

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING  
MARCH 3, 2011 7:00 P.M.

in

Senior Center

806 Massachusetts Avenue  
Cambridge, Massachusetts 02139

Brendan Sullivan, Chair

Constantine Alexander, Vice Chair

Tad Heuer, Member

Thomas Scott, Member

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

BRENDAN SULLIVAN: I'll call to order the meeting of the Board of Zoning Appeal for March 3, 20011. The first case is No. 10060, 10 Garden Terrace.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the board. For the record I'm James Rafferty from the law firm of Adams and Rafferty located at 130 Bishop Allen Drive appearing this evening on behalf applicants. Seated to my left Mr. and Mrs. Raj Chetty C-h-e-t-t-y. And the project architect from Cambridge Seven Architects Peter Sollogub.

PETER SOLLOGUB: Yes.

ATTORNEY JAMES RAFFERTY: S-o-l-a?

PETER SOLLOGUB: S-o-l-l-o-g-u-b.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: This is an application for a Variance to allow for some additions and renovations to a single-family dwelling located at 10 Garden Terrace. Professor Chetty and his wife have recently relocated here from California, from UCAL Berkeley. Professor Chetty is an economist of some renown, so he did a careful analysis of all of the Cambridge neighborhoods and he concluded that he wanted to live as close to Taylor Square as possible in Cambridge. So he was able to find this home on Garden Terrace, and there are really three things occurring as part of this renovation.

Garden Terrace, for those of you who may not be familiar with it, is a small cul-de-sac off of Garden Street. It abuts the Harvard Radcliff Observatory Hill Complex. So it has institutional neighbors on one side, and

it's a close-knit neighborhood. But this, this particular house has a -- if you look at the photos of it, it has kind of a, what I would describe as a 1960's, '70 style addition to the left. And what the Chettys are hoping to be able to do is they're going to remove that addition and replace it with a comparably sized addition. They are looking to locate a garage beneath the addition. They and their architects have carefully been over the dimensional criteria to set forth in Article 5 regarding the height of such garages below grade to be excluded from the gross floor area, and they have satisfied themselves -- or the architects have, and also with the Building Department that the garage itself does not create any GFA issues.

Where the GFA element of the project comes in is in the rear of the property, an area that's best shown here is this is kind

of shaded. There's a bit of a notch in the rear today. And the increased GFA is the result of putting a single-story addition into that notch. The GFA number here is -- it's really a -- it's an interesting textbook case in GFA because part of the renovation of the house actually has some GFA coming out of the house because there are some second floor rooms that are actually being removed. And that the floor is coming out, so the space -- the volume of the space becomes two levels. So, there is a section under Article 2 involving definitions that involves the interior courtyard. This is a really somewhat inside baseball thing. But it does, it represents one of the issues here. Because when the Cambridge Seven first approached me about the fact that oh, we think we can achieve this addition as of right because we're gonna draw down the GFA on one side and we're gonna relocate it here, and at

no point will we be over the permitted FAR.

I then had a case once, and I said, well, there's this thing called the interior courtyard. And the interpretation of this is that in a building with more than two floors, the area of each floor level of any interior courtyard, whether or not covered by a roof, which has a minimum dimension of less than 40 feet in any direction, shall be included unless 20 percent or more of the perimeter of such courtyard at each floor level measured consecutively is not enclosed.

I think it -- I had a different understanding of the plain meaning of the word courtyard. I couldn't understand how this could be applied in the context of entry foyers and houses or two-story family rooms. But as is so often the case, my logic was not the one that was seen as appropriate. So nonetheless, long story, the moving parts are

the numbers here. But the overall change in the GFA is quite modest. There's just this back piece.

And the second piece is a relocated front entry which does has a very small change. It brings it slightly closer to the setback. It's a cul-de-sac which also makes definitions of front yards even more challenging when you figure out at what point does the front become the side? So it took a lot of study. I've been to see Mr. O'Grady more than once to make sure what we're doing correctly at the moment. We have some confidence that we have. Everyone breathes a sigh of relief when the building permit arrives. But at the moment we believe the garage definition, which again, has a four-foot requirement under Article 5. So even though it's a one -- so it's a one-family house, so you could have a one car garage and that wouldn't count regardless, but then this

is a -- this garage is going to accommodate two. So then the question is does the GFA in the garage or not? Well, if it's below four feet, how do you measure the four feet? You should just take a point every ten feet around. But I know the Cambridge Seven have done measurements, they've been out there. They've talked to Mr. O'Grady. And the dimensional form reflects the understanding that this garage facility does meet the exception provided for for below grade garages and thus the GFA does not -- it does not trip any additional GFA.

CONSTANTINE ALEXANDER: Does Mr. O'Grady agree with that?

SEAN O'GRADY: I've never spoken with the architect.

ATTORNEY JAMES RAFFERTY: We've spoken.

SEAN O'GRADY: We've spoken.

TAD HEUER: Where's the entry to the

garage?

ATTORNEY JAMES RAFFERTY: The vehicular entry?

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: On the cul-de-sac? It's right -- it would be in this area right here where the addition is currently.

BRENDAN SULLIVAN: That space is currently a crawl space.

PETER SOLLOGUB: That's correct.

BRENDAN SULLIVAN: And what is the height there now?

PETER SOLLOGUB: Four and a half feet is the crawl space.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Again, you didn't answer my question. Do you agree with what Mr. Rafferty is saying about the garage and the GFA?

SEAN O'GRADY: In theory, yes.

Below grade garages are exempt.

ATTORNEY JAMES RAFFERTY: I do note that Mr. Johnson met with Mr. Singanayagam on this at least once. I don't know, Peter, you attended that meeting.

PETER SOLLOGUB: I was not at that meeting, but that's correct.

ATTORNEY JAMES RAFFERTY: Yes. We identified the issue earlier on, and I directed them to this section. So, I'm personally -- well, on this one, I have directed the architects to talk to the Building Department. The Building Department, at least through the Commissioner Singanayagam has looked at this issue, and the belief is, the assumption is that the garage based on the topography of the lot today and the existing historical mean grade does meet the definition that not more than -- not more than 50 percent extends more than four feet underground.

BRENDAN SULLIVAN: So, the relief that you're requesting is the relocation of the front door, front entry down the wall?

ATTORNEY JAMES RAFFERTY: That's part of it.

CONSTANTINE ALEXANDER: Part of it.

BRENDAN SULLIVAN: You're requesting relief for the back addition?

ATTORNEY JAMES RAFFERTY: Correct.

BRENDAN SULLIVAN: And what relief are you requesting for the garage?

ATTORNEY JAMES RAFFERTY: None.

TAD HEUER: Aren't you in a setback?

ATTORNEY JAMES RAFFERTY: Well, we're below grade.

TAD HEUER: But aren't you expanding an above grade space? I'm just thinking out loud.

ATTORNEY JAMES RAFFERTY: Well, no, because we're -- this is a single-family house and we're on the same footprint as the

addition.

BRENDAN SULLIVAN: But the foundation for the garage space comes up above grade.

ATTORNEY JAMES RAFFERTY: But not more than four feet. So, this side yard setback are you focussed on?

TAD HEUER: I don't know. Well, I mean depending what you want to call it, the cul-de-sac.

BRENDAN SULLIVAN: And that foundation --

ATTORNEY JAMES RAFFERTY: Well, I think that's clearly side here.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: So obviously the --

BRENDAN SULLIVAN: You're pushing that back.

ATTORNEY JAMES RAFFERTY: Peter, are we pushing that back?

PETER SOLLOGUB: Yeah, we're pushing the -- well, here's -- may I?

ATTORNEY JAMES RAFFERTY: Maybe we ought to get the setback relief. Thank you for the point.

PETER SOLLOGUB: There's a turret that's --

TAD HEUER: You're advertised for it, I think.

ATTORNEY JAMES RAFFERTY: Well, I think the setback we advertised was for the new front entry, but you know?

TAD HEUER: Well, I mean -- yes.

PETER SOLLOGUB: Essentially there's a terrace here, and we're essentially tucking automobiles under the terrace. So that's how the -- the width of the building remains exactly the same. It's just that the cars are -- this grade, this -- I'll show you this little diagram. This grade is essentially -- it's two feet below the

terrace. So the house remains the same. It's just that the cars tuck in under the terrace.

ATTORNEY JAMES RAFFERTY: There's a helpful photo in the file. I don't know if the board members have seen it, but it does tell the story.

BRENDAN SULLIVAN: I guess the point I'm making is this foundation wall here is going six feet further into the backyard, which is encroaching on that side yard setback. Because right now that is, this is one of the areas which makes the house non-conforming is the left side.

Well, you've got a left side of ten-foot seven, and a right side of 14. The Ordinance requires either side to be ten, but they have to add up to 25.

ATTORNEY JAMES RAFFERTY: Right. So, often times when you encounter this, since we have the minimum of 10, we're

treating that as the conforming side and it's the other side that doesn't -- you can make that election under this formula. So, I wasn't aware that we had a side yard setback issue here. That was my point. That we had the 10 and the other side doesn't add up to 25. It doesn't make the 10 non-conforming. It's three inches shy --

BRENDAN SULLIVAN: Then somewhat in toto.

TAD HEUER: So you're saying it's just the entire non-conformity to the other side?

ATTORNEY JAMES RAFFERTY: Well, I think that's what it's intended to. I mean, I don't think both -- it can't be said that both sides are non-conforming. When there's a minimum of 10, the sum of 25, when you meet the 10, one side is not conforming. You could say it's the side -- if it was nine, it would clearly be non-conforming. But it

meets the 10. So I've been doing it this way for years. That could be deemed to be a conforming wall because it's 10 feet, it's the other side.

BRENDAN SULLIVAN: Because you're not catching the other side, right.

ATTORNEY JAMES RAFFERTY: Right. And any time you have a sum of, we have the same thing in the B. Any time you have the sum of you make the case.

BRENDAN SULLIVAN: Okay. So, in other words, you're not asking for relief on that because you're on the solid ground in that issue.

ATTORNEY JAMES RAFFERTY: Yes. But for some reason -- did you agree with the 10 feet sum of 25 that you can declare one wall --

SEAN O'GRADY: Yes, you can. What is the side setback there? For some reason I thought it was less. Is it more than 10?

ATTORNEY JAMES RAFFERTY: It's 10.  
Oh, you mean the existing condition?

SEAN O'GRADY: Yes.

ATTORNEY JAMES RAFFERTY: No, it's  
10.7.

SEAN O'GRADY: Yes. Jim's  
absolutely right. You can elect the 10 on  
either side. Yes, okay. Sorry, I didn't  
catch that.

CONSTANTINE ALEXANDER: The only  
relief you're really seeking is a slight  
increase in FAR?

ATTORNEY JAMES RAFFERTY: Correct,  
yes. Attributable to the rear addition.

CONSTANTINE ALEXANDER: The filling  
in of the notch?

ATTORNEY JAMES RAFFERTY: The  
notch, exactly. It is a one-story --

CONSTANTINE ALEXANDER: And the  
hardship is?

ATTORNEY JAMES RAFFERTY: What did I

say? That the hardship is --

CONSTANTINE ALEXANDER: You had to be using hardship. Your hardship is your ceiling's too high in the basement. It's more than seven feet, and therefore, it counts towards FAR. A lot of people wouldn't think that's not necessarily a hardship.

ATTORNEY JAMES RAFFERTY: Well, no, but Res B comes up from time to time. The hardship is that this could be -- as you always advise -- I advise a client here's what you want to do. How can you get there as of right? And not that it is an enjoyable experience to come here, and if more people didn't come here, I'm not sure what I would do for a living. But okay, there are these options where you could in-fill the basement and then proceed as of right. So I think admittedly that in looking at issues around hardship is okay, here's how I can get here as of right. The hardship is for the

additional space here, and the fact that we're netting out space from the house to begin with, although we're not getting any credit for that.

CONSTANTINE ALEXANDER: What's the more than seven foot high ceiling basement, what is it used for now? Storage? Mechanical? Living space?

PETER SOLLOGUB: Mechanical and storage, yeah.

MAHMOOD FIROUZBAKHT: There's a bathroom down there, too, isn't there?

CONSTANTINE ALEXANDER: Is there a bathroom there?

PETER SOLLOGUB: Yeah.

NADARAJAN CHETTY: There was a bathroom.

PETER SOLLOGUB: Yeah.

TAD HEUER: What is it now?

PETER SOLLOGUB: There is a bathroom there now.

TAD HEUER: Which one is it?

PETER SOLLOGUB: There's a bathroom on the lower level, yeah.

CONSTANTINE ALEXANDER: So it's very easily to use as living space?

PETER SOLLOGUB: Well, it's below grade. I mean, you know.

CONSTANTINE ALEXANDER: A lot of basement apartments, rec rooms, whatever.

ATTORNEY JAMES RAFFERTY: Right. The hardship really is the notion of trying to make a more functional use of that gross floor area. To have it at grade. To have better access out to the patio, and into the yard. As you say, it's a notch. It's a place that won't be seen by anyone and there's, I think the net increase -- I think the room itself is 10 by 14?

PETER SOLLOGUB: Yes.

ATTORNEY JAMES RAFFERTY: It's in that range. The footprint -- it

doesn't -- the rear setback is exceptionally generous here. So I think it was -- as part of the overall -- the house is a lovely house. It hasn't had much by way of upgrades in the last 40 years or so.

BRENDAN SULLIVAN: When was the house built, do you know?

PETER SOLLOGUB: 1910, 1912.

BRENDAN SULLIVAN: Okay.

PETER SOLLOGUB: It's a beautiful house. The addition on the house was actually -- it's really not a good aesthetic in terms of how the house is and that's what we're trying to do.

CONSTANTINE ALEXANDER: Any reaction from your neighbors?

ATTORNEY JAMES RAFFERTY: Yes. Two letters of support.

NADARAJAN CHETTY: The neighbors are very enthusiastic.

BRENDAN SULLIVAN: Okay. Any other

questions? Obviously you'll have a chance to rebut.

TAD HEUER: Do you -- and I don't know this -- do you need setback relief for the moving of the entryway closer to the either side or side yard setback?

ATTORNEY JAMES RAFFERTY: Yes. Yes, I think we're bringing it closer to the front.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: That's the setback relief I had contemplated.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: So this entry today is over in this area here. So if you if you look at its relationship to the front, it's clearly moving closer to the front the more it is. So, and then -- that's a hard setback to figure out quite frankly. So it needs -- that could be a side. So I think it needs setback there and there

frankly. Front and side.

TAD HEUER: Right. That was more of my question.

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: And on the plans there's a notation for alternate seed dormers. Does that mean anything?

PETER SOLLOGUB: We eliminated those. At one point we were thinking about doing that, but we're not having dormers.

TAD HEUER: Okay.

THOMAS SCOTT: There's actually several alternates listed on the plans.

PETER SOLLOGUB: Yes.

THOMAS SCOTT: Are they all not considered part of this relief or part of this review?

PETER SOLLOGUB: We were considering alternates for a new design phase. We're not doing any of the alternates. We're not doing any of them at

all.

CONSTANTINE ALEXANDER: Do we know from the plans what it is that you're seeking so that Mr. O'Grady, should we grant relief, will know how to enforce our decision?

PETER SOLLOGUB: I believe the plans are clear, yeah.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: The front entryway and the bump out of the kitchen. The kitchen; is that right?

PETER SOLLOGUB: The bump out actually is for (inaudible).

BRENDAN SULLIVAN: Dining?

NADARAJAN CHETTY: Dining, living room.

CONSTANTINE ALEXANDER: And the garage, the nature of the garage and the parking is not changing? You have a two car garage now?

ATTORNEY JAMES RAFFERTY: No,

there's no garage now.

PETER SOLLOGUB: It's across from us.

CONSTANTINE ALEXANDER: Why isn't your hardship the fact that you need parking on a narrow cul-de-sac?

ATTORNEY JAMES RAFFERTY: Because I don't need a Variance to do my garage.

CONSTANTINE ALEXANDER: That's right.

ATTORNEY JAMES RAFFERTY: There's no GFA and I think it meets the setback. So I don't think the garage --

CONSTANTINE ALEXANDER: Yes, you're right.

ATTORNEY JAMES RAFFERTY: -- needs the Variance.

So I think the garage, under the current understanding, is the garage appears to be an as-of-right accommodation. That we're dealing with a footprint with an addition on

a single-family house that we're going back on the same footprint.

MAHMOOD FIROUZBAKHT: So, in terms of the kind of overall impact of the project, you are generating two off street parking spaces? Which is a good thing.

ATTORNEY JAMES RAFFERTY: Yes. The way that -- it's a private way now, and if you would go there, they actually have I would say dedicated spaces in front of this cul-de-sac at the moment.

NADARAJAN CHETTY: Just signage.

ATTORNEY JAMES RAFFERTY: And I guess that's by agreement with cross easements with other property owners.

Another neighbor to the left there has a garage, and they're excited about it because it does, it gets the cars off the street. If frees up maneuver -- if you can, on that garage, I put up the sign on a snowy Saturday and then try to get out of that thing

with the cars on the street, you wind up backing out --

BRENDAN SULLIVAN: You can try there, but you can back out.

ATTORNEY JAMES RAFFERTY: You back out to Garden, right.

MAHMOOD FIROUZBAKHT: I'm not a design professional, but I had a hard time reading the plans.

CONSTANTINE ALEXANDER: So did I. That's why I asked the question.

MAHMOOD FIROUZBAKHT: And I think there's a lot of things going on, and it was a little bit difficult to decipher and sort of what are the elements that really should require zoning relief given all the different moving pieces in the plan. So I think, that's just a sort of point of reference that it was difficult to review this case.

TAD HEUER: Is this stapled plan in front of us any better or clearer than the

conversations that we had?

ATTORNEY JAMES RAFFERTY: This one right here?

TAD HEUER: Yes. Is it just different?

PETER SOLLOGUB: That's (inaudible).

ATTORNEY JAMES RAFFERTY: I don't think it has the same level of accuracy. It does identify the 222 square foot addition according to this plan. But I think -- these were an earlier iteration, right?

PETER SOLLOGUB: (Inaudible.)

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: Yes, and the square footages were different. I appreciate that because I had a visit with Mr. O'Grady this week because I had the same sense. I wanted to make sure the plan -- but the zoning relief really has to do with the rear addition and the new front entry. We

then have an existing addition which we're going to replace. And in the context of replacing it, put a below grade garage beneath it. And that replacement structure and garage we're not seeking relief on. I guess we should find out if we should, but I can't see why we would need it.

BRENDAN SULLIVAN: Actually what's shown here by with the hash marks is what the relief that's being requested for.

PETER SOLLOGUB: That's correct. That's correct.

THOMAS SCOTT: If any of the alternates that are indicated on the plan would require relief, I think they should be crossed out on the plan. I find that confusing. You know, like there's one alternate in the back, it adds -- it looks like it would add FAR. It's three stories. It talks about --

BRENDAN SULLIVAN: Then that would

trigger additional relief.

THOMAS SCOTT: Right.

BRENDAN SULLIVAN: Right now they're over the floor area. We're granting them a slight increase in that if we do, and any of these alternates would trigger more relief.

CONSTANTINE ALEXANDER: When we get to the motion, I think you should be very specific that we're granting relief only for the notch, what I call the notch in the back and the front entry and no other relief.

NADARAJAN CHETTY: The alternatives are out of the picture. We haven't talked about them for weeks.

BRENDAN SULLIVAN: Yes, okay.

Let me open it to public comments. Is there anybody here who is interested in this particular case, 10 Garden Terrace?

(No Response.)

BRENDAN SULLIVAN: Being none,

there is correspondence in the file from the Cambridge Historical Commission which makes no comment on the merits of the case, only if a demolition permit is required.

There is a correspondence in the file dated February 19th, "To Whom It May Concern: We have reviewed the architectural design documents. I'm writing to support the Variance request by the" -- sorry, Nadarajan and Sundari Chetty -- sorry. "For their new home at 10 Garden Terrace. The addition of a two car garage would reduce congestion in your cul-de-sac by taking cars off the street. This will allow other cars to turn much more easily in the space and permit snow plows to clear the street. The garage is also valuable from a fire safety perspective as having the cars off the street will allow fire trucks easier access to our properties. We also support the rear addition and relocation of the front entry as requested by

the Chettys. These changes will modernize their house and improve its value in our neighborhood without having any impact on the abutting houses." Signed by, is it Martha Brown?

NADARAJAN CHETTY: Yes.

BRENDAN SULLIVAN: No. 11 Garden Terrace which is the abutting neighbor.

Correspondence from a Doctor Henry Friedman, F-r-i-e-d-m-a-n at 6 Garden Terrace. "To Whom It May Concern: He has reviewed the architectural drawings and documents. And I'm writing to support the Variance. Again, states that the two car garage will reduce congestion. He supports the rear addition and relocation of the front entry. The changes will modernize the house and improve its value in our neighbor without having any impact. As a next-door neighbor to 110 Garden, I am very much in support of the changes that the Chettys have designed

for their home. All they plan to do to add to 10 Garden will improve their house as well as the whole cul-de-sac.

And I'll close public comment. Are there any other comments by members of the Board?

(No Response.)

BRENDAN SULLIVAN: Mr. Rafferty, any --

ATTORNEY JAMES RAFFERTY: Thank you.

Mr. O'Grady has pointed out something that's helpful. The application also cites Section 8.22.3. Because it is a non-conforming structure, and there's a GFA component to this, but there's also you'll recall under non-conforming structures, if you increase volume by more than ten percent. And the volume calculation here we think we -- there's a suspicion that it may not have -- that there is a volume, depending on

whether you could include the addition -- the house was -- the assumption is the house was probably non-conforming before the addition was built that's being renovated, so that we're probably in fact over the 10 percent because you may have included that. So, we did cite 8.22.3.

So to the extent that there is a volume question, the Variance relief under 8.22.3 would relieve that problem. So, it is in the advertisement and as part of the application we would ask that to the extent it's deemed necessary, that there's volume relief under 8.22.3 for either the renovation of the addition or the new -- the new addition or the renovation of the area above the garage that the --

CONSTANTINE ALEXANDER: I mean, if we just make the motion to grant the Variance is limited to the two things you've identified, we don't have to worry -- it

picks up everything that's involved by this, including the volume issues. I don't think you have to worry about that.

ATTORNEY JAMES RAFFERTY: Right. But I may have misstated in suggesting that the -- depending on where we trip the volume. The volume trip could come in the existing addition, the replacement of that. So, to the extent I suggested that that might as of right, it could be that that would rely upon the 8.22.3 relief.

TAD HEUER: You're almost certainly pre-existing non-conforming because of your front yard setback --

ATTORNEY JAMES RAFFERTY: Oh, we're definitely non-conforming. We're definitely non-conforming, there's no question. So we do have the volume limitation. We've thought -- I mean, I know I asked you and you did it, but I think Sean brought up a good point. Maybe we were not

permitted to include the volume of that 60's style addition in the volume calculation, because that would have gone on at a point in time when the house was already non-conforming. So the provisions says since the house first became non-conforming. So you go back to 1942 or 1941 and you figure out what was the volume in 1941 and what's the volume today? And I probably failed to help Peter to do that. So, I appreciate that.

BRENDAN SULLIVAN: It becomes a numbers game at that, but that doesn't necessarily change --

ATTORNEY JAMES RAFFERTY: It changes nothing in terms of the plans or what people have seen or anything else. It's just that -- and we fortunately sought the relief and advertised for it as well.

TAD HEUER: And all the removals are things that are being removed; is that right? So on this where it says remove bulkhead,

remove landing and the whole new stairs in the vestibule. All those --

PETER SOLLOGUB: Yes.

TAD HEUER: -- do actually go?

PETER SOLLOGUB: Yes.

BRENDAN SULLIVAN: Anything else?  
Mahmood, anything questions?

MAHMOOD FIROUZBAKHT: Well, I think the project with respect to the substance of it, I'm comfortable. I guess I'm less comfortable with the quality of the plans, and I would much prefer to have cleaner plans without the alternates included, and with the sort of maybe even larger so that it's clear in terms of what's being approved. But to the extent that other Board members in particular are sort of design element think that we can craft a decision that clearly identifies, you know, what elements are being picked out here for our decision and capture our decision, I'm okay moving forward. So,

I'm interested to just sort of hear, you know, if other folks feel the same?

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Well, I share with Mahmood's views about the plans. I was troubled by them when I read them in the file. But I echo what Mahmood said. I think the project makes sense, I'm in favor but we have to be careful when we craft the motion.

THOMAS SCOTT: Yes, it would have been nice to see the other elevations that weren't depicted in the set. I think the set is heavily noted. You have to read every note and understand everything that's going on and that's what creates some of the confusion. You know, I'm okay with after reading all of the notes that I think, I think we can craft the decision.

BRENDAN SULLIVAN: I guess the critique may be that sometimes you get plans with little information. This may have too

much information.

THOMAS SCOTT: Right.

BRENDAN SULLIVAN: It would depend on shifting the other way. I make a motion, then, to grant the relief requested.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner as it would preclude them from moving the front entryway to a more appropriate location on their house. Also, to increase some living area with the back of the house.

The Board finds that the hardship is owing to the existing non-conforming nature of the house. The house built in the 1910 to 1915 era well before the enactment of the present Zoning Ordinance. Hence, any addition to the house would require some relief from this Board.

The Board finds that desirable relief

may be granted without substantial detriment to the public good. We find that there was a benefit to the abutting properties for the project because it does free up some additional parking on the private way. A much needed and very appreciable byproduct of this renovation.

The proposed addition of approximately 222 square feet is what's being approved. The Board finds it's minimal in nature and has no appreciable affect on the abutting properties to the left or to the right. And in fact, has letters of support from the abutters.

The addition faces the rear of the property which abuts an open space consisting of a driveway, tennis courts, a recreation facility i.e. Harvard University observatory.

And as such the Board finds that the requested relief from the Ordinance is a

favorable request.

The Board grants the relief on the condition that the work subject to this Variance be in full compliance with the drawings and dimensional form submitted, signed by the Chair and noted that it is the area highlighted on the drawing sheet. And I will just say A1 in hash marks and also the front entryway which is being relocated. That the other notations on the drawing have no bearing and are not subject -- noted on the drawings as alternates have no bearing on the -- actually before the Board, and is not part of the granting of this variance.

Is there anything else?

CONSTANTINE ALEXANDER: I think you have to make it clear that to the extent that there may be any issues regarding increase in volume that the cover that as well.

BRENDAN SULLIVAN: Okay.

Under -- well, 5.3.1 favorable dimensional

requirements and also Article 8.22.3.

Anything else? All those in favor of granting the relief?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

ATTORNEY JAMES RAFFERTY: Thank you very much.

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

(7:35 p.m.)

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

BRENDAN SULLIVAN: The Board will

hear case No. 10061, Four Irving Terrace.  
Introduce yourself for the record if you  
would. Please spell your last names for the  
record, it's being recorded.

MARTHA OSLER: Martha Osler  
O-s-l-e-r.

DAVID OSLER: David Osler  
O-s-l-e-r.

THOMAS SCOTT: And, Mr. Chair,  
before we begin, I have to disclose that I am  
an acquaintance of Doctor and Mrs. Osler.  
Our children grew up together, played  
baseball together. He was my children's  
pediatrician, and so I don't think it would  
have any bearing on my decision on his  
particular case because I've read over his  
file, but I just wanted to disclose that.

BRENDAN SULLIVAN: Okay, so noted.  
Does anybody have any objection to this  
member sitting?

(No Response.)

BRENDAN SULLIVAN: You may proceed.

MARTHA OSLER: Well, we're here tonight to ask that you approve the moving of a window approximately 15 inches, it could be half an inch or an inch off from that depending on what the contractor finds when hopefully when it's removed. We're undergoing kitchen renovation. It's -- this is a window in our kitchen. It faces the rear. It's within the setback, and so in order to do, we needed your approval.

There was another window that faces not the rear but one of our neighbors, and that one was already approved by the Cambridge Conservation District Commission. So that one's been changed. But we're waiting now to hear what you feel about our moving this window.

TAD HEUER: Are you sure you don't want to move it further now that you're here? You know, you made the trip.

MARTHA OSLER: No.

BRENDAN SULLIVAN: It basically has to do with what he finds when he opens up the wall, sort of structural concern --

MARTHA OSLER: Exactly.

BRENDAN SULLIVAN: -- whether it goes 14 inches or 16 inches or something like that without reinventing the wheel here basically.

MARTHA OSLER: Right.

CONSTANTINE ALEXANDER: I saw in the file that there was notice of a hearing before the Mid Cambridge Historical Commission, but I didn't see the outcome of that.

MARTHA OSLER: The outcome is that it was approved. I've gotten an e-mail about it today, but I've also got I think written approval. So that hasn't come to you?

SEAN O'GRADY: It just came.

BRENDAN SULLIVAN: This must have come in very late.

SEAN O'GRADY: Yes, it came in four o'clock or something.

MARTHA OSLER: Yes, today.

BRENDAN SULLIVAN: Any questions from members of the Board?

MAHMOOD FIROUZBAKHT: Did you have a chance to meet with the abutting condo association as well?

MARTHA OSLER: I've spoken to the property manager there that meet with the Board of Trustees from that building periodically, and she brought this up to them and they had no, you know, reason to oppose it. And I have an e-mail from her stating that this was brought up at the board. So if you want that, I'd be happy to share that with you.

And we also have a letter an e-mail from our abutting neighbors who face the other window that was already changed, and she too, has given their support for the moving of this

window even though it's not directly in her view, but it's -- you know, in the house and in the kitchen. So I have that as well.

BRENDAN SULLIVAN: Okay.

Okay, any other questions?

Is there anybody here who would like to comment on the matter, No. 4 Irving Terrace?

(No Response.)

BRENDAN SULLIVAN: I see none.

There is correspondence from the Cambridge Historical Commission. Case No. 10061, Four Irving Terrace. "The property is located in the Mid Cambridge Neighborhood Conservation District where exterior alterations are subject to review and approval. After a public hearing, the Commission issued a non-binding Certificate of Appropriateness on February 17, 2011. The Certificate of Appropriateness is to replace one window at the rear of the west elevation with a new six over six true divided

light wood sash window that is reduced in size. The replacement window will have a rough opening of two-foot, nine wide by three-foot, five high. The plans and specifications that were submitted with the application are incorporated into the certificate which is non-binding on the applicant." And it is signed by Nancy Goodwin, February 17, 2011.

There is correspondence from Catherine and Richard Tabors T-a-b-o-r-s, Six Irving Terrace. "We are immediately abutting neighbors of Martha and David Osler. In the more than 30 years that we have been neighbors we have had a continuing cordial relationship. We entirely support their plans for the renovation of their kitchen, including moving the south facing window."

I also note that there is a quite a bit of communication from Mrs. Osler to the 1699 Cambridge Street Condo Association to

discuss the proposal and to meet with them at any time.

There is correspondence in reply on January 27th from a Miss Candace Morse. "As a follow up to your renovation proposal during the regular monthly business meeting held on January 26th, the trustees of 1697-1699 Cambridge Street reviewed your proposal for planned kitchen renovations, and the trustees had no objections to a slight relocation of the window 50 inches east of existing. If there's anything further you need to proceed with this work, feel free to call me." Sincerely, Candace.

And that is the substance of the communication and I will close public comment. Nothing to rebut. Pretty simple.

DAVID OSLER: Yes.

BRENDAN SULLIVAN: Any questions by the Board at all?

DAVID OSLER: Very simple.

BRENDAN SULLIVAN: I make a motion to grant the Special Permit to relocate a position of a window on the south elevation as per the plan submitted.

The Board finds that the requirements of the Ordinance can be met. That there would not be any traffic generated or patterns of access or egress to cause congestion, hazard or substantial change in the established neighborhood character.

And that the continued operation of or development of adjacent uses as permitted to the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

That there would not be any nuisance or hazard created to the detriment of the health, safety, welfare of the occupants of the proposed use or the citizens of the city.

And for other good reasons 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.

The Board notes that there would be a slight modification depending upon the existing structural conditions.

That we have approving the approximate location within --

CONSTANTINE ALEXANDER: Three inches.

BRENDAN SULLIVAN: Well, I was going to say six inches either way.

THOMAS SCOTT: Six inches.

BRENDAN SULLIVAN: Six inches either way of the 15. To go either nine to 21 inches from the present location.

TAD HEUER: Horizontally?

BRENDAN SULLIVAN: Horizontally, correct.

All those in favor of granting relief requested.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(7:45 p.m.)

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

BRENDAN SULLIVAN: The Board will  
hear case 10062, 146-148 Huron Avenue.

ATTORNEY JAMES RAFFERTY: Good evening again, Mr. Chairman, members of the board, James Rafferty on behalf of the applicant Ed Stuart. Mr. Stuart is seated to my left. Mr. Stuart is the owner of the subject property. He operates his business at the ground floor level, European Country Antiques. It's a long time location of the Dawson Hardware Store. Mr. Stuart was a tenant of Mr. Dawson. He decided to buy the building about a year ago?

EDWARD STUART: September.

ATTORNEY JAMES RAFFERTY: So what Mr. Stuart intends to do, the building comprises of retail on the ground floor and four units on the two floors above. His plan -- his intention is to combine the two units on the third floor into a single apartment. And in doing that, he's encountered two Zoning issues.

One is present before the Board because

it came as a surprise to Mr. Stuart and myself, and I venture to say people have a long history in this neighborhood wouldn't be able to tell you where Boyle Terrace is. But what was --

TAD HEUER: Do we know who Mr. and Mrs. Boyle was? Has there been any research into how they got an eponymous terrace?

ATTORNEY JAMES RAFFERTY: I don't know. That's a very interesting.

EDWARD STUART: I tried looking it up, but I haven't been to find it.

ATTORNEY JAMES RAFFERTY: Boyle Terrace is the -- this building is located on the corner of Huron Ave. and Boyler Terrace which to the untrained observer would appear to be a driveway.

CONSTANTINE ALEXANDER: Driveway.

EDWARD STUART: Goes into the parking lot.

ATTORNEY JAMES RAFFERTY: That kind

of puts a little just on the lot.

So there are really two minor things that Mr. Stuart is looking to do or which requires relief.

One involves the back porch, the rear porch on the property. He's enclosing the porch. He's entitled to do that as of right, but because of the setback presented by Boyle Terrace, he would have to hold the wall in that to about that location. And what he wants to do is in-fill that. And if you look at the plans, it's a laundry room. But that section of wall represents an extension of a non-conforming wall. I mean it is the correct Zoning call. So that's what the relief is on that point.

Similarly, on the other side of the building at the front, which is going to become living space. You basically can see it in this photo right here. Mr. Stuart wants to put a window into that blank wall and

it is a non-conforming wall.

BRENDAN SULLIVAN: And that's at the third level?

ATTORNEY JAMES RAFFERTY: The apartment that he's converting.

EDWARD STUART: One on the first.

BRENDAN SULLIVAN: Would it look out to the --

EDWARD STUART: To the intersection.

BRENDAN SULLIVAN: Above the front porch.

ATTORNEY JAMES RAFFERTY: Yes, it's forward of the principal point of the house.

BRENDAN SULLIVAN: Of the house, right. So you're not looking out on to anything?

EDWARD STUART: No.

ATTORNEY JAMES RAFFERTY: Right, no. The side line.

BRENDAN SULLIVAN: The corner

pocket of Huron Avenue.

ATTORNEY JAMES RAFFERTY: You can see the window from the corner. So, it's forward, the window is forward of the abutting house.

BRENDAN SULLIVAN: So it really doesn't affect your privacy or anybody else's privacy.

ATTORNEY JAMES RAFFERTY: And that abutter you've spoken with I know?

EDWARD STUART: Yes, he's fine.

CONSTANTINE ALEXANDER: You say you're actually going to reduce the number of units in the building, the residential units in the building?

EDWARD STUART: Yes.

CONSTANTINE ALEXANDER: How big are the two now that you're converting into one? I'm just curious what size are you going to go to?

EDWARD STUART: I think it's 1800

square feet.

CONSTANTINE ALEXANDER: That's what the new unit's going to be?

ATTORNEY JAMES RAFFERTY: The combined.

CONSTANTINE ALEXANDER: The combined?

EDWARD STUART: Because we're taking some of the back hall, you know, a little bit of the space there.

CONSTANTINE ALEXANDER: Are you going to occupy that?

EDWARD STUART: Yes, I'll be there. And my mom's in one of the other apartments.

ATTORNEY JAMES RAFFERTY: He's living over the store. The proverbial American --

EDWARD STUART: I live across the street now.

ATTORNEY JAMES RAFFERTY: Right now he's living across the street.

BRENDAN SULLIVAN: So you're selling 127?

EDWARD STUART: I have to sell my house, yeah.

BRENDAN SULLIVAN: Yes.

EDWARD STUART: It's a great house.

ATTORNEY JAMES RAFFERTY: It's a lovely house. Mr. Stuart has mentioned that he lives diagonally across just below Kelley Street on the other side of Huron Avenue. So he's -- but it is. If you look at the floor plan, it's going to be a very nice unit. And they're four equally sized units now, so combining the top floor will make a very accommodating living space. Actually, has the effect of reducing the intensity of the use of the building by the reduction of one unit. There's ample parking.

BRENDAN SULLIVAN: Any questions by members? Mahmood.

MAHMOOD FIROUZBAKHT: Were there

any letters of support in the file? I don't think I saw any this afternoon? There aren't any.

ATTORNEY JAMES RAFFERTY: No.

MAHMOOD FIROUZBAKHT: It's helpful to have those.

EDWARD STUART: I know, I could have gotten --

ATTORNEY JAMES RAFFERTY: Well, it is, but Ed mentioned to me that he spoke to his -- he spoke to the abutter and he thought he might send one the house next-door.

EDWARD STUART: He's in Florida.

ATTORNEY JAMES RAFFERTY: We usually encourage that. But frankly I mean the relief here was so modest, and the abutter that's most affected is the abutter who has the window. And he supported it. We thought he was sending a letter. It's also recognized that an absence of opposition can be -- has certain inferences that I think the

board can draw as well.

CONSTANTINE ALEXANDER: If you had moved your office, you could have written a letter of support.

EDWARD STUART: Had I not moved my office.

ATTORNEY JAMES RAFFERTY: I know. Imagine how persuasive that might have been.

BRENDAN SULLIVAN: And the enclosure of the porches on the back --

EDWARD STUART: Yes, just one.

BRENDAN SULLIVAN: A porch. That is higher than the back of that adjoining building. That's a condo association is it not?

EDWARD STUART: Yes, the 12-unit building next-door.

BRENDAN SULLIVAN: Yes. But that really -- it's not in line with those porches. I don't --

EDWARD STUART: Yeah, they don't

have porches in the back on this. And that porch is set back further into the parking lot.

ATTORNEY JAMES RAFFERTY: Yes, I don't know if the Assessor's map might show that. That building goes deeper into the lot. They go further into their lot than this building.

BRENDAN SULLIVAN: I guess the point that I'm trying to draw, you're really not obstructing anybody's sight line --

EDWARD STUART: No.

BRENDAN SULLIVAN: -- by enclosing that. Because the building, it's on a different plain.

EDWARD STUART: Right.

TAD HEUER: I just have a more aesthetic question than anything else, but because it's a Special Permit, it is what it is. The enclosure isn't exactly the most appealing at least when I look at it, way to

enclose a rear porch. Can you talk a little bit about the fenestration choice? I mean, you have double hung windows and the rest of it and it looks like you're putting square windows.

EDWARD STUART: Yeah, they're square high windows so that when you're looking in the laundry room looking out, you're not looking down and seeing the parking lot you're seeing the trees and the sky. Is that what you mean?

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: Right. So those windows are not the subject of the relief.

TAD HEUER: No, I know.

ATTORNEY JAMES RAFFERTY: All right. Okay. So the window -- I'm trying to see what the window looks like on the elevation that's the subject of the relief. Are they the same as those?

TAD HEUER: I'm betting that if it looks like these, I mean, that's what --....

ATTORNEY JAMES RAFFERTY: Don't we have that elevation is my point?

TAD HEUER: That is it. I'm talking about these three, these three little porthole type windows.

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: And filling in going -- so you've got a railed porch now. You're filling in, going top to bottom. Essentially you're slapping in a quadrant to use the space, and I'm just suggesting it's not in my view the most --

ATTORNEY JAMES RAFFERTY:  
Mr. Stuart has a high --

BRENDAN SULLIVAN: Those windows are going to be --

ATTORNEY JAMES RAFFERTY: -- a high standard of design.

(Discussing plans.)

ATTORNEY JAMES RAFFERTY: So there is no window on the wall that we're talking about.

MAHMOOD FIROUZBAKHT: Just, this is all --

TAD HEUER: This is a solid wall here, right?

ATTORNEY JAMES RAFFERTY: No. The proposed wall that's the subject of the relief doesn't contain a window. The only issue in the relief is that wall, right? We're able to enclose because we don't have a rear setback violation. So that's why I was troubled -- the window that we're adding --

TAD HEUER: You're claiming that you would be happy with an enclosure of this by right but not this?

ATTORNEY JAMES RAFFERTY: Well, that's what the -- no, that's what would be -- that's what's permitted. We could go

to about that point. So, no, you were commenting on these windows --

TAD HEUER: Yes, I know.

ATTORNEY JAMES RAFFERTY: -- I was merely pointing out that the wall that is the subject of the relief doesn't contain a window. I don't know if you were suggesting that those windows, that that wall should have a window?

TAD HEUER: No, no, no. I'm just suggesting you're enclosing an entire porch, part of which requires relief on this wall on this fourth side. You're adding a wall here.

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: As you go around the entire toto of what you're asking for --

ATTORNEY JAMES RAFFERTY: This would be the conforming enclosure, and we're adding this portion.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: That's

the same thing.

TAD HEUER: Yes.

BRENDAN SULLIVAN: But you're looking for something a little more aesthetically pleasing?

TAD HEUER: Yes. I understand that I might not be able to get it. It may not be something that the applicant is asking for, but I'm also betting you want the rest of the storage closet. I'm asking that the sum total of the enclosure of this porch, is there anything that those windows might be made to be a bit more pleasing?

ATTORNEY JAMES RAFFERTY: Well, you never have to negotiate aesthetics with Mr. Stuart. He has a high desire to see this done well, so please don't be reluctant to suggest outwardly -- I missed your subtly. I apologize. I thought you were actually saying that you thought a window should be on that wall.

TAD HEUER: No.

ATTORNEY JAMES RAFFERTY: Oh, you're suggesting that he could do a better -- the material. Is it the proposed windows in the enclosure seem too utilitarian or something. They should be a little --

TAD HEUER: They seem out of character with the rest of the gracious nature of the building.

ATTORNEY JAMES RAFFERTY: Would you have a design alternative?

EDWARD STUART: They're better quality windows than the rest of the windows. The rest of the windows were replaced by the previous owner with a vinyl.

ATTORNEY JAMES RAFFERTY: Yes, the existing windows are rather the pedestrian vinyl double hung windows. Like I said, there's nothing about the fenestration here in the existing building that's going to get any awards. I mean, if this were a classic,

beautiful building with heavy mullions and nice things, I would tend to agree.

CONSTANTINE ALEXANDER: With all due respect, I think aesthetic improvements would be lost on this structure. It's not a particularly distinguished --

TAD HEUER: It's only that low starting point that's the problem.

BRENDAN SULLIVAN: It's a very generous backyard which overlooks another side yard to a brick building.

EDWARD STUART: Parking lot, yeah.

TAD HEUER: I recognize it's an enclosed space.

EDWARD STUART: (Inaudible.)

BRENDAN SULLIVAN: Right. Your critique is well taken.

ATTORNEY JAMES RAFFERTY: Right. There are ample metaphors of lipstick on a pig or something. I don't think we want to go there, but I hear what you're saying and I'm

not suggesting that your building is that, but I hear what you're saying.

EDWARD STUART: It's a beautiful building. Let's look at the front page of the picture.

ATTORNEY JAMES RAFFERTY: Yes, it is a lovely building.

EDWARD STUART: This will look nice when it's done.

TAD HEUER: My point exactly.

EDWARD STUART: Yeah. I like him, he's all right.

BRENDAN SULLIVAN: Did I ask for public comment at all?

Is there anybody here who wishes to speak on the matter 146-148 Huron Avenue.

(No Response.)

BRENDAN SULLIVAN: I see none, and there are no letters of correspondence in the file. I will close public testimony.

Any extra comments from the Board?

From our resident architect?

THOMAS SCOTT: No, I mean I agree with Tad. If I were putting those windows in, I would have made them all double hung just because all the other windows in the building are double hung and it would look better.

BRENDAN SULLIVAN: I can see why they did it because you have a washer and dryer there.

THOMAS SCOTT: Right. You can have a washer and dryer in front of a window if you chose to.

EDWARD STUART: And then you got to see the back of the dryer. The washer and dryer they're 38 inches tall.

BRENDAN SULLIVAN: Mahmood.

MAHMOOD FIROUZBAKHT: I'm indifferent. I really don't -- I mean, it's not -- it's in the back.

THOMAS SCOTT: It's the back.

MAHMOOD FIROUZBAKHT: It's not visible from the street. So, in that regard....

THOMAS SCOTT: It's less offensive back there.

MAHMOOD FIROUZBAKHT:  
Aesthetically if that's what the owner wants.

ATTORNEY JAMES RAFFERTY: Do you think it's the geometry? Or do you think that they should be -- is it too small? Do you think they should be more in keeping with the windows in the rest of the building?

TAD HEUER: More in keeping with the windows in the rest of the building.

EDWARD STUART: My plan would be to replace the windows in the rest of the building.

BRENDAN SULLIVAN: To me it looks very much like what it is, an in-fill with a couple of windows.

EDWARD STUART: The structure's

unique. The rest of the building's brick and this is going to be a unique structure on its own.

BRENDAN SULLIVAN: The inside works. I'm not sure how you really put lipstick on a --

CONSTANTINE ALEXANDER: I think we're ready for a motion.

MAHMOOD FIROUZBAKHT: I think we would be --

ATTORNEY JAMES RAFFERTY: We want to leave at least --

BRENDAN SULLIVAN: You may just want to leave at this point.

TAD HEUER: I just want to say this is the greatest amount of protest I've had with Mr. Rafferty over many years. I'm happy to continue it, but I would presume you wouldn't be.

ATTORNEY JAMES RAFFERTY: If you

really were at his mercy and needed a Variance, we'd be changing these windows. He doesn't have the leverage he's ordinarily accustomed, too.

BRENDAN SULLIVAN: My advice would be that the dialogue stop.

Let me make a motion to grant the Special Permit to enclose the rear porch on the third floor as per the plans submitted.

Also, to add a window on the third floor of a non-conforming wall as per the plan submitted.

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.

The Board finds that continued operation involving adjacent uses as to the Zoning Ordinance would not be adversely

affected by the nature of the proposed use.

The Board finds that the nuisance or hazard would not be created to the detriment to the health, safety or welfare of the occupants of the proposed use.

And that the proposed use would not impair the integrity of the district or adjoining districts or derogate from the intent and purpose of the Ordinance.

And the Board also finds that the proposed work will actually be less intensive with the number of occupants than is presently in the building.

Anything else to add to this?

CONSTANTINE ALEXANDER: The conditions on the set of plans? I didn't hear you.

BRENDAN SULLIVAN: Yes, as per the plans submitted.

CONSTANTINE ALEXANDER: Okay. I didn't hear that.

BRENDAN SULLIVAN: For the addition to the enclosure in the back, and also the new window in the front.

All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(8:00 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10063, 144 Western Avenue. I ask that you please give your name and you may have to spell it for our stenographer.

FAWAZ ABU-RUBAYAH: Fawaz Abu-Rubayah.

BRENDAN SULLIVAN: Please tell us what you've done and why you've done it.

FAWAZ ABU-RUBAYAH: I live at 144 Western Ave. and I have the porch and for like five feet by 50 foot is the total, you know. And it always been just for the kids, they play outside the porch and we have these

two -- the two store the first floor and myself.

CONSTANTINE ALEXANDER: The relief you're seeking, you've actually already done the work, have you not?

FAWAZ ABU-RUBAYAH: Yes, sir.

CONSTANTINE ALEXANDER: Why did you not come to the Building Department and get a building permit or seek determination whether you needed it.

FAWAZ ABU-RUBAYAH: I don't -- the board -- I close it. (Inaudible).

CONSTANTINE ALEXANDER: I had trouble from the dimensional forms in the file as to why you need relief. Is it too much floor area ratio? Are you too close to the street?

FAWAZ ABU-RUBAYAH: Close to the street. And we have problem also with the kids, they play outside. And I have problem for the store. We have leave that all the

time --

CONSTANTINE ALEXANDER: I'm sorry. That's not my question. I just want to understand why you need relief? To what extent does the project not comply with our Zoning? Is it too close to the street, because you're second floor is close to the street.

FAWAZ ABU-RUBAYAH: Right.

CONSTANTINE ALEXANDER: It's the first floor and that's too close.

FAWAZ ABU-RUBAYAH: Right.

CONSTANTINE ALEXANDER: That's correct.

FAWAZ ABU-RUBAYAH: Right.

CONSTANTINE ALEXANDER: And is the amount of floor area per the size of the lot in excess of our Zoning requirements?

FAWAZ ABU-RUBAYAH: I close because, you know, it's the like just if I leave it open, it will affect like store.

CONSTANTINE ALEXANDER: And the store downstairs. You came before us before for a cafe, a coffee shop.

FAWAZ ABU-RUBAYAH: Yes.

CONSTANTINE ALEXANDER: And we granted relief and I think it's been appealed to the court?

FAWAZ ABU-RUBAYAH: Yes.

CONSTANTINE ALEXANDER: Is that case still pending in the courts?

FAWAZ ABU-RUBAYAH: Yes.

CONSTANTINE ALEXANDER: And there's no use for the downstairs right now?

BRENDAN SULLIVAN: The dimensional form is -- well, it's not adequate anyhow. It's not properly filled out. Well, you probably did the best that you could in trying to understand it, but there's a whole lot more information that we would need on it should we grant the relief anyhow. But, anyhow.

Tom, any questions at all?

THOMAS SCOTT: I find the drawings to be a little lacking. It's hard to understand. I mean, I can see the photographs so I know what's been done.

BRENDAN SULLIVAN: The photos probably give a better --

THOMAS SCOTT: The photos give a better representation of what it was and what it is.

CONSTANTINE ALEXANDER:

Mr. Chairman, are there any letters in the file at this point?

BRENDAN SULLIVAN: There is none. Nothing came in since four o'clock I don't think.

SEAN O'GRADY: Not that I'm aware of.

BRENDAN SULLIVAN: Okay.

Mahmood, any questions at all?

MAHMOOD FIROUZBAKHT: Just sort of -- no.

BRENDAN SULLIVAN: No questions.

Tad, any questions?

TAD HEUER: Many and none at the same time.

THOMAS SCOTT: Is the space being used currently since it's been built out? Is it being used.

FAWAZ ABU-RUBAYAH: The porch outside?

THOMAS SCOTT: The space that you built.

FAWAZ ABU-RUBAYAH: Just the kids play in it, you know, sometimes.

THOMAS SCOTT: Kids play in it?

FAWAZ ABU-RUBAYAH: Yes.

THOMAS SCOTT: But it's not completed, it's not completed on the inside?

FAWAZ ABU-RUBAYAH: No.

BRENDAN SULLIVAN: Let me open it to public comments. Is there anybody here who would like to comment on the case at 144

Western Avenue? Would you please come forward, identify yourself, and please spell your name for the secretary.

ROBERT HANSS: My name is Robert Hanss. My last name is spelled H-a-n-s-s. I'm here representing Ben Corey (phonetic) he's sick. He wanted to be here. As you know, he's 93-years-old and he's not attending this hearing and present.

BRENDAN SULLIVAN: Richard, if you want why don't you just read that if you want into the record and we'll make a transcript of it.

ROBERT HANSS: Okay. (Reading) I am 93-years-old and regret that I am not able to attend this hearing because of my illness. At present my illness proposes a difficulty to walk and breathe so I am not able to represent to this -- make of this -- my objection to Fawaz's claim. I ask that my representation be allowed to speak and read

this letter on my behalf. I object to Fawaz adding to his premises, especially on the base of his claim of hardship. Prior to his un-permitted alterations, I own the identical mirror image property. I have had no hardships, and believe Fawaz would have no alleged hardships if he didn't make costly, unnecessary and unauthorized alterations. He claims that his roof or deck is chronically leaking. The obvious solution is to repair it and remove the enclosure that is currently -- violates almost every aspect of Zoning requirements allowed in C-2 Zoning. I cannot build or permit these alterations and additions he has, so why should he be allowed to do so. Sincerely, Ben Corey, owner of attached property 18 Kinnaird Street and neighbor.

BRENDAN SULLIVAN: Thank you.

Anything you need to add to that or is that sufficient?

ROBERT HANSS: Well --

BRENDAN SULLIVAN: That's it?

Thank you. We'll enter that into the record.

Anybody else?

(No Response.)

BRENDAN SULLIVAN: I will close  
public comment.

Would you like to rebut anything or  
final --

FAWAZ ABU-RUBAYAH: No.

BRENDAN SULLIVAN: No? Okay.

Any comments by the Board at all.

CONSTANTINE ALEXANDER: I just have  
a question. Mr. Corey challenged your  
relief for the granting of the cafe. You  
know he was going to challenge anything you  
do here, I presume challenge. Why did you  
not at least come before the Board first  
rather than just building the addition?

FAWAZ ABU-RUBAYAH: Because he do  
his porch last year and I never seen any

permit for it, and the old one he move it to make a new one. And I think it would be the same. And I don't need any Variance for it. This is why.

BRENDAN SULLIVAN: Well, I was very sympathetic to your proposal last year in wanting to do a cafe, restaurant. I thought it was a very nice proposal and you seem like a very nice man, but this is sort of bad behavior to do something before the fact and not coming down and getting permits and inquiring about it and just doing it. I for one could not approve -- I'm not sure if I would approve it even before it was done because it's really bringing that building out further toward the street. And it's, I think, a change and an adverse change to the structure that's the streetscape. That would be my feeling.

Mahmood, what's your --

MAHMOOD FIROUZBAKHT: I guess a

question about Mr. Corey's property. He doesn't have a similar build-out on his property?

FAWAZ ABU-RUBAYAH: On the back side.

MAHMOOD FIROUZBAKHT: But on the front side.

FAWAZ ABU-RUBAYAH: I am on the front side. He's not on the front side.

MAHMOOD FIROUZBAKHT: Oh, I see.

BRENDAN SULLIVAN: He is and down the street, right next to it.

MAHMOOD FIROUZBAKHT: He's on the back side?

FAWAZ ABU-RUBAYAH: Right.

MAHMOOD FIROUZBAKHT: He does or does not?

FAWAZ ABU-RUBAYAH: He does it. He do the same. He close it.

MAHMOOD FIROUZBAKHT: Okay. I guess I don't know the status of whether

that -- if that was done, whether it was done with proper permits, but it's difficult to rule on this kind of a case given circumstances and rule in favor of it.

TAD HEUER: I would agree. I mean, there are a number of things that just don't reach the level yet where we really could make the determination that you want even if we wanted to. As the Chairman mentioned, the form doesn't have the right numbers so it's very difficult to see what's going on. But even just looking at the photographs, it's fairly evident, even without the numbers on the form being fully filled out, that it's too close to the -- it violates the setback. It probably violates the amount of floor to area ratio that you're allowed to have in the building. I, too, was very sympathetic to the cafe proposal, I think it's a good idea. I'm disappointed that it's being challenged because I think it's the right thing for the

neighborhood. But this, even though that was a change of use situation in a residential zone, and this is more residential space, it goes, you know, even if it were coming before the fact rather than after the fact, which I think is a concern, I'm still not sure I would be able to vote for it even though it's a residential expansion and not a change of use, because it just has so many moving parts that are against what we're trying to do. And I know that you included the picture of what it used to look like. That you used to have this enclosure.

FAWAZ ABU-RUBAYAH: Right.

TAD HEUER: But one of the principles of the Zoning Code is that once you've made something that's non-conforming less non-conforming, so it looks closer to what the city has said should be there, we should be very hesitant to allow that to be built back out again. And that seems to be

what's done here. So I can see if you went and saw the pictures and said this is what we had before, this is what I could put back now kind of by right, I can see why that might be the thought. But it's just not the case. And the fact that you don't have a building permit just makes it more difficult. So I think all those factors together unfortunately make it impossible for me to vote in favor of it.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: I would echo just what the two of you said. I would also emphasize, I wouldn't put as much weight on the fact that you built without our approval. I think if you come before us initially, I don't think I -- I wouldn't support it even though I did support your cafe. And so, to me, just speaking for me, I don't put that much weight on the fact that you built in violation of the Zoning By-Law.

You just don't meet the requirements for relief.

BRENDAN SULLIVAN: Should the motion --

THOMAS SCOTT: Well, I agree. I mean, it's unfortunate that the work occurred before coming before this Board. But I think in terms of kind of what it is, I'm not offended by it. And, again, without seeing the corrected dimensional form it's hard to know whether it violates FAR or how many Zoning violations are really created here. But in terms of the look of it and what it is, I mean this is not uncommon to see, you know, a retail on a first floor, residential on a second down a street just like this in Cambridge. So, I'm personally not offended by it. And I don't find it to be objectionable from just an aesthetic point of view, but again, I guess we have to judge it on its merits.

MAHMOOD FIROUZBAKHT: And I guess the problem is I'm not quite sure what we would be judging. And that's the problem with this case in that there's -- it's inadequate, that there isn't enough information there for us to be able to -- even if we did support it, to be able to give our support because your file is not complete.

So, I guess one possibility would be -- and I'm just throwing this out there, to the extent that the applicant had an interest in trying to complete the file, come up with some plans that reflect what's been done to correctly complete the dimensional form and essentially make the file correct so that we can give a decision based on the complete file, then perhaps we could re-hear it at a later date. But that's just a suggestion that we may want to contemplate.

THOMAS SCOTT: I'm in favor of continuing the case if the applicant was

willing to, you know, get a professional involved so that they can complete the information that we can see to make a judgment.

TAD HEUER: I would be opposed to continuing the case because I think that it gives the Petitioner the right to continue using the space that was built off the permit and off variance that essentially expands out for several months. It means that like coming in and asking for relief after it's already been built and gives him additional time. I think that goes against the intent of the Ordinance and Inspectional Services.

MAHMOOD FIROUZBAKHT: Is it being used?

FAWAZ ABU-RUBAYAH: It's not used. I stop the work after they talk.

MAHMOOD FIROUZBAKHT: What's in the extra space now?

FAWAZ ABU-RUBAYAH: There's

nothing. It's empty. After they tell me stop work in it, I stop the same day.

CONSTANTINE ALEXANDER: I would oppose continuing the case as well for slightly different reasons. The dimensional form is not sufficient. I think I can see enough on there and I see enough on the photos to suggest to me that relief would not be warranted in this case even if we had a more complete form. I just don't see it. I don't think we should prolong this case. So I would not continue it.

BRENDAN SULLIVAN: I would prefer, too, not go on. So, I mean that's --

MAHMOOD FIROUZBAKHT: I thought it would be worthwhile to discuss.

BRENDAN SULLIVAN: Yes.

Let me make a motion to grant the relief requested which is to allow the addition which is currently existing to remain.

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 him from enclosing the area which is currently a deck. The hardship is owing to the size and shape of the building on the lot. And that any addition to the structure, we believe, would require some relief from this Board.

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 this Ordinance.

All those in favor of making those findings?

(No Response.)

BRENDAN SULLIVAN: Seeing none. And not receiving the four affirmative votes, the petition is denied.

Further, the Board finds that a literal enforcement of the provisions of the Ordinance, it has not been established, would involve a substantial hardship to the Petitioner.

The Board finds that the hardship which is stated having to do with a chronic leaking of the roof, is not sufficient to grant the relief.

The Board finds that there may be substantial detriment to the public good by enclosing this area which is now open space.

And the Board finds that the granting of the relief would in fact nullify and substantially derogate from the intent and purpose of the Ordinance.

The Board also finds that the application with the -- that the application, the dimensional form submitted with the application is inadequate. And as such, fatal to the petition.

All those in favor of making those additional findings?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of those additional findings.

(Sullivan, Alexander, Heuer, Scott, Firouzbakht)

(8:20 p.m.)

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

BRENDAN SULLIVAN: The Board will

hear case No. 10064, 15 Robinson Street.

Introduce yourself. Whenever you're going to speak, before you speak introduce yourself and spell your name for the record.

DAVID FOLEY: My name is David Foley F-o-l-e-y. And this is Brian Bordonaro B-o-r-d-o-n-a-r-o and we're with Foley Fiore Architecture. And these are the homeowners Derek Frank and Mina Farouk F-a-r-o-u-k.

The property is at 15 Robinson Street. And I don't know if you're familiar with the street, but it's a mid-century street originally developed by Harvard. Some of the houses there are still owned by Harvard. Some have been sold, and that's the case here. This is in the package, but this is a photo of some photos from the street. On one side there are some larger apartment buildings owned by Harvard, and then on the other side are these smaller residential houses that were originally built for professor housing.

What we are seeking relief from today is relief from the rear setback which is this red portion here. It's 40 square feet that projects into the rear setback which is dashed here, continuing the existing infringement in line with the existing infringement.

When the house was built in the fifties, the setback was 20 feet. So it was conforming when it was built. But then in the nineties the setback was changed to 25 and it became non-conforming.

The other portions of the additions are shown in darker yellow, and those are as of right. The reason that we're requesting this relief in this portion as sort of three-fold.

There are functional reasons, economic reasons and aesthetic reasons. The functional reasons are that on the first floor it allows for a mud room area for

storage and shoes. On the second floor it allows for a second bedroom. And on the third it allows us to create a study for Derek.

The other functional reasons are that putting it in this corner allows us to continue an existing stair in the existing house. And that also sort of ties into the economic reasons which is we can continue the stair. And it also sort of isolates the construction in these two specific places which is more economical.

And then aesthetically what we tried to do is sort of keep this volume which goes up to the third floor to the rear of the property. There's kind of a nice rhythm on the street with all of these somewhat identical houses. And we wanted to be respectful of that. I think that just about summarizes.

CONSTANTINE ALEXANDER: And your

intrusion's about three and a half feet into the setback? Supposed to be 25 feet and you're about 21 and a half?

DAVID FOLEY: Yeah.

CONSTANTINE ALEXANDER: And no, as you point out, just to reiterate, no closer to the rear yard than the existing building already?

DAVID FOLEY: Correct.

CONSTANTINE ALEXANDER: Just running the line.

DAVID FOLEY: Yes.

BRENDAN SULLIVAN: There is a second means of egress out of the house now, is there not?

DAVID FOLEY: There is, yeah.

BRENDAN SULLIVAN: Which is I guess, and again, we're critiquing every architect here tonight so I might as well chime in.

DAVID FOLEY: That's all right.

BRENDAN SULLIVAN: One thing that we

like is existing and then proposed. That makes it a little bit easier for some of us to decipher exactly what's going on. I mean, you guys know what's going on and, you know, we can -- but I think it's somewhat easier if we get existing and proposed at some point going forward.

DAVID FOLEY: I do have those on the board here today if that is useful.

TAD HEUER: Sure.

BRENDAN SULLIVAN: Yes, if you can just quickly run through that.

DAVID FOLEY: These are all the existing floor plans. These are the comparable proposed floor plans. The existing second egress that you were just mentioning is right here. And this is the corner that we're filling in. Sorry.

BRENDAN SULLIVAN: Okay. So it basically just gets pushed forward.

DAVID FOLEY: Yeah, pushed forward

to this point. There's a bulkhead here now that we would be removing. And an overhang over this door. So we're pretty much just filling in that corner.

BRENDAN SULLIVAN: Okay.

And the only violation that I can see is the fact that the Zoning requirement changed on the rear, hence that in-fill is within the setback?

DAVID FOLEY: Correct, yes.

BRENDAN SULLIVAN: Again, as Mr. Alexander said, you're not extending the building in any way beyond the footprint. In a sense you're just squaring it off.

DAVID FOLEY: Correct.

BRENDAN SULLIVAN: Okay. And the height is five feet less than the max.

DAVID FOLEY: Uh-huh.

BRENDAN SULLIVAN: Okay. Any questions?

TAD HEUER: Who do you abut in the

rear?

DEREK FRANK: Do you remember their name?

CONSTANTINE ALEXANDER: Might it John Pratt?

DAVID FOLEY: Don't know.

The houses to the rear are -- they're sort of a berm in the back of the property and the houses to the rear are up a little bit and set kind of far back. So, the impact to them wouldn't be terribly significant. It's more the side people.

TAD HEUER: But the impact to them, and it's not just because of your addition, but not just because of the additional relief but that's where you're putting the height; is that right? You're putting the height in the rear --

DAVID FOLEY: It is.

TAD HEUER: -- the northwest corner?

DAVID FOLEY: The rear northwest

corner, yeah.

BRENDAN SULLIVAN: Okay. Any questions?

I'll open it public comment. Is there anybody here who would like to speak?

Yes. If you can introduce yourself again for the record.

VIRGINIA MEE-BURNS: Okay. I am Virginia Mee-Burns and I am the owner of the direct abutter 15 Robinson Street. And I, as a direct abutter, while I commend the design style of the proposed alterations for the house at 17 Robinson, I object to the large footprint and square footage increase that would result. The lot is only over a bit 5,000 square feet, but the four additional rooms proposed from what I saw of the plans would add over a thousand square feet to the existing house. It would increase the density of the neighborhood and reduce the setback and what is an already congested

area. And these houses were all identical originally. They were built by Walter Gokus (phonetic) himself. They were not just bits and tree houses. They are from my mind have some architectural interest.

BRENDAN SULLIVAN: The net add is a little bit less than 500 square feet, is that correct? The actual number is how many?

VIRGINIA MEE-BURNS: The plan I saw had a new -- another building, another large room.

BRENDAN SULLIVAN: Well, Ms. Burns, come and just --

DAVID FOLEY: This diagram shows the existing house, the light yellow. And these are --

VIRGINIA MEE-BURNS: Yes, I have one like it.

DAVID FOLEY: Oh, okay.

VIRGINIA MEE-BURNS: This is increasing the footprint. They made it

sound like there wasn't much, but....

TAD HEUER: But I think in fairness to them what they're saying there's not much that they can't do by right. So they can do everything on this chart that you see in yellow, they could do that without even coming to us. And they can certainly do the part over here without coming to us. But it's this part in the back corner that when they put it all together, they would need some relief from us in addition to what they can do on their own without any relief.

VIRGINIA MEE-BURNS: And there's no objection to the third floor?

BRENDAN SULLIVAN: They're within their right to do that.

TAD HEUER: They're within their right to go up. The only question is can they go out?

VIRGINIA MEE-BURNS: Yeah, I understand.

TAD HEUER: And it's can they go out all three stories, too? Not just can they go out --

VIRGINIA MEE-BURNS: Yeah, they are going out all three stories. And that bothers me a little, too, since I am within just a little over ten feet and I'll be looking up at that third story.

BRENDAN SULLIVAN: Okay.

There is correspondence in the file for Mr. John Pratt at 2 Gray Gardens East. "To the Board of Zoning Appeal, I have the impression that the importance of various viewpoints as sometimes thought to be validly measured by the amount of noise their adherents make or drum up. I consider this completely unreasonable. People differ greatly in their tolerance for searching out documents and attending meetings, and in many other activities they may reasonably wish or are obliged to engage in. In my case, a

disabled wife keeps me at home. I think the major purpose of the BZA is not merely to balance pressure groups, but to represent the interests of the public generally, including especially those who want to go on with their own lives and not spend time on Zoning matters. If I am preaching to the choir, as I hope I am, I apologize. When Harvard developed Robinson Road and Fernald Drive, it obviously obtained denser Zoning than comparable adjoining streets. For example, Bates and Garden Terrace. While it would be difficult and impossible to find out what representations or promises Harvard made, this is certainly a situation where one should be cautious about going beyond the already existing special deal, especially since the integrity of Bates, Garden Terrace and Gray Gardens East whose lots abut those on Robinson has been almost completely maintained. The two exceptions I know of

only strengthen my point since they were stuck in a way I would have hoped the BZA would discourage." John Pratt, 2 Gray Gardens East.

CONSTANTINE ALEXANDER: Mr. Chairman, I would note that Gray Gardens is not an abutter but an abutter to an abutter.

BRENDAN SULLIVAN: Correct.

TAD HEUER: But I would also note that even though he mentions that there are two exceptions, they're not indicated in his e-mail so we do not know what they are.

BRENDAN SULLIVAN: Right.

And that is the sum and substance. Anybody else wish to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: Seeing none, I'll close public comments.

Anything to add?

DAVID FOLEY: Well, I guess I can understand that -- and I'm sorry, I don't

remember your name.

VIRGINIA MEE-BURNS: Virginia Mee-Burns. We've been neighbors for years.

DAVID FOLEY: Yeah. That you would be the most concerned because you're the neighbor --

VIRGINIA MEE-BURNS: Ten feet away, third floor.

DAVID FOLEY: -- next door.

But I guess I would like to reiterate to you that we can by right do something, and our intention was to do the thing that was kindest to the street and least impactful. And so I mean if we can't do this, it does present some sort of hardship to the clients. We can come back with something else which I'm not sure would be an improvement. So, I would -- I guess I would request that you look and I think we have tried to maintain the spirit of the street in a reasonable way.

BRENDAN SULLIVAN: Have you had

conversation with her before?

DAVID FOLEY: We have not, no.

TAD HEUER: Did you reach out to your neighbors?

DEREK FRANK: I delivered a letter to all our abutters, and told them what we were doing basically and gave our contact information. And my wife actually met with our eastern abutters the Kauffman, and sort of went over the plans with them and sort of explained what we were doing and listened to their thoughts and concerns about. We have not spoken to Ms. Burns.

DAVID FOLEY: Perhaps the Kauffmans shared the plans with you.

VIRGINIA MEE-BURNS: No, I went down and got them. I did get the letter, but my -- this cat which is had been the inhabitant after my son moved out, died and I was kind of upset about that and the house was a mess because it was messy before he

died. So I certainly was not entertaining. My legal address is 107 Humboldt Street. I got this place for my mother. And since she died my two sons --

BRENDAN SULLIVAN: Mrs. Burns, would going over these for the next 15, 20 minutes be of any benefit to you at all, any help to you or not? Any further discussions with the owners? In other words, I guess what I'm saying is I could continue this matter if you wish to go into the other room --

VIRGINIA MEE-BURNS: No, I don't because my son is very grumpy in coming to get me and he would be hostile. Yes, if you have sons --

BRENDAN SULLIVAN: Obviously she has some standing. She has voiced an objection, that's all. Either you can reconsider, go back to the drawing board or go forward. I don't know if you want to talk

about it. Again, spend 10, 15 minutes or something. It's up to you.

DAVID FOLEY: Well --

BRENDAN SULLIVAN: You want to just huddle for a few seconds?

DAVID FOLEY: Sure.

DEREK FRANK: Sure.

BRENDAN SULLIVAN: I'll go to the next case and then we'll have you come back.

Sorry, Mrs. Burns, if we're prolonging this. I make a motion to continue this matter for a few moments until we hear the next case.

(Case Recessed.)

(8:35 p.m.)

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

BRENDAN SULLIVAN: The Board will now hear case No. 10065, 64 Linnaean Street.

ATTORNEY FRANCIS KELLEY:

Mr Chairman, members of the Board, for the record, my name is Francis Kelley. I work with SAI Communications. I'm here representing AT&T Mobility, New Cingular Wireless, LLC. Here with me is Mark

Verkennis with Harvard planning.

BRENDAN SULLIVAN: Just a couple of pro forma things, Mr. Kelley before we proceed. I just want to establish the fact that you are representing New Cingular which is AT&T Mobility.

ATTORNEY FRANCIS KELLEY: AT&T Mobility.

BRENDAN SULLIVAN: That they are a licensed carrier granted by the FCC? Yes to that?

ATTORNEY FRANCIS KELLEY: Yep.

BRENDAN SULLIVAN: And that the license is in the file with the Federal Communication Commission radio authorization and the appropriate designation?

ATTORNEY FRANCIS KELLEY: Right.

BRENDAN SULLIVAN: That, the next thing would be whether or not this is what's listed in a Residence C-2 Zone, and we have

to make findings that residences are not predominant in the area in order for us to proceed or we have to go down another avenue. So your contention would be?

ATTORNEY FRANCIS KELLEY: It's an institutional area. It's -- the building is Gilbert Hall on the Radcliff Quadrant of Harvard University. The majority of the uses surrounding the site are institutional uses associated with the college.

BRENDAN SULLIVAN: Okay, and for the record --

ATTORNEY FRANCIS KELLEY: Also for the record, this is -- the use has already has a telephone exchange for A&T was already approved in the original Special Permit which was granted last February.

CONSTANTINE ALEXANDER: The reason we granted this the last time, and in large part was for safety reasons for the Harvard students because of a problem in

communicating with the students when an incident occurred. Are you having trouble providing that communication? Why the need for the new antenna?

ATTORNEY FRANCIS KELLEY: The new antennas are for capacity issues.

CONSTANTINE ALEXANDER: So it's beyond the reason that you came before us before?

ATTORNEY FRANCIS KELLEY: Well, no. If, if the station goes beyond capacity, it results in dropped calls. So, it's to increase the capacity. It's basically the -- the network has a much bigger impact now with all the communications and data with the iPhones and the plug-ins for the PC's. If you get beyond the capacity, then it results in some dropped calls.

CONSTANTINE ALEXANDER: But it's a burden on the system is not just from Harvard students? It's the community around the

neighborhood if you will at large.

ATTORNEY FRANCIS KELLEY: Correct, yeah. And, you know, the other reason that we're beyond capacity is this is of the 4G rollout. They call it LTE. So it will also improve the speed of the data transmission. It will take -- it will take some capacity off of the system, the voice and data system that's existing there to help prevent dropped calls because of the capacity.

CONSTANTINE ALEXANDER: When did we give you Special Permit?

ATTORNEY FRANCIS KELLEY: It was February 10th last year.

CONSTANTINE ALEXANDER: What I'm trying to find out is did you miscalculate how much you needed? Or is this another case where we're getting a little bit at a time and we weren't given all the facts the first time?

ATTORNEY FRANCIS KELLEY: I don't know whether they were originally trying to

get more antennas at that time or not. I wasn't involved with it. But the original Special Permit was for six antennas, and there were two antennas within a false chimney. There were two antennas behind a false wall, and there were two antennas on separate mounts that were flush mounted to the penthouse of the building on the corner.

CONSTANTINE ALEXANDER: Right.

ATTORNEY FRANCIS KELLEY: And the -- what we're planning on doing is putting one antenna inside the stealth chimney, one antenna inside the -- behind the false wall. And then taking the two separate mounts that we have on the penthouse where we have antennas painted to match, taking one of those antennas, putting it on a double mount on the existing mount, and then putting a new antenna on the current existing mount. So, we're trying to limit.

CONSTANTINE ALEXANDER: Let me ask

that question a different way. Why didn't you anticipate this in February when we granted the relief? So soon all of a sudden you need more antennas?

ATTORNEY FRANCIS KELLEY: Well, you know, when you look at how soon it is, when they did their initial design for that, it was probably substantially before that. And so I know they originally were trying to go to a different location within the quadrant to serve it and the building had to switch over. So, you know, so it was probably a couple years ago. And, you know, there's been a lot of advances with new technologies that have a -- take up a lot of capacity.

BRENDAN SULLIVAN: When did the 4G come online?

ATTORNEY FRANCIS KELLEY: It's not online. It's not online yet.

BRENDAN SULLIVAN: This is going to be for that?

THOMAS SCOTT: Is that what's driving it?

MARK VERKENNIS: Not to speak for AT&T, but it is technology driven. I mean, I was equally surprised to see that they were coming back already for a change.

BRENDAN SULLIVAN: Right. But my understanding, I didn't sit on that case, but my understanding was when the first application to the Hilles Library and that was not met favorably, so it might have been that same capacity. It was basically Harvard driven that needed to get something in that quadrant very quickly because of some assault cases or something and that they felt that --

MARK VERKENNIS: We had no coverage.

BRENDAN SULLIVAN: That Harvard tried to do it, and they just did not have the capacity for it. So consequentially AT&T was contacted because of their system, and

that they needed something quickly. Hilles Library was their first locust of choice. That was not met favorably. Hence that package was then tried to be put where can it go? And then it was settled on this particular building. And that was, and I think if I -- correct me if I'm not right, was that that whole process probably started some 18 months prior to that, I believe. And the previous case in last year was the result of that which was started earlier to get something online, on board quickly.

ATTORNEY FRANCIS KELLEY: Yeah, and I think what they actually put a temporary --

TAD HEUER: They put a cell on wheels there.

ATTORNEY FRANCIS KELLEY: A cell on wheels just in the interim to get something --

BRENDAN SULLIVAN: Because it was a safety issue and it was quite lacking and it

was a dangerous situation actually.

TAD HEUER: My question deals with gamma sector, and it deals with the externally mounted antenna. And I did sit on the previous case, I don't know why I didn't ask about it then but I'm asking now. In the gamma sector you have the existing penthouse which has, for alpha sector internally mounted antennas. And then you have externally mounted antennas on a penthouse. Is there a reason that those weren't internally mounted? Is that because that's not a fiberglass --

MARK VERKENNIS: That's actually a brick.

TAD HEUER: That's a brick wall?

MARK VERKENNIS: That's the originally building mechanical.

ATTORNEY FRANCIS KELLEY: Right.

TAD HEUER: Right. I guess I --

ATTORNEY FRANCIS KELLEY: I think

that's a function of you can't -- with the direction that that sector has to face, you can't just remount it. It's just -- you know, unless you'd have to transmit through the existing --

TAD HEUER: I understand that.

So this one on the south -- no, sorry. West side of that penthouse, that's the dual mount on the single pipe?

ATTORNEY FRANCIS KELLEY: Well, right now, this is the after. But right now there's currently an antenna on each one of those. So what we're doing is we're going to take the existing one and put it up next to the other existing one because they're similar technology. And we're going to put the new one on the old mount.

TAD HEUER: On the north face?

ATTORNEY FRANCIS KELLEY: And if you look at the view shed on it, the picture two is probably the one that has the most impact.

If you're looking down Garden Street towards the, towards the edge of the building, that's the, that's the biggest impact visually. You know, from Bond Street, because the building penthouse is setback from the edge of the rest of the building by quite a ways, you need to get quite a ways down Bond Street before you can see it. And by then it looks so small that it's not really that visible. So those are the only two sector parts that you could, you could see it from was looking I think south on Garden and looking across and to the dead end of the building on.

CONSTANTINE ALEXANDER: I must say I was rather disappointed with your photo simulations. I mean, they're taken at such a great distance. You could put the Eiffel Tower on there and it would look like it's inconsequential.

ATTORNEY FRANCIS KELLEY: Well, I think part of the reason is because they're

setback, the penthouse is setback a little bit. So you do have to get away from the building a little bit to see them on it. But we're going to have some other ones --

CONSTANTINE ALEXANDER: In the past you've given much better photo simulations than these. I really had a lot of trouble coming to grips with the visual impact.

BRENDAN SULLIVAN: Yes, I mean down Bond Street you'd have to -- it's really not that close to Bond Street.

CONSTANTINE ALEXANDER: No, Garden Street.

BRENDAN SULLIVAN: Garden Street. Garden Street at the driveway to the observatory, you know, you're really looking at it at that point.

ATTORNEY FRANCIS KELLEY: Right.

BRENDAN SULLIVAN: But at that point you're looking at the red lights.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: To be honest with you or the green light.

CONSTANTINE ALEXANDER: Actually the folks from Garden Terrace have the best view of all.

BRENDAN SULLIVAN: Yes. And living on Garden Street the point on that, to be honest with you, until this application came I didn't know those antenna were up there. I thought they were more down Linnaean Street than they were there.

Do you still have a question pending?

TAD HEUER: Is there a reason they're not all on the same side of the building? Is there a reason they're not all on the north face?

ATTORNEY FRANCIS KELLEY: The antennas?

TAD HEUER: Yes.

ATTORNEY FRANCIS KELLEY: For that sector?

TAD HEUER: Yes, for gamma sector.

ATTORNEY FRANCIS KELLEY: Why they're not on the same face?

TAD HEUER: Yes, why aren't they all --

ATTORNEY FRANCIS KELLEY: Well, the reason they're not all on -- they weren't on the same face with the last decision. So we're reusing one of the existing --the mounts that was approved in the last decision. We thought it would have the least visual impact if we reused a double mount because it would reduce the amount of square footage that's taken up on it, and so we wanted to reuse the mounts that were approved before that were existing.

TAD HEUER: Is there a reason you can't have a distributed antenna system on this building or build one out particularly if Harvard is so interested in having cell coverage?

ATTORNEY FRANCIS KELLEY: You know, we've got an existing system there --

TAD HEUER: I know. That's the problem.

ATTORNEY FRANCIS KELLEY: With --

TAD HEUER: I wanted it better than the existing.

ATTORNEY FRANCIS KELLEY: I know they've looked at that and they've done some of them. I'm not the radio frequency engineer.

BRENDAN SULLIVAN: Is that all in our future though?

ATTORNEY FRANCIS KELLEY: I don't think it is. I think, I don't -- you know, Cambridge has enough density where you can -- it has more chance of being able to do it, but it's, it's with the modern capacity that -- I'm not the correct person to be answering this.

MARK VERKENNIS: Neither am I.

ATTORNEY FRANCIS KELLEY: It would be the radio frequency --

BRENDAN SULLIVAN: Just what you picked up.

ATTORNEY FRANCIS KELLEY: I know the places that where it can work are areas that have dense build up. But I also know that there's -- the amount of capacity that's taken up and is expanding continuously by the amount of information that's coming through now. With the new system, with this 4G, it will be comparable speeds as a cable modem. So it will give people the opportunity to maybe give up their internet tie-in and just get a card for -- you know, there's some benefits to it with the 4G stuff. It's very, very fast.

BRENDAN SULLIVAN: All right. Any other questions?

TAD HEUER: Is Harvard looking to put antennas on other buildings?

MARK VERKENNIS: We're not. I mean, I can't speak for our university information system, but I do know that they're looking at the more, a repeater system within buildings. And I think that's probably what you're going to see more of. And what I understand, and again, I'm not speaking for AT&T or the cellular technology, but this is a technology change and this is what people expect to use. And it's not -- I never claimed that the driver, certainly from Harvard's perspective, is our emergency notification, but that is how people are going to be -- they're going to move to the next technology, and the next technology is 4G. So I mean we're kind of caught here. I mean, that is -- that's where we were a year ago with people requiring AT&T service because they all had iPhones and no one had AT&T service in the Quad.

TAD HEUER: Right. One of the

reasons I ask is that it seems that when we have other providers come in looking at sites, and they say well, I looked at all the sites, but these are all the sites that available. And we say did you look at this Harvard building, which seems like it's perfect. They say Harvard wouldn't talk to us about this. So it seems like Harvard picks the buildings that are most viable to it, like this one here, but we have a situation, you know, and I'm thinking of 1558 Mass. Ave. where I think they looked at buildings directly across the street from the law school. So right across the law school, Waterhouse and Mass. Ave. They were looking -- I think it was AT&T. Was looking to put antennas on the roof of that residential building. And we asked them where else did you look? And they said we looked at two other large residential buildings there. It would seem that Town

Hall would be a potential site or the new Washerstein or some of these other buildings, but those seem to be out of bounds for folks. And while I do recognize them, I'm not sure I'd want to see cell antennas on William James. It's a pretty tall building. It would reduce the need of putting a lot of antennas elsewhere. And it seems -- I'm just a bit concerned that Harvard wants those capacities for the many faculty and students and staff it has in the area that isn't quite willing to contribute its buildings unless it's only in its own interests.

MARK VERKENNIS: Again, I'm not the person to speak to that. But I will certainly relay that message to UIS because I think that is something we need to understand as well. And I don't know what agreements they have with various carriers.

BRENDAN SULLIVAN: I think their interest would have to be served first and

ancillary to that would be also, you know, the public sort of piggy back onto it also.

TAD HEUER: I here that mobile companies usually pay.

MARK VERKENNIS: It's -- yeah, but I don't want anyone to think that Harvard is making money.

TAD HEUER: I know.

MARK VERKENNIS: This is not a revenue enhancement for the university.

BRENDAN SULLIVAN: Okay. Let me open it to public comments. Is there anyone here who wishes to speak on the matter of 64 Linnaean Street?

(No Response.)

BRENDAN SULLIVAN: I see none. There are no letters in the file. I will close public comments. Any --

CONSTANTINE ALEXANDER: No, we bit the bullet on this one already in terms of granting relief before. The relief to my

judgment being sought now is not great and it is not a big leap forward in terms of visual impairment. Most of the antennas are going to be inside the stealth chimneys and penthouse. There is a need for it. Again, I would be a little -- I'd like to see less visual impact demonstrated from the photo simulations, but you don't have that. But I think I'm okay. I think the findings we made last time apply to this case as well.

BRENDAN SULLIVAN: Tom, do you have any comments?

THOMAS SCOTT: No, all set.

BRENDAN SULLIVAN: Any more probing questions at all?

TAD HEUER: No.

BRENDAN SULLIVAN: I make a motion to grant the relief requested.

The Board finds that we make a motion to grant the relief requested, which is a proposal to alter the telecommunication

facility approved by a Special Permit, case No. 9874 with the addition of three antenna.

One new antenna's proposed to be mounted inside an existing screen wall that currently houses two antennas.

The second antenna is proposed to be mounted inside a false chimney which currently houses two antennas.

The third antenna is proposed to be facade-mounted on an existing mount but currently has one antenna.

The existing antenna will be relocated on a dual mount which allows both antennas to be mounted next to each other.

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.

The Board finds that the continued

operation of development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

There would not be any nuisance or hazard created to detriment to the health, safety, welfare of the occupant of the proposed use or the citizens of the city.

And that the proposed use would not impair the integrity of the district in which it is located.

The Board finds that the visual impact will only have a slight wider antenna on the existing mount, and that the two existing antennas would be mounted to each other.

The facility is located on the campus of Harvard University, and the signal covers an important section of the campus. Harvard utilizes cell phones as part of an alert system to communicate with students. Additionally, the installation will allow

for an upgrade of the signal to AT&T's 4G system known as LTE. This will allow for an increased speed and capacity for data transmission which is important to the students and other residents who utilize AT&T's network. The increased data capacity will take a load off the network, reducing the probability that calls on the emergency alert system will fail.

The Board has found that the Petitioner is a licensed FCC carrier and the license is in the file.

The Board also finds in this particular case, as in the previous case, a non-residential use is predominate in the vicinity of the proposed location.

And the Board finds that the work proceed in accordance with the plans submitted by the Petitioner and initialed by the Chair. And also that the photo simulations be part of the relief being

granted.

Also that the -- and should the facility be abandoned or not used for a period of six months, the facilities be removed and the building be restored to its prior condition to the maximum extent possible.

That the Petitioner may replace or repair the facilities provided that the replaced facilities fit the same footprint as the existing ones, and also the proposed and the visual impact is no different and no more adverse than those shown in the above photo simulations.

CONSTANTINE ALEXANDER:

Mr. Chairman, I think in more recent telecom cases than that one, don't we have a requirement that the Petitioner must also maintain the facility? Maybe you've covered it, I may have missed it. Maintain the facilities and keep them --

MARK VERKENNIS: Repair and --

CONSTANTINE ALEXANDER: -- keep the visual impact.

ATTORNEY FRANCIS KELLEY: Make sure they're painted to match.

CONSTANTINE ALEXANDER: Add that to the motion if we don't already have it.

BRENDAN SULLIVAN: That the carrier be required to maintain the facility in the proper manner.

CONSTANTINE ALEXANDER: To the visual impact is no different than is shown on your photo simulations.

BRENDAN SULLIVAN: Okay.

And that the proposed use is not inconsistent with the urban design objective set forth in Section 19.30 of the Ordinance.

All those in favor of granting the Special Permit?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer, Scott,

Firouzbakht.)

(9:05 a.m.)

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

BRENDAN SULLIVAN: Okay, let me reopen case 10064, 15 Robinson Street. Mr. Foley.

DAVID FOLEY: Well, we've discussed in the other room, and Mina and Derek would love to sit down and meet with you as neighbors just as they did the Kauffmans and discuss the design and hopefully make you feel good about it.

VIRGINIA MEE-BURNS: My lawyer had another objection, but I couldn't figure out what it is and I don't know if it's valid or not. But, it just was an incredibly inconvenient time. I just had an indication before the Zoning Board and I've had an ill

cat and I've been sick and I've had a lot of other problems.

DAVID FOLEY: I understand.

BRENDAN SULLIVAN: Well, I mean, you can continue it if you want. Possibly you come back to us and say that it's not possible. You tried or whatever. And you could then proceed forward or you can just proceed forward now.

DAVID FOLEY: I think we would -- on the other side Mina and Derek have a newborn that they're anxious to get out of their very small apartment and they would like to move ahead. So we would like to proceed today.

BRENDAN SULLIVAN: Okay. Any results of the huddle session, mending changing or plan as proposed?

DAVID FOLEY: Plan as proposed. And I guess I would like to reiterate that we tried to be sensitive to the neighborhood and feel okay about where we are with the design.

BRENDAN SULLIVAN: Okay. Any questions by the Board?

CONSTANTINE ALEXANDER: My comment would be I'm in favor of the relief. I think the relief being sought is quite modest and it comes basically from a really inequitable situation. The structure was built in compliance with the Zoning By-Laws. The law got changed on you, put you out of compliance. You're not increasing that non-compliance. It strikes me as the kind of situation where we should be granting relief. I think you meet the requirements for a Variance.

THOMAS SCOTT: And the relief requested is in back of the house and, you know, the three-story addition that is also at the back of the house and has no great impact on the street facade and I think that's an important issue that you've addressed and I think it's commendable for the neighborhood.

TAD HEUER: I agree. I think that one other factor when I at least look at the schematic, it looks like the front portion of the house, that's a deck area; is that right?

DAVID FOLEY: Yes.

TAD HEUER: On the second floor?

DAVID FOLEY: Yes.

TAD HEUER: That, you know, even if we didn't grant relief, I would imagine that a by right solution could be created by moving part of that three-story structure three feet forward into that deck area, I think it would create possibly, you know, more hardships than are necessary. Where it was mentioned the stair would be continued, without significantly advantaging the public. Instead it would be moving essentially the same massing several feet closer to the street, which I think is not in the public interest. And it would still create the same amount of massing as would be under this

proposal for the abutting neighbor. So I don't think the abutting neighbor would benefit from a redesign which I imagine would be pulling that structure out of the non-conforming area into the conforming area. It would be swapping three feet on one side for three feet on the other. I don't think it would be advantageous result from requiring the Petitioner to do that.

BRENDAN SULLIVAN: Okay. Mahmood.

MAHMOOD FIROUZBAKHT: I would echo what Ted just said. As of right, with the impact of the as of right is almost the same as what's being requested for and what's requiring relief. And in that regard, I think the relief being requested is appropriate given the project and location and I would be in support.

BRENDAN SULLIVAN: Let me make the motion then to grant the relief requested which is to build two additions as per the

plans submitted.

BRENDAN SULLIVAN: One thing in the future, there was a pleading form that we ask you to use rather than a generic. Are you familiar with that other form?

DAVID FOLEY: No, I guess not.

BRENDAN SULLIVAN: You don't have a copy there, do you?

SEAN O'GRADY: Which form are you talking about?

CONSTANTINE ALEXANDER: They give the justifications why they need a Variance.

BRIAN BORDONARO: I think there wasn't an enough room to write it all in.

BRENDAN SULLIVAN: It's a pretty good sized form. It should be in the packet.

DAVID FOLEY: Is that what you had? I think maybe we just need to be less verbose.

BRENDAN SULLIVAN: We're beating up on architects tonight. Okay.

DAVID FOLEY: Thank you.

(Whereupon, at 9:10 p.m., the  
meeting adjourned.)

**C E R T I F I C A T E**

**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a  
Certified Shorthand Reporter, the  
undersigned Notary Public, certify that:

I am not related to any of the parties  
in this matter by blood or marriage and that  
I am in no way interested in the outcome of  
this matter.

I further certify that the testimony hereinbefore set forth is a true and accurate transcription of my stenographic notes to the best of my knowledge, skill and ability.

**IN WITNESS WHEREOF**, I have hereunto set my hand this 11th day of February 2011.

---

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

My Commission Expires:  
April 23, 2015

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