLEY: Yeah -- three on the west.

TAD HEUER: Where's my....

FRANCIS KELLEY: North is up.

BRENDAN SULLIVAN: West is facing the street?

TIMOTHY HUGHES: No, west is facing the street, isn't it?

FRANCIS KELLEY: West is facing the street.

TIMOTHY HUGHES: North is going towards Porter Square.

TAD HEUER: Which way is --

FRANCIS KELLEY: North is this way. North is towards me.

TAD HEUER: Okay, yes. You have three on the north, and three on the west. But nothing on the east. You will have --

FRANCIS KELLEY: That's what we will have.

TAD HEUER: Will have. Right. So when I count, that's three that you will have on the south. Three that you will have on the north.

FRANCIS KELLEY: Three on the west.

TAD HEUER: And that third one on the south, the southern most of the three on the west is one that's there already and won't be moved; is that right? Gamma sector.

FRANCIS KELLEY: The gamma sector here, okay, that one is going to get swapped. So if you look at it, the new antennas are the dark ones, are the black ones. And the ones that aren't dark black are ones that are either staying or moving around from somewhere else.

TAD HEUER: Okay. I guess what I'm -- the reason I'm asking so I know how many we're dealing with. So to the extent we're dealing with three swaps --

FRANCIS KELLEY: Yeah, three swaps.

TAD HEUER: Or Three swaps to the four relocations. To the extent that anything is not moving and staying the same, is still subject to the cladding of the requirement as part of this grant. So even if something's where it is and it isn't going anywhere and you're not changing it, you still have to do everything else to it.

FRANCIS KELLEY: It's all going to

get painted. All of them.

TAD HEUER: Okay.

BRENDAN SULLIVAN: The existing is to be brought up to the level of the proposed.

TAD HEUER: Right.

BRENDAN SULLIVAN: Is there anybody here who wishes to speak on the matter 1815 Massachusetts Avenue.

(No Response.)

BRENDAN SULLIVAN: I see none. There's letter in the file from the Planning Board dated March 16th. "The Planning Board met with the Applicant's representative to discuss the proposed alteration to the existing telecommunication installation. The Planning Board supports the swapping and relocation of the existing antennas. The revised installation results from discussions between the building owner, Applicant and the Community Development Department design staff that led to an

overall plan for the installation of antennas and assorted equipment at this location. The Planning Board supports these types of discussions to minimize the visual impacts of the proposed facilities on buildings."

That's the only communication in the file. Tim?

TIMOTHY HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: To quote Tim, I'm good with it.

TAD HEUER: Can I see the file again? To the extent possible, right now you're showing a pipe mount that's longer than the antenna. I would want the pipe itself to be shorter than the antenna and disguised behind it. I don't want to give an exact length but below --

BRENDAN SULLIVAN: Not to exceed the length of the antenna. Existing antenna to be painted and then also the existing cable to be covered.

(Discussion of writing on plans).

SEAN O'GRADY: Brendan, when you make the findings, would you put that language that Tad's writing down into the actual language?

BRENDAN SULLIVAN: I make a motion then to grant the Special Permit for the installation and modification of the existing telecommunication equipment at 1815 Mass. Avenue by swapping three antenna, and the relocation of four antenna currently located on the corners of the building and on the face of the building. Two new remote head radio heads for each new antenna will be installed at the rooftop, and as for the application will not be visible from the street.

The Board finds that in granting of the Special Permit, we find that any -- well, should any replacement or upgrade of the equipment be necessary with the new Special

Permit. How do we treat that?

In granting a Special Permit, the Board shall set forth in its decision under which circumstances or procedure, if any, the permittee shall be allowed to replace or upgrade its equipment without the necessity of seeking a new Special Permit.

If they are changing out defective equipment, to replace it in kind would be allowable under this Special Permit. If they are changing location, size --

CONSTANTINE ALEXANDER: It's visual impact. If the visual impact of the replaced equipment is different than what we're approving, then they should have to come back to us.

BRENDAN SULLIVAN: Yes, that's somewhat subjective though as to --

TAD HEUER: If there's any change in dimension or placement of the antenna facilities -- yeah, if there's any change in

dimensional.

BRENDAN SULLIVAN: Would  
necessitate --

SEAN O'GRADY: Reduction okay?

TAD HEUER: No.

BRENDAN SULLIVAN: All right. And  
the approval of this Special Permit is  
contingent upon notes obtained in the -- the  
work be in conformance with the drawings and  
the photo simulations as submitted with the  
application and initialed by the Chair.

And also further condition that the  
pipe mount, which is shown on drawing A6, not  
to exceed the length of the antenna, be flush  
with it in any one spot. That the note that  
the cables on proposed and existing antenna  
be encased in a suitable enclosure and be  
painted to match.

Was there anything else needed?

That the existing antenna under the  
Applicant's control would also be encased as

what the proposed installation.

TAD HEUER: And that those be subject to the same restrictions as the pipe mount and the paint to match antenna itself.

BRENDAN SULLIVAN: All those in favor of granting --

CONSTANTINE ALEXANDER: Also, if they discontinue the use.

BRENDAN SULLIVAN: All right.

And also if the equipment becomes unusable or obsolete, that the equipment be promptly removed and any defects of the buildings be repaired.

CONSTANTINE ALEXANDER: And further that the equipment must be continued to be maintained so the visual impact does not -- gets no worse. Remember the case we had over in another point the town where the Planning Board pointed out that the Petitioner never kept the paint -- never repainted the pipe mounts and it became an eye

sore. Get that in as well.

BRENDAN SULLIVAN: So say Aye.  
All those in favor.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.  
(Sullivan, Alexander, Hughes,  
Heuer, Anderson.)

(12:00 a.m.)

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

BRENDAN SULLIVAN: The Board will  
hear case No. 10073, 1531 Cambridge Street.

Okay, introduce yourself for the record.

ATTORNEY ANDREW BRAM: My name is Andrew Bram B-r-a-m. I'm an attorney here in Cambridge. To my left is Dorothy Austin who is one of the owners of the property. To her left is Diane Eckland who is the other owner of the property.

DIANE ECK: Just plain Eck.

ATTORNEY ANDREW BRAM: Sorry. This is a building on the corner of Cambridge Street and Leonard Avenue. Historically this was a single-family house that had a carriage house behind it. This Board, in 1989 and 1990 granted two separate Variances to construct two residential units in the rear of the property where the carriage house had formerly existed. The basis of that Variance had to do with a rent control issue because the property, the main single-family house was being converted to the Erickson

Center which the Board approved but the rent control board objected to removal of housing units. So these Petitioners caused the two new units to be constructed. Since that time the owners have occupied the property and used it. They now find themselves in a situation where the institute is going to be disbanded and they need to sell the property, and they want to sell it, to restore it to its residential use which is a permitted use in the C-1 District in which the property is located. Again, I think the issue that concerned the Board when we were initially here about five weeks ago was the question about parking. Whether there were in fact three off-street parking spaces on the side of the property on Leonard Ave. The reason the parking is an issue is because this is a corner property, so it has a deemed front yard on what is really the side yard. The property does front on Cambridge Street. It

has a deemed -- the side yard is deemed a front yard, and the parking would all occur within the setback in that front yard.

We have since submitted a parking plan as requested by the Board. And I believe the Board has it. We've submitted two plans this week. One, we requested to show all the existing dimensions on the property. That is the plan that has the engineer's stamp at the bottom of it.

BRENDAN SULLIVAN: Is that the same?

ATTORNEY ANDREW BRAM: That should be the same plan. It was filed on Monday.

CONSTANTINE ALEXANDER: It's in the file. I remember seeing it.

ATTORNEY ANDREW BRAM: And then we also sub --

BRENDAN SULLIVAN: Is that an original?

ATTORNEY ANDREW BRAM: I don't know.

BRENDAN SULLIVAN: Well, it's here

anyway.

ATTORNEY ANDREW BRAM: And we also submitted a companion plan which shows the proposed location on the three cars, and that should also be in the file. There was a concern expressed by Mr. O'Grady about whether or not because these cars would be so close to the building, whether this would be a concern to the Building Department or the building inspector vis-a-vis egress. So we asked Mr. McLaughlin who is the area inspector for this district, to look at this, he did, and he stamped this plan -- and it should be in the file, as egress not being a problem with these cars parked here.

The other things we asked the Board to take note of is that historically, and I think this is a picture of it, this is from the City's website. This is the Assessor's plan that's on record for this thing. There is a car here. And while it is, we agree, a narrow

curb cut, the curb cut is only 11 feet, I think if you look at this plan, and I assume many of you have gone by this property and looked at it, there is physically enough room for three cars to park there. And historically these Petitioners have parked three cars in this location from time to time. Both for their own use and for the use of the two tenants in the property.

The engineer on the plan we submitted drew out a car coming in, again, in his opinion this car can come in and out without having to move either of these other two cars. And that by the way, has been the Petitioner's experience. The cars don't have to be jockeyed around in order to get in and out --

CONSTANTINE ALEXANDER: And that's using the one curb cut that's there right now?

DOROTHY AUSTIN: Yes.

ATTORNEY ANDREW BRAM: Again, and also going back to the Variances that were

granted -- nothing has changed from the Variances that were granted in 1990 when the Petitioner's represented that in fact they were on their application on the Table of Dimensional Requirements that there were in fact four spaces in this lot although that would require for some car being moved. But the Board approved the arrangement at that time. They didn't specifically address parking, but they did approve a Variance for these in effect three separate spaces. And so we're asking the Board tonight in terms of discussion of hardship, it is an unusual, unusually configured house and the hardship is in large measure caused by the deemed front yard and what is really the side yard on this property.

BRENDAN SULLIVAN: Yes, but you still have to comply with front yard setback, you know, under Article 5.24.3.

ATTORNEY ANDREW BRAM: We

understand that.

BRENDAN SULLIVAN: And that was our whole point at the original hearing is that you needed relief for that.

ATTORNEY ANDREW BRAM: And we're here asking for that --

BRENDAN SULLIVAN: Just to legalize this status.

I sort of disagree with the way the vehicle is shown here, because if you look at the photo, first it can actually drive straight in and not at an angle.

DIANE ECK: You can.

DOROTHY AUSTIN: Yeah, you can. You can do three. Boom, boom. There's plenty of room.

BRENDAN SULLIVAN: You've actually got six feet between because you've got some air conditioning equipment there. The way he's had it shown here is not correct. Just editorializing it, because actually you have

some air conditioning condensers here. There is a barrier here. This person can -- this curb cut is really not shown in the proper location. You can actually pull straight in with that. Parking here violates this dimension here. I mean, there's a whole thing violates what is off-street parking requirements. There is a very large tree here. One of the other issues, though, is that there's very large protruding root right in this location, so it's going to be problematical but it can be done.

DIANE ECK: The tree could be removed.

BRENDAN SULLIVAN: We'd rather not.

DIANA ECK: Oh. Can I just say something here?

BRENDAN SULLIVAN: Introduce yourself for the record.

DIANA ECK: Diana Eck, one of

the -- what are we? Petitioners. One of the Petitioners.

Also in this diagram, the ramp that had been required when this was a non-profit, will be removed by one of the most wonderful potential purchasers in the world who would like to have this property. So that ramp will be removed and that really does allow for further space for the two cars. And we would hope not to have to remove that tree, but should that be necessary, I suppose that would happen as well.

BRENDAN SULLIVAN: Well, no, I would grant relief on the parking requirements to save the tree.

DOROTHY AUSTIN: Thank you.

BRENDAN SULLIVAN: Now, is there any proposal -- there's a chain link fence that sort of comes down and stops. Is there anything in either your proposal or the --

TAD HEUER: It comes down around the

front of the house.

BRENDAN SULLIVAN: Well, yes, it comes down.

DOROTHY AUSTIN: And around the side.

BRENDAN SULLIVAN: And I guess, again, one of the requirements of off-street parking is to have some screening from the public way. And I was wondering if there's anything there to install some screening rather than a fence? And the fence sort of comes down and stops somewhat. And I see that there is nothing.

ATTORNEY ANDREW BRAM: Yeah, I believe if the Board were to grant the Variance and were to add that as a condition, I think that would be acceptable to the Petitioners.

BRENDAN SULLIVAN: Well, obviously it needs sort of an evergreen, you know, type of thing to screen a car from a sidewalk and

to physical as well, sort of a visual barrier.

TAD HEUER: Like a hedge.

BRENDAN SULLIVAN: Yes. Well put, a hedge.

DOROTHY AUSTIN: A skinny hedge. An attractive hedge.

BRENDAN SULLIVAN: Some kind of along the -- let me open it up to public comment.

CONSTANTINE ALEXANDER: I have a question on the parking. Could I have the dimensional form? You want to go from two residential units on the property right now and you want to go to three.

ATTORNEY ANDREW BRAM: Correct.

CONSTANTINE ALEXANDER: We've been focusing on parking. Because three units increases the density of the use of the property. If I look at your dimensional form, and you say right now the lot area for each dwelling unit is 1916, 1,916 feet. And

then you say if we grant you relief, it's going to say 1,916? You're going to go from two units to three units, therefore the lot area for each dwelling unit has got to go down, doesn't it? And if it does, are you going to be below the minimum of 1500. Do you need a Variance for that?

BRENDAN SULLIVAN: The first number is wrong.

CONSTANTINE ALEXANDER: One of the numbers is wrong.

BRENDAN SULLIVAN: The existing is wrong. It should not be 1916. The proposed is 1916.

CONSTANTINE ALEXANDER: If that's the case --

ATTORNEY ANDREW BRAM: Because the lot area is 5750, the second one. And it's 1500 per unit. So it would be 4500 for three units. So the lot area is sufficient.

BRENDAN SULLIVAN: The first number

which is existing conditions, should be half of 57-something. Right now there are two units.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: The 1916 is correct.

CONSTANTINE ALEXANDER: I got it.

BRENDAN SULLIVAN: In the proposed.

CONSTANTINE ALEXANDER: I wanted to make sure there were no issues there.

DOROTHY AUSTIN: Thank you.

DIANA ECK: Thank you.

ATTORNEY ANDREW BRAM: I also would like to point out that we did approach the neighbors. A letter was sent out to the neighbors before the initial hearing informing them of this change. My client spoke with the head of the Mid-Cambridge Conservation Group. There is nothing in our proposal requires an appearance before them. The potential buyer has spoken with several

neighbors. In fact, has shown some of the neighbors and given some of the neighbors a tour of the house. And I believe there is one -- the son of one of the neighbors is here this evening to expressed outside that he had some objection for this. And I'm sure he'll speak for himself. But I wanted the Board to know there was substantial discussion with neighbors about this proposal.

DIANA ECK: May I also say -- Diana. We sent out a separate letter signed by us to the same group of neighbors in addition to the one that the city sent with our home phone number should anyone have questions about it. And we did have two people who responded. One the gentleman who is here tonight, not immediately one of the abutters. And another a neighbor across the street who was hoping if anything fell through, that he could put in a bid to buy it for more Chinese students which is what he has in his house.

But that was really all.

TAD HEUER: On the dimensional form it shows existing, and this may be because this dimensional form was the original one. Existing number of parking three, requested three, Ordinance required three. That can't be right. Because if there are actually three, we wouldn't need to be granting you a --

ATTORNEY ANDREW BRAM: This is the point I tried to make. In the original Variance that was granted in 1990. The dimensional form showed four, and that was approved. What we're saying is that physically there have been three spaces, at least three spaces --

DOROTHY AUSTIN: At least.

ATTORNEY ANDREW BRAM: -- since these units were created.

BRENDAN SULLIVAN: But in that relief they never gave you relief from the

parking requirements.

TIMOTHY HUGHES: They didn't need relief.

ATTORNEY ANDREW BRAM: I would argue that it was implicit because it was listed on the form and the Board knew what the proposal was to build these two units and that they would have to be parking for the front unit. And so --

TIMOTHY HUGHES: We're not relieving the number of spaces, we're relieving the fact that it's in a front yard setback because it's a side yard is a front yard on a corner lot.

BRENDAN SULLIVAN: Right.

ATTORNEY ANDREW BRAM: I think that's correct.

TAD HEUER: We're relieving --

TIMOTHY HUGHES: We're not giving parking relief for a number of spaces. They have the number of spaces they need, right?

CONSTANTINE ALEXANDER: They only have the number of spaces if we grant them dimensional relief. They don't really have three spaces.

TIMOTHY HUGHES: They don't measure out as three spaces?

CONSTANTINE ALEXANDER: No.

TIMOTHY HUGHES: I thought I read someplace that it did measure out.

BRENDAN SULLIVAN: That's the whole technical point of the thing, that they could possibly physically park six cars there if they wanted to cram them in. What they do in fact and what they can legally do are two different issues.

TAD HEUER: I'm not worried about it. All I'm saying is it would be really weird to granting a three, three, three parking variance.

BRENDAN SULLIVAN: Right. Right now it is, it should be two. Again, the

numbers need to be changed.

TIMOTHY HUGHES: It wouldn't be weird to me if the numbers were setback instead of numbers.

TAD HEUER: That's all I'm saying.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER:

Dimensional form is wrong. Change it to two.

TAD HEUER: Can I change it to two?

ATTORNEY ANDREW BRAM: I don't object to that. But, again, this is the same question, even two spaces are they going to meet the dimensional requirements? I mean, we've drawn it this out and the engineer drew this out showing eight and a half by 18-foot spaces.

TIMOTHY HUGHES: That's what I just said. I thought I read someplace that they have three spaces that fit, they don't?

BRENDAN SULLIVAN: How far back?

ATTORNEY ANDREW BRAM: I agree with

Mr. Anderson, it's either zero because there aren't three spaces --

BRENDAN SULLIVAN: If you're going to park in the front yard setback how far does the car have to be back from the sidewalk?

SEAN O'GRADY: It depends on the zone. Most likely ten feet. So there's front yard parking, one of the spaces is not 18 feet long. The backup space is not 22 feet and 524, what is it two or three which requires maneuvering spaces, probably not being adhered to.

CONSTANTINE ALEXANDER: The Petitioners claim they have three spaces is not borne out by the facts legally. They don't have three legal spots right now and there's been --

BRENDAN SULLIVAN: You don't have enough real estate for it.

ATTORNEY ANDREW BRAM: Right. With looking at the plan now, with the space

that's -- perpendicular space I see a 17.9 on the plan and not 18 feet. So it's, it is short.

BRENDAN SULLIVAN: Right. The numbers don't add up. You don't have enough real estate there. So that's what you're down here for.

TIMOTHY HUGHES: So we change the first three to two? Do we change it to one or to we change it to zero?

ATTORNEY ANDREW BRAM: Well, there must be at least one space.

TIMOTHY HUGHES: Maybe two spaces.

SEAN O'GRADY: Well, there's theories. I mean, if you really along the parcel --

TAD HEUER: The answer is not three.

SEAN O'GRADY: The answer is zero. I believe technically the answer is zero. And the reason I believe that is because on the plan in the Variance it shows a driveway

going into a garage. And presumably it showed a single-wide driveway going into the single bay garage in the 1989 or '90 Variance. And because there was no parking granted at that time, there's a defect in that.

TAD HEUER: Because that space no longer exists because it's a residence.

SEAN O'GRADY: Right. There was legally no spaces at that point. And this is the harshest view, and I'm not saying there's arguments against it. As a matter of fact, our official position is that we will -- the Building Department was willing to accept that there were two there, but that's not -- that's a generous sort of well, we'll sort of go with that because the record is cloudy. But the stringent --

CONSTANTINE ALEXANDER: Most stringent.

SEAN O'GRADY: -- reading is that there was a defect in that '90's grant that

they forgot about parking. They just forgot about it. And that there was no, no relief granted for parking in that area and relief would have had to be granted. So arguably all the parking should have been in the street. And the fact that they wrote four on the dimensional form is meaningless as we know, just because you put something on the form or put something in a plan, if you don't ask for relief, you don't get that relief.

DIANA ECK: Could I say only that because we are asking that this be returned to residential use it, had been institutional use, I mean a non-profit, and indeed in fact over the course of the institutional use there were at least two, two cars that belonged to the people who were officers of the institution. Sometimes even more depending on whether the apartment people had cars or not. So, you know, it was used that way over all these years.

TAD HEUER: All I care about is legal spaces. All I care about is legal spaces.

BRENDAN SULLIVAN: Two.

TAD HEUER: Two.

DOROTHY AUSTIN: But the point is they granted it to us.

TIMOTHY HUGHES: Put zero down.

TAD HEUER: Don't argue that point right now.

BRENDAN SULLIVAN: Existing two. Proposed three. Requirements three.

CONSTANTINE ALEXANDER: Speaking only for myself, I think our focus on the parking issue has been somewhat overblown. I don't believe -- you can have a nice plan that shows three parking spaces. People are not going to be parking three cars in this tiny area. What looks nice on paper, the real word is not. I think the bigger issue is you got to return a non-conforming use to a conforming use. It's a residential use.

TIMOTHY HUGHES: It's more money for the City of Cambridge, you know.

DOROTHY AUSTIN: Tax money.

CONSTANTINE ALEXANDER: And this is further really the basic purposes of our Zoning By-Law is to get a more consistent pattern of use that complies with the Zoning By-Law. I'm in support of this. Not because I believe you've got three parking spaces. Because I think you're going to do something that really benefits us for the Zoning By-Law.

BRENDAN SULLIVAN: Let me open it to public comments. Let's see what Mr. Marquardt wants to say about it.

CHARLES MARQUARDT: Charlie Marquardt. My father owns the property that they referred to right across the street. He's physically incapable of coming. He asked me to come. My brother is also an abutter diagonally across the street. He

owns the commercial property. We were before you probably ten months ago, nine months ago or so.

CONSTANTINE ALEXANDER: Floral shop.

CHARLES MARQUARDT: Floral shop, dry cleaner, that kind of stuff. And maybe it's partly our fault for setting a bar up, not a bar, bar, but the bar of what the neighbors have come to expect. A number of people have expressed concern that they haven't heard what's going on. And part of that comes down to lack of communication. And I know that, you know, they're going to nod their heads or shake their heads, and they did send out letters. My brother never received one for the business. Mr. Bram says he sent it. I don't know he sent it. Never received it. My father did receive his. However, the house right next-door 1541 was not on the City's mailing list,

therefore, it was left out of the mail list for the other letter. So the outreach is the equivalent of here's the minimal legal notice to reach out to these neighbors. We're talking about restoring a building. We actually want to have a new neighbor. We want to talk to them. There are plenty of opportunities to come around and talk to folks. I even offered at the last one come on over, I'll introduce you to a whole bunch of people. Five weeks have gone by. The first time I saw this plan and first time I heard from these folks again was tonight. In that time I was told if you wish to object, object. We're moving forward. And I don't think that's the best way to start moving into a neighborhood. I mean, we offered.

There's a number of people here. I expressed concern actually, they spoke last time to members of the Mid-Cambridge Neighborhood Association. One of them expressed concern

that they had a meeting a week ago Wednesday, no one came and talked to them. That's generally just people come and talk to them and say, hi, how's it going? We'd like to welcome you to the neighborhood, and oh, by the way you have a new board up for a parking variance which in that neighborhood is a big deal. You all mentioned it. I've seen lots of cars parked in there. I've never seen three without them having to move one. That's just me. And we have four spots across the street and it works with what I would call a wonderfully grandfathered curb feet of 30 feet which you never, ever get in the city today. So where those folks park now overnight also with the hospital, with the Spaulding Rehab, parking's already tight and people are looking at a parking variance going what's the plan? What are they going to do? There's already people across the street, and up and down the street that have

received variances over time but have no parking spaces so they park on that street. And after this passed winter we all know that parking is at a premium, and yet no outreach. Limited outreach I would say as to a letter. And that, that's really not what the folks have come to expect. And I'm sort of concerned that it's starting off with a bad omen. And we're all still remembering the construction of the carriage house, which everybody agreed with, it's really a beautiful carriage house. I mean, they are quite nice, they're lovely. And I think both are finally rented which is a great -- at least one of them is. But, during the construction they deemed the parking curb cut across the street from them, which happens to be ours, as a nice place to park your truck. And then, you know, how do we work through that again with our neighbors when the first impact we have and interface we have with them

is we get a letter and there's no other outreach. They have a beautiful building. They could have had the neighborhood in, sat down and had coffee and tea. Done. Finished. Yet nothing. And I think that's putting them in a really difficult position with a neighborhood that wants to have a single-family in there, but doesn't know what to expect.

So, with the parking variance, they wanted me to come down and say they're concerned. They're disappointed. They're worried. And they really don't want to see the start of the relationship we will do the minimum required and no more. And that's what they feel has been done. It may be the minimum legal requirements, but they then look at parking and say we will oppose any changes to a curb cut. We will oppose because we haven't even spoken with you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: They're not proposing any additional curb cuts.

CHARLES MARQUARDT: Oh, I know that. And the only other thing I would talk to, Mr. Chair, you mentioned putting some screening next to the cars. I don't -- if they're going to try and park three, I actually request that we don't put it there because it doesn't work. Because 18 inches between the car and the lot line, if you put up any type of screening, even the thinnest boxwood you're out of luck. I think I saw 18 between.

BRENDAN SULLIVAN: I threw that out for possible discussion.

CHARLES MARQUARDT: So, I just think it would just make it even harder. I don't see them parking three cars in there. There's usually one parked pseudo straight and one parks crooked and that's the extent that I've ever seen in there. You can get

three in there if you, you know, drive in over the curb but it doesn't work that way.

BRENDAN SULLIVAN: Thank you.  
Anybody else wish to be heard?

(No Response.)

BRENDAN SULLIVAN: Okay, none. Let me close public comment.

Anything else to add?

ATTORNEY ANDREW BRAM: No, I believe, you know, I spoke earlier. We reached out to many neighbors. Mr. Roderick who is the potential buyer, he took people through the house so I disagree with Mr. Marquardt's assessment. Plus Mr. Marquardt already indicated he doesn't live in the house that is the direct abutter. He lives in East Cambridge, and I believe has no legal standing. But leaving that aside, I believe it was an outreach to the people who would most likely be affected who were obviously the abutters and the abutters to

the abutters. And other than the two calls that my clients got nobody else came back and contacted us.

TAD HEUER: I think I would point out that Mr. Marquardt said he's here on behalf of people who are actually abutters. The people are allowed to have representation.

CHARLES MARQUARDT: Can I just say something. I'm actually offended. For those of you who do know my father, he's suffering with ALS and could not make it here. So, I do take offense. I came in his place.

CONSTANTINE ALEXANDER: I would just say, Mr. Bram, you should take note of what he said.

ATTORNEY ANDREW BRAM: I do.

CONSTANTINE ALEXANDER: There are other, you know, we've seen much better situations where people who are seeking relief have reached out to neighborhoods and apparently what happened here and that's not

good.

BRENDAN SULLIVAN: Okay. Tim,  
what's your --

TIMOTHY HUGHES: I echo Gus's  
observation, that this is putting this back  
into a conforming situation in a residence.

BRENDAN SULLIVAN: Slater.

SLATER ANDERSON: Yes, I don't see  
that they're asking for anything that's  
unreasonable. The parking situation is kind  
of a pre-existing circumstance that has been  
out there and it's trying to add some  
definition to it. Whether they can get three  
in there or, you know, going to be three  
units, you want to give a parking space to  
each unit, it makes sense to me. It's up to  
them to make it work. But I think getting the  
cars off the street is beneficial to the  
neighborhood so I'm fine with it.

BRENDAN SULLIVAN: Okay.

Gus?

CONSTANTINE ALEXANDER: I expressed my view.

BRENDAN SULLIVAN: Tad?

TAD HEUER: I agree, it's going back to a conforming use. I don't know how they're going to get three cars in there either. But I mean, it's not a situation that we reasonably have where we're trying to add a space with a curb cut that takes away a parking space. It's going to force them into a curb cut more power to them.

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested to convert the front unit of the structure which is currently used as a non-profit educational facility into a residential unit.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because in order to convert the existing section of the

building, two residents would require some relief from this Board.

The Board finds that granting of such relief to convert is fair, reasonable and much desirable to convert an existing non-conforming use, albeit it even though by way of a relief from a prior Board to a residential use is far more desirable.

The Board finds that the hardship is owing to the existing Variance I would believe which was granted which allowed for the non-conforming use and hence that the hardship is that they would have to get some relief from the Board to overturn that decision. Not overturn it but to --

TAD HEUER: To --

BRENDAN SULLIVAN: -- set aside that decision and proceed with the conversion to a residential use.

And the Board finds that 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.

The Board finds that the dwelling unit created by the conversion of an existing dwelling into a greater number of units is permitted under Section 5.26. And the requirements of the minimal lot area of each dwelling unit is met. The floor area ratio to a lot area is met, I believe. And that the usable open space requirement is met. And that the off-street parking is not met, but by the plan the Board accepts to be valid and part of the relief being granted here. The plan which would be initialed by the Chair.

Anything else to add to that?

All those in favor of granting the relief requested?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(Whereupon, at 12:35 a.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 4th day of April 2011.

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

My Commission Expires:  
April 23, 2015

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