

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
APRIL 14, 2011 7:15 P.M.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Brendan Sullivan, Chair

Constantine Alexander, Vice Chair

Timothy Hughes, Member

Tad Heuer, Member

Thomas Scott, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:15 p.m.)

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

BRENDAN SULLIVAN: We'll call the meeting of the Board of Zoning Appeal of April 14, 2011 to order. The first order of business will be case No. 9642, the Cambridge Affordable Housing Corporation, Temple Place.

ATTORNEY PETER FREEMAN: Thank you. Good evening, for the record, Peter Freeman, Freeman Law Group representing CAHC the permit holder. I won't go into a lengthy detail about the history because I think you're aware of it, but just very briefly, the comprehensive permit for the 42-unit affordable development on Temple Street -- Temple Place was granted in 2008. There was an appeal by abutters, and some of

the principals are here tonight just so that you know that, and their Attorney Barbara Huggins is here. And so, because of the litigation, that's why the project hasn't proceeded as of yet. At one point about a year after the initial permit, we came back thinking that by moving the building further away from the abutting property owner that that might help a settlement. It didn't work at the time, but we got your approval as a minor modification, an insubstantial modification under the 40(b) regulations to move the building at that point four feet further away from the Rink Realty property. And that was approved, and then we continued unfortunately in the litigation path. But happily we have reached a settlement. And your attorney was privy to it and signed only as to the procedural law aspects understanding that Council certainly cannot bind the Zoning Board to agree to the change.

What we worked out with the abutters, and we are grateful for that, is that we would move the structure yet again three more feet further away from their property line so that when it was initially approved, it was only four-tenths of a foot away, then it moved to 3.4 feet away, and now if you approve this change, what has been agreed to by all of us, all parties, is that it will be 7.4 feet away. So we believe in the same spirit for the same substantive reasons under the regulations that we went through about a year and a half ago in the year 2009, that this is an insubstantial change. The regulations clearly call for minor site changes or even building changes to be considered insubstantial, therefore, don't require a public hearing.

So we submitted the plans, and there are a couple of other things that ISD asked for, that we submitted, including the dimensional

form and a plan that our architect, and she is here, Laurie Coles (phonetic), yet from the architectural firm, created and submitted.

And so in a nutshell, we believe that No. 1, it's wonderful news because it settles the litigation and this much needed affordable housing development will be able to proceed.

And No. 2, fortunately it really -- objectively we believe that absolutely it's meritorious of being viewed as an incidental change.

The only other thing that I don't think was in the package was the YWCA is presently the owner as you know, and they were signatory to the settlement agreement, but just to reinforce the fact that they are a hundred percent on board, I did have the director Eva Martin Blythe (phonetic) sign a letter to that effect, and I have a few copies to submit

through one of you. Thank you.

So, I don't really feel the need to elaborate more. We do have, as I said, Laurie Coles and the plan on boards if you want it to be explained, but I think I'll just stop and see if you have questions.

Thank you.

BRENDAN SULLIVAN: Just a little pro forma stuff, Counselor. I just want to make sure that the Applicant is still a public agency and a non-profit organization.

ATTORNEY PETER FREEMAN: Yes, it is. And by the way, John Woods from Cambridge Affordable -- from the Housing Authority and the corporation is here with any specific questions. But yes, it is.

BRENDAN SULLIVAN: That the project shall be funded by a subsidizing agency, and that the funding is still in place?

ATTORNEY PETER FREEMAN: Yes, that is correct.

BRENDAN SULLIVAN: And that the Applicant controls the site, and that there is no change in the number of units that were originally proposed?

ATTORNEY PETER FREEMAN: That is correct. Yes, and that's again, one of the reasons I brought the letter from Eva Mark Blythe from the YWCA. And I actually neglected to mention that we had submitted the Affidavit from George Metzker (phonetic), the principal from the architectural firm that basically goes into a little more detail as to there are no other changes precipitated by this shifting of the building.

CONSTANTINE ALEXANDER:

Mr. Freeman, along those lines, I mean, that Affidavit, which I've read, compares the relief you're seeking tonight to the project as modified per our last time we met. It seems to me in terms of measuring -- whether

it's an insubstantial change, it's cumulative. You've got to go back and look at the two changes together and whether this is really enough to tip it. So we're really talking about a seven foot moving of the building back. But that being said, there's still the 42 units, we're not changing the number of units?

ATTORNEY PETER FREEMAN:

Absolutely.

CONSTANTINE ALEXANDER: And the only effect of moving it is simply just to move the building closer to the YMCA building?

ATTORNEY PETER FREEMAN: Correct.

CONSTANTINE ALEXANDER: And YMCA has no problem with it? And you're still going to have about 25 or 29 feet of space between the two?

ATTORNEY PETER FREEMAN: It's still a decent amount.

Laura, do you know offhand the amount?

LAURIE COLES: 29 feet.

CONSTANTINE ALEXANDER: 29? Thank you.

ATTORNEY PETER FREEMAN: You know, I can't cite any case law or precedent and so I will respectfully say that's a rationale position. I'm not sure whether you should look at it cumulatively. But the good news is I don't think it causes a problem, because I would still submit that I think it is for other reasons just discussed, still an insubstantial change. Especially with the only party objecting to the proximity of whatever distance being these neighbors who now thankfully, and we appreciate it, have, you know, agreed to this.

Thanks.

CONSTANTINE ALEXANDER: Thanks.

BRENDAN SULLIVAN: Okay, good. We'll hold you off for a minute.

Do you wish to say a few words?

ATTORNEY BARBARA HUGGINS: Thank you, Mr. Chairman. I agree with Mr. Freeman's summary of the proceedings.

CONSTANTINE ALEXANDER: Could you identify yourself, please?

ATTORNEY BARBARA HUGGINS: Oh, certainly. I beg your pardon.

My name is Barbara Huggins and I represent Bank Realty in this matter.

I agree with Mr. Freeman's summary of the proceedings, but I do want to point out the distance between the property and the boundary and the building is -- I don't believe it's going to be 29 feet.

ATTORNEY PETER FREEMAN: They were asking about to the Y --

CONSTANTINE ALEXANDER: To the YMCA. Not your client.

ATTORNEY BARBARA HUGGINS: To their building? Okay.

CONSTANTINE ALEXANDER: Yours is seven feet, four inches.

ATTORNEY BARBARA HUGGINS: That's correct. So I'm glad that's been clarified, Mr. Chairman, unless my clients --

BRENDAN SULLIVAN: Thank you. Appreciate that.

For the Board's information I have requested an updated dimensional form showing that -- the proposal actually brings the building into greater compliance with the Ordinance. That the Ordinance requires a 23.3 space between buildings, and that this additional foot will bring the building to 28 feet. So that brings that into compliance. The distance from lot line is still obviously out of compliance, but it's part of the relief that was granted.

One of the criteria that the Board must consider under 760-CMR-56.074 is the following matters generally will not be

substantial changes. A reduction in the number of housing units proposed. There is none.

A decrease of less than ten percent and the floor area of individual units. And there is none on this.

A change in the number of bedrooms within the individual units by more than ten percent, and there is none.

A change in the color or style of the materials used. There is no change.

ATTORNEY PETER FREEMAN: That's correct.

BRENDAN SULLIVAN: A change in the financial program in which the Applicant plans to receive the subsidy, and if the change affects no other aspects of the proposal. And there's no other change in the financing.

So they have met all the criteria under the guidelines under 760-CMR for a not

substantial change to the proposal.

Nothing to rebut? Nothing to --

ATTORNEY PETER FREEMAN: No. And we -- I'm glad we clarified. Sorry I was confusing. The only thing which I think makes it even more understandable that we view it as minor. At the tallest part of the building has always been not a close as the garage portion that's closer to the abutters, and so that is also being shifted yet again this extra four -- I'm sorry, three feet. And I couldn't find the detail exactly, but it's probably about 20 feet or something away. So, again, that just adds to the fact that we're moving in the right direction but not enough to be anything more than insubstantial.

BRENDAN SULLIVAN: Okay. Any questions by members of the Board at all?

Let me make a Motion then to grant the relief requested -- I'm sorry, that the

proposed changes do not constitute a substantial change to the plan originally submitted, and to the revisions to the plan in the previous decision.

The Board finds that the Applicant does meet the criteria for a not substantial change under 760-CMR-56.07 paragraph 4. And as such, that the action by this Board does not require any further public hearing.

The Board is in receipt of a revised dimensional form, a revised plot plan, which will be initialed by the Chair.

On the condition that the work proceed in accordance with the original plans, the amended plan, and these amended plans of this state.

All those in favor of granting the relief requested for not finding a substantial change?

ATTORNEY PETER FREEMAN: Is there a second first?

BRENDAN SULLIVAN: What?

ATTORNEY PETER FREEMAN: The Motion, did somebody second?

BRENDAN SULLIVAN: We don't.

CONSTANTINE ALEXANDER: We don't do that.

ATTORNEY PETER FREEMAN: Sorry. Keep my mouth shut. I'm sorry.

BRENDAN SULLIVAN: Okay, it's done.

ATTORNEY PETER FREEMAN: Thank you very much. As always, appreciate it.

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

(7:30 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10024, One Percy Place.

Is there anyone here on that matter?

(No Response.)

BRENDAN SULLIVAN: I see none.

The Board is in receipt of correspondence from Kate Anderson and John Flax, being represented by attorney James Rafferty.

"Please accept this correspondence as a request on behalf of the Petitioner to withdraw the above-captioned case."

All those in favor of accepting the withdrawal?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes, Tad, Scott.

(7:30 p.m.)

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

BRENDAN SULLIVAN: The Board will
hear case No. 10053, 17 Lakeview Avenue.

Is there anybody here interested in
that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in
receipt of correspondence dated April 6th
from Adams and Rafferty. "Please accept
this correspondence as a request on behalf of
the Petitioner to withdraw the
above-captioned case."

All those in favor accepting the
withdrawal?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(7:30 p.m.)

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

BRENDAN SULLIVAN: The Board will
hear case No. 10051.

Is there anyone here interested in that
matter?

CONSTANTINE ALEXANDER:

Mr. Chairman, I don't think we can hear that
case yet. That case was -- when they
modified the advertisement, they left the
8:15 p.m. time.

BRENDAN SULLIVAN: Oh, okay.

CONSTANTINE ALEXANDER: So, I don't
think we can hear that case until 8:15.

BRENDAN SULLIVAN: Okay.

(Case Recessed.)

(7:30 p.m.)

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

BRENDAN SULLIVAN: Okay, we're all settled in.

The Board will hear case No. 10074, 7-9 Foch Street.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman. For the record, James Rafferty on behalf of the Applicant. Seated to my right, Ms. Susan Kale K-a-l-e. Ms. Kale is the owner of the subject property which is a two-family house located on Foch Street in the Residence B District. Ms. Kale's architect is present. If he could give his name and the spelling of his last name.

DAVID TAYLOR: David Taylor

T-a-y-l-o-r.

ATTORNEY JAMES RAFFERTY: Ms. Kale lives in this home with her daughter. She is a lifelong Cambridge resident who is looking to remain in the city. She is a police officer here in town, and her daughter has certain requirements that we could go into that led her to look at creating a living space on the third floor. So the proposal does involve additional GFA. The scheme that Mr. Taylor has come up with involves raising the roof of the structure to create adequate living space on the third floor. The slope of the roof is -- the pitch is rather low. There had been an effort initially to look at dormers here, and the dormer remedy really wasn't too successful in terms of trying to achieve this.

So, after reviewing the matter with the staff at the BZA, and seeing that the dormers

as proposed, were not adequately consistent with the dormer guidelines, Mr. Taylor and Ms. Kale made the conclusion that they would seek the relief in the form of GFA and raising the roof.

The hardship is related to the lot itself. It's a slightly undersized lot. It's only about 3800 square feet. The house presently is a somewhat conventional two-family house on the smaller side. It's about 2100 square feet. And that's living space in each apartment at somewhere around 900 square feet when you back out the common areas, and for -- to accommodate her growing family, Ms. Kale is looking to be able to stay in this property and create the two bedrooms on the second floor.

BRENDAN SULLIVAN: Raising the roof approximately what, two foot, nine inches or so, is that correct?

DAVID TAYLOR: Yes.

BRENDAN SULLIVAN: And the reason for raising the roof, other than obviously getting some additional space, is there access to the attic now at all?

SUSAN KALE: Yes, sir. That presently is where the two rooms are. The two -- there's one extremely small bedroom on the second landing of that property. And on the third floor there's an extremely small bedroom that I couldn't fit a bed for my daughter, and a dresser. And the other room it's just dormers so the headroom is inadequate to put any type of furniture that would allow you to move about comfortably.

BRENDAN SULLIVAN: And I noticed that the stairway --

SUSAN KALE: And the stairwell also presents a problem as well. It's extremely steep. It's extremely narrow.

And may I please just give a little background relative of why this is so crucial

for myself and my family?

BRENDAN SULLIVAN: Sure.

SUSAN KALE: I grew up in Cambridge. I've lived here my entire life. As you know, I'm employed by the City of Cambridge. I'm starting my 19th year with the City of Cambridge as a police officer. I'm extremely vested in the community. I enjoy working here. I enjoy living here. I currently reside at No. 5 Foch Street with my sister. And at the present time, I only have four rooms. And two years ago I was very fortunate enough to adopt a little girl from Russia. And she is just incredible. She's adjusting very well. But right now she's with me at present. So this is one of the reasons why I purchased that property, to give her an adequate bedroom. It was just ironic that that property became available. Due to the fact of being a single parent, my sister helps me with child care. And due to

scheduling, you know, I need her in the morning to drop off Lexie and sometimes pick her up. When I purchased the property, I knew it wasn't an ideal property just due to the fact that I previously had been in there, and there was an elderly woman that had lived there and there was no renovations done. And it's just extremely difficult to climb those steps especially for her, she'll be three in May. So I need to fix that. And I need to have her on the same level as myself. She does have a little bit of anxiety due to the fact that I adopted her 15 months and she's from an orphanage. So there's a lot of issues relative to that. So with this house being purchased, I need to have adequate space for both of us to reside there.

In addition to that, my parents who live on Rindge Ave., they have elderly. My dad's experiencing a lot of health issues, and at some point I know if somebody passes,

unfortunately that my mother who enjoys going to 2015 Mass. Ave., the senior center, that would be a perfect place to put her on the first floor because she can take the bus and continue her social activities.

So it would be a family property, and just due to the dynamics it worked out perfectly that it became available.

Unfortunately it's not habitable to the point where we would be comfortable for us to reside in. That's why it's really important if we can get this Variance we can stay in the city. And like I said, I'm totally committed to this city. I volunteer here, I work here, and I live here, and I do need the support system which just by luck is next-door to me. So that's why it's so essential to get this Variance.

And we have looked previously at dormers, and they had exceeded the requirements from the city. So this was the

only other option that we could feasibly explore to make the property habitable for us to live comfortably.

TAD HEUER: Mr. Rafferty, can you speak on a procedural matter to whether these properties were merged?

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

TAD HEUER: Whether these properties have merged.

SUSAN KALE: No.

TAD HEUER: Were they taken under the same ownership? Because the only reason I ask is I'm looking at the distribution of the abutter notices, and this property is indeed owned by both Susan and Carol, it appears that 5 Foch Street is also owned by Susan and Carol which would constitute a merger. Is there a reason to doubt that that happened?

ATTORNEY JAMES RAFFERTY: I have no

understanding of the title, so I apologize.

SUSAN KALE: That did not happen. It was just purely due to the mortgage. There was a glitch with the credit, and both of us had to be put on the existing property.

TAD HEUER: But who's the -- can I have the file?

I'm seeing record title listed as notarized in the name of both.

ATTORNEY JAMES RAFFERTY: It's my understanding that this property is owned by both. I didn't have an understanding of the next--- door the ownership.

TAD HEUER: I didn't either until --

ATTORNEY JAMES RAFFERTY: The next-door property.

TAD HEUER: Mr. Chairman, I would submit that if this is indeed a merged property, we have a procedural issue to get through before we got to the merits of the case.

BRENDAN SULLIVAN: Does the fact even though if it is merged, what we're saying is that it is two pieces of property on one lot for Zoning purposes.

TAD HEUER: Uh-huh.

BRENDAN SULLIVAN: Does that preclude us granting relief to one of them?

TIMOTHY HUGHES: It would seem to me that the dimensional form would at least have to be changed.

TAD HEUER: Right. But nor do I think that the Petitioner would want that to be the case practically going forward.

CONSTANTINE ALEXANDER: It might be an issue, too, whether sufficient notice went out to the people. All the people who are entitled to statutory notice, did they get them if you have a merged lot? I don't know, I don't know the answer to that but I would --

SUSAN KALE: I have unanimous approval from the neighbors that have seen

the plans.

CONSTANTINE ALEXANDER: It's something different.

TAD HEUER: Yes, you have, you'd have neighbors all the way on to Richard Avenue being abutters to the abutters given the way that corner lot is.

BRENDAN SULLIVAN: So that the only procedural would be the dimensional form, which would have to be --

TAD HEUER: But if they have actually merged, you would have notice to abutters that are not noticed here, here, here. One, two, three, four, five, six, seven. Seven abutters? I hate to bring this up at such a late point.

ATTORNEY JAMES RAFFERTY: No, no. And I have to confess I'm a late entrant here. And I'm sure -- I haven't even had an opportunity to explain to Ms. Kale --

BRENDAN SULLIVAN: Do you want to

explain it to her?

ATTORNEY JAMES RAFFERTY: Maybe I can explain the legal consequences of that.

BRENDAN SULLIVAN: Why don't you do that maybe in the next room. We'll go to the next case and then come back.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: I think Mr. Rafferty is involved in the next case. No, you're not, sorry.

(Case recessed.)

(7:45 p.m.)

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

BRENDAN SULLIVAN: Okay, let me call case No. 10075, 51 Highland Street. Ms. McCabe. Introduce yourself for the record, please.

ATTORNEY KATHLEEN McCABE: Good evening, Mr. Chairman, Members of the Board. My name is Kathleen C. McCabe, and my office is at 129 Mount Auburn Street in Cambridge. I represent the owner. With me tonight is the holder of the beneficial interest of the trust that owns the property, Annette Niwieszewski N-i-w-i-s-z-e-w-s-k-i, and she lives at the subject property. Also with me tonight is Seth Dobie from the architectural

firm of Adolfo Perez. Adolfo was unable to be here tonight.

This is a Petition for variances for height restrictions for two elements of the property: The widow's walk with a railing, and the portion of the addition containing the head house for access to the widow's walk.

We have one letter of support, which we have already passed in a copy, but this is the original from a direct abutter across the street on Highland. I'm going to run through the legal aspects of the case as quickly as I can. It's all in the supporting statement. And Seth will be here to answer any questions on the architectural features, and he brought some photos.

The work in question was completed in 1998. My clients purchased the property in 2000 knowing of the violations, but optimistically hoping to be able to resolve them. Both elements, the widow's walk and

the addition, were built pursuant to building permits, and the owner at that time believed that they were in compliance. Based on the idea that the widow's walk was the repair of an existing access point, and therefore not subject to the code. The rail was added obviously for safety and, therefore, not subject to the code and the addition, they thought was at 35 feet. After many subsequent measurements of the average grade and height, it was found to be eight inches above the 35 feet.

The pre-existing house was 43 feet in height, and I wanted to point out that the dimensional form has that dimension correct. There are two points in supporting statement that state that it's 40, and that's an error. The existing house was 43 feet. The widow's walk and the rail measure at 46 feet, and the addition with the head house is 35 feet, eight inches.

Okay. The literal enforcement of the provisions of the Ordinance would result in a substantial hardship. If the Petitioner is not granted the Variance, they would have to remove these two elements which would be a considerable expense, and which would result in their no longer having access to the roof for maintenance. It would also result in the loss of a prominent architectural feature of the house, which is common in height and style in the neighborhood.

TAD HEUER: Can you say where else in the neighborhood? I read that. Can you point to some other properties in the neighborhood that have this at that height?

ATTORNEY KATHLEEN McCABE: Yeah. I was told by Adolfo Perez that this one has an identical widow's walk. I'm sorry -- no.

TAD HEUER: That's a brick house?

ANNETTE NIWISZEWSKI: It is. It is not the same height. It has the same widow's

walk. Not the same height. It's a similar design widow's walk.

TAD HEUER: It's a -- okay. Facing the street or on the rear?

UNIDENTIFIED MALE: Yeah, I'm sorry to interrupt. I actually live in that house.

TAD HEUER: Okay.

ANDREW PESEK: And I'm in support --

BRENDAN SULLIVAN: Just identify yourself.

ANDREW PESEK: Oh, I'm sorry. My name is Andrew Pesek. I live at 48 Highland Street. We have a similar feature, however, it's behind the peek of our house. But it, you know, and we're downgrade from these guys but across the street, but it's -- it was there. It has a big hatch to access the roof. It's just a small.

TAD HEUER: And that's on the rear of the structure, so not visible from the street?

ANDREW PESEK: Correct. It's not visible from the street. You can look from the street, it looks like two stories but if you go around back.

CONSTANTINE ALEXANDER: Before you go, sir, continuing on what the legal requirements for a Variance. I'm totally confused about how this case got here and your supporting statement, not just me, it's not you, but the building permit was granted back in '98, '99 to build a widow's walk or repair it or whatever. And then there was litigation?

ATTORNEY KATHLEEN McCABE: A lot of litigation.

CONSTANTINE ALEXANDER: What was the basis of litigation? There was no Variance granted. The building permit was issued. The structure was constructed. Then what happened?

ATTORNEY KATHLEEN McCABE: I'll be

very honest with you, I took this case being told that I would not have to read the files from the litigation. I cannot repeat to you chapter and verse of how many lawsuits there were.

CONSTANTINE ALEXANDER: Just top line. What was being challenged? What was the basis of the lawsuit?

ATTORNEY KATHLEEN McCABE: There were many things being challenged, including the use of home office and things like that.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY KATHLEEN McCABE: It boiled down to these two issues, and the litigators for the city and for -- that were involved in litigation have worked out a resolution that is in court -- that has been filed with the court now. That if the current owner can get these Variances, then all of the litigation will be dismissed.

CONSTANTINE ALEXANDER: So the case

is going to be settled on the basis of getting the Variance?

ATTORNEY KATHLEEN McCABE: Yes.

CONSTANTINE ALEXANDER: It hasn't been resolved on the merits?

ATTORNEY KATHLEEN McCABE: Correct.

CONSTANTINE ALEXANDER: Now I understand. Okay, thank you.

BRENDAN SULLIVAN: All right, now I'm a little confused a little bit. The work was done -- I'm going way back. A building permit was pulled and some of this was to reconstruct deteriorating features.

ATTORNEY KATHLEEN McCABE: Yes.

BRENDAN SULLIVAN: And work proceeded as was other work in the house and so on and so forth. Okay. Then at some point the flag went up about these features. What initiated that?

ATTORNEY KATHLEEN McCABE: Well, there was one neighbor in particular,

Morganthals (phonetic) who were -- and they share the driveway. They did. They were -- what I'm hearing is they were very upset about a lot of things, and it probably boiled down to just relationships between the neighbors.

BRENDAN SULLIVAN: Construction in is general and all kinds of -- okay.

ATTORNEY KATHLEEN McCABE: A lot. Mr. Morganthal has now died --

ANNETTE NIWISZEWSKI: No, Mrs. Morganthal. He has a dispute.

TAD HEUER: Is this your immediate abutter to the right?

ANNETTE NIWISZEWSKI: We share a driveway with him. To the right facing our house, yes.

BRENDAN SULLIVAN: Okay.

TAD HEUER: So, this is the structure that is under a complete gut rehab right now?

ANNETTE NIWISZEWSKI: Correct.

BRENDAN SULLIVAN: So the construction poisoned the water, and then work was done I guess incomplete; is that correct?

ATTORNEY KATHLEEN McCABE: Yes.

BRENDAN SULLIVAN: And then the people who owned the house at that time continued to live in it until she came along and she bought the house then in the year 2000?

ATTORNEY KATHLEEN McCABE: Yes.

BRENDAN SULLIVAN: Okay.

And who initiated litigation I guess is where I'm trying to --

ATTORNEY KATHLEEN McCABE: I think Morganthal and others.

ANNETTE NIWISZEWSKI: Morganthal as far as this particular one.

BRENDAN SULLIVAN: Okay. Against the previous owner?

ATTORNEY KATHLEEN McCABE: Yes.

ANNETTE NIWISZEWSKI: Yes.

BRENDAN SULLIVAN: Okay. You purchased and purchased this --

CONSTANTINE ALEXANDER: Bought the lawsuit.

ANNETTE NIWISZEWSKI: The lawsuit.

BRENDAN SULLIVAN: Okay.

TAD HEUER: Sorry. If you're no longer -- if the -- Mr. Morganthal, are they still the owner of that property?

ANNETTE NIWISZEWSKI: No.

TAD HEUER: If they're no longer the owner, how can they have standing to maintain an action against you? Wouldn't that make it moot?

ANNETTE NIWISZEWSKI: I don't know legally where this has happened. I know he was dropping all his part of the legal action. So I thought this was just to finally put it to bed.

TAD HEUER: So, who's -- whoa, all right. So, there are -- who's suing who right now? And I'm sorry if I'm missing something.

ATTORNEY KATHLEEN McCABE: I was hoping that the city attorney was going to come. She's watched this very carefully.

TAD HEUER: So, is there a lawsuit pending?

ATTORNEY KATHLEEN McCABE: There are lawsuits pending.

TAD HEUER: Who are the parties?

ATTORNEY KATHLEEN McCABE: I don't know believe it or not, because I just -- I'm the real estate lawyer who agreed to do the Zoning hearing.

BRENDAN SULLIVAN: The Morgenthals raised some issues which have some validity Zoning wise, and hence the city got involved?

ATTORNEY KATHLEEN McCABE: Yes.

BRENDAN SULLIVAN: Okay.

ATTORNEY KATHLEEN McCABE: Well, the city had to defend Board.

BRENDAN SULLIVAN: And the determination by the Commissioner's office that, yes, certain aspects of the construction were in violation?

ATTORNEY KATHLEEN McCABE: Yes.

TAD HEUER: But if they were in violation, then how was their building permit issued?

CONSTANTINE ALEXANDER: Yes. I mean, first the lawsuit would have to challenge the issuance of the building permit because there was no Zoning relief ever granted. That's No. 1.

ATTORNEY KATHLEEN McCABE: Exactly.

CONSTANTINE ALEXANDER: And then the other litigants, besides your client, is willing to settle the case, why are they passing the buck to us? In other words, why don't they simply say we'll agree to drop our

lawsuits?

ATTORNEY KATHLEEN McCABE: I believe that it has been acknowledged that probably those building permits should not have been issued, and Variances are now required to resolve this.

BRENDAN SULLIVAN: Okay. Or there's a grey area as to what the permit was issued for --

ATTORNEY KATHLEEN McCABE: Exactly.

BRENDAN SULLIVAN: -- and the work that was actually done. It might be a little stretching of something and hence by the issue that is before us does have some validity, and the Law Department, Commissioner's office have agreed that, yes, those are in violation.

ATTORNEY KATHLEEN McCABE: Yes.

BRENDAN SULLIVAN: Hence, this is along the road to resolve and put all of these issues behind us --

ATTORNEY KATHLEEN McCABE: Yes.

BRENDAN SULLIVAN: -- basically.

ATTORNEY KATHLEEN McCABE: Yes.

TAD HEUER: But I'm still confused, because the city is apparently in both postures. The city is settling with you for something, but the city was presumably against you going -- the city was presumably with the Morgenthals going in, but they weren't because they issued a building permit. I don't understand where the city is in this, and that's crucial because we're the city.

ATTORNEY KATHLEEN McCABE: I'm sorry I don't have better answers for you, but I believe that the city's involvement was they were defending the Board Members. It was the Board --

TIMOTHY HUGHES: Not the Board, but the Inspectional Services that issued the permit. Since there was no Board

involvement.

ATTORNEY KATHLEEN McCABE: No. There were appeals to the BZA of probably the building permits and interpretation --

TIMOTHY HUGHES: And they upheld the Commissioner's decision to issue the permits, and then the city got involved defending the Board.

TAD HEUER: But we -- if any of this is true, we don't have enough stuff in front of us to be able -- I have no idea what's going on.

CONSTANTINE ALEXANDER: Nor do I. I don't understand why this case is before us at all.

BRENDAN SULLIVAN: Well, the issue before us as it makes sense to grant the relief that is needed to put this issue behind --

CONSTANTINE ALEXANDER: But if the city settled the lawsuit --

BRENDAN SULLIVAN:

Regardless -- well, but that's another issue. That's an administrative decision that go to the Board, get these two issues resolved one way or the other, and we will deal with whatever other issues are outstanding. I guess that's the way I'm reading it.

ATTORNEY KATHLEEN McCABE:

Absolutely, yes.

BRENDAN SULLIVAN: And so, you go in either get a yea or nay on that, and then the city will find it's in their best interest to push aside whatever issues are outstanding.

So the issue before us is whether or not granting relief in this instance makes sense to us regardless of what the other issues are.

TAD HEUER: And relief is only being granted because it's been told for 12 years that we're still outside the statute that we oppose?

CONSTANTINE ALEXANDER: Yes. It

makes no sense for this case to be before us, I'm sorry.

BRENDAN SULLIVAN: You would think they would be self-correcting at this point.

ATTORNEY KATHLEEN McCABE: I think because the case has been pending so long. The statutes would told that the cases are pending?

TAD HEUER: They were told at the entry of the complaint, that makes sense. So presumably it's told now all the way through, and we're still at legal month one, wherever.

ATTORNEY KATHLEEN McCABE: Yes.

TAD HEUER: So I understand that. But if we're saying that it's settles, it's settled, does it go away and therefore these are still in violation for ten years? I guess so.

CONSTANTINE ALEXANDER: If the case were settled, there would be no one who could ever after challenge, left standing to

challenge the structure of the (inaudible).
I don't understand why we're -- -

TAD HEUER: And if the city is
challenging it somehow, then that's part of
the -- or is the city not challenging it?

ANNETTE NIWISZEWSKI: I don't think
the city is challenging.

TIMOTHY HUGHES: They're defending.

CONSTANTINE ALEXANDER: No, the
city's defending. It's got to be defending.
The challenge was if the building permit
should not have been issued, how can the city
not represent the Building Department?

TAD HEUER: Right. So Morgenthal
has agreed to drop the challenge?

ATTORNEY KATHLEEN McCABE: I
honestly cannot tell you the particulars of
the case. I was told by the litigator
representing my clients that he has an
agreement with Attorney Valenquin (phonetic)
for the city, that if these two Variances are

obtained, all of the litigation will be dismissed.

TAD HEUER: Why would he have that agreement with the city and not with the opposing entity? I mean, the city issued your client the building permit. So you and the city are on the same side, right? You have to be.

CONSTANTINE ALEXANDER: Have to be.

TIMOTHY HUGHES: It would seem so.

ATTORNEY KATHLEEN McCABE: There must be somebody left on the other side. Other than the Morgenthals, there must have been other defendants other than the plaintiffs.

TAD HEUER: How can you have an agreement with the city? That's just like me talking to my co-plaintiffs or co-defendants. The agreement has to be with the other side. And that's something that your client would be a part of because you're

a co-defendant against their action.

ATTORNEY KATHLEEN McCABE: When we filed this Petition, Ranjit was very aware of why it was being filed. In fact, we had a deadline to file it. And I guess I assumed that somehow the city's position would be transmitted to you. That you would know that Attorney Boulen (phonetic) wants these, you know, wants the cases resolved and wants these Variances issued.

BRENDAN SULLIVAN: Well, they've been silent on that.

ATTORNEY KATHLEEN McCABE: Okay. That's too bad.

In answer to your question, I'm assuming there were other plaintiffs other than Morganthal who have kept those alive. Or the other possibility is the city has assumed the position of needing to enforce its own code. And that could very well be how it evolved. That the city is now saying,

okay, the permits were issued incorrectly. We've been asked to enforce our code. We have to enforce our code. And the only way that we -- the way we're recommending that this be resolved is that the land owner come in and apply for Variances.

BRENDAN SULLIVAN: Yes. The city cannot push that aside, that fact aside, and just say, we will accept it to get rid of the case, to put it to bed, and that administratively it needs to be adjudicated for the Board basically.

TAD HEUER: But that's not necessarily true, I don't think, because if what counsel has just stated is true, and I have substantive questions about whether it's true in terms of when things happened, but taking as a given for the moment that it is true that this was something that was a safety rail placement on something that didn't violate an Ordinance, then the city

should be defending its belief that that's a safety rail. It doesn't go over the existing height, therefore, it's a replacement of a like is like, and there are -- building permit is the correct relief required. The city is now saying that that's not true, we're in a different --

BRENDAN SULLIVAN: There must have been some expansion of the original permit application, drawings, agreement, whatever. There had to have been some expansion of that. Then once we've gone to the city's attention, the city looked at it and said yes, that's correct, there is a violation here. The city then --

TAD HEUER: Pulled its permits?
Withdrew the permits?

BRENDAN SULLIVAN: Well, it could have been discovered after the work was completed.

TAD HEUER: But it wouldn't matter

because you have ten year repose.

BRENDAN SULLIVAN: Okay. But then the city agreed that yes, there's a violation here. Now the city can't bend. Once they agree that there's a violation here Zoning wise, they can't all of a sudden just dismiss it and say well, we'll let it slide, we'll let it go. So that there needs to be relief granted by this Board.

TAD HEUER: Okay. So --

BRENDAN SULLIVAN: Fast forward, here we are tonight.

TAD HEUER: All right. So, what I'm hearing, and I admit that I don't like to have to be filling in inter seses of legal proceedings, because there's one thing about legal proceedings, they're usually written down and usually reads front to back. And the fact that I'm having to put this together, I'm not thrilled by. Seeing that it's an essential element to why we're here. That

being said, what I think I'm hearing is that a building permit issued to the Petitioner --

BRENDAN SULLIVAN: Previous Petitioner -- previous owner.

TAD HEUER: Tacked on. The abutter challenged in court. We are supposing, we should have no reason to do whatsoever that the city then reviewed the permits it issued, and city said, I issued a permit, I should not have issued the permit. That relief actually requires a Variance. The city then switches sides from defending its permit with the previous owner/petitioner and moves over to the side of the plaintiff saying that that cannot be constructed, not because of the complaint but because you don't have a valid permit if the structure already existed. Making the city on the side now of the plaintiffs rather than before in defending a building permit on the side of defendant to whom what we are being asked to relieve now

maybe accurately is that the city has said in resolving this issue, which we believe needs a Variance, we have, negotiation with our co-plaintiff essentially, so the city would have been a third-party intervenor as a plaintiff, and the city is saying we have negotiated with Mr. Morgenthal, he will drop his issues if you get a Variance on our side, we're both the same side, and we have agreed against you defendant/owner, that if that happens, the settlement occurs. Therefore, we're here to get those Variances that the city can, in its agreement with its third-party co-plaintiff status plaintiff, make that agreement and hence probably be binding.

CONSTANTINE ALEXANDER: The only flaw with all that, which I think is ingenious as you walked us through, is that if this case only involved that, then what the city simply should have done is throw in the towel, your

predecessor loses the case, and now you have to come back for a Variance. What's puzzling me is that the case -- somehow there's a settlement to this case that's tied to the Variance which suggests to me there's more to the lawsuit than what's before us tonight. And I'm a little loathed to sort of help you settle part of the lawsuit until I know the whole picture. Because otherwise that's simply it, the city loses the case, the building permit was improperly granted, you come back before us and say okay, it was improperly granted, but please give us a Variance. We would take up the case and that would be it. The fact that there's a settlement here that's tied to the Variance makes absolutely no sense to me. It suggests there's more to this case than we're seeing. And I'm troubled by deciding the case until I know the whole picture. We're not being told the whole picture tonight.

BRENDAN SULLIVAN: Well, other than the fact of getting some correspondence from the Law Department.

CONSTANTINE ALEXANDER: Or the litigation counsel for this representing your client?

ATTORNEY KATHLEEN McCABE: There is litigation counsel. They're not here tonight.

CONSTANTINE ALEXANDER: I know they're not. But if you could bring the litigator down and tell the whole story to us, that might help us.

ATTORNEY KATHLEEN McCABE: That or I should just probably input from the City Law Department.

CONSTANTINE ALEXANDER: Sure. If you can get the City Law Department to get you that.

ATTORNEY KATHLEEN McCABE: I'm sorry that I can't answer it, but --

CONSTANTINE ALEXANDER: It's not your fault.

ATTORNEY KATHLEEN McCABE: And anything that I've said really needs to be interpreted. It's sort of my trying to figure it out to answer your questions, I do not know. I took one look at those files and said -- you know, and they said, no, no, no, no, you just have to apply for the Variance and the rest --

CONSTANTINE ALEXANDER: That's what scares me. I'm sorry. The fact that you were sent here with this little narrow errand, tells me there's something outside of this errand that I don't know about, and no one wants to tell us about and that's why I'm troubled by this case.

BRENDAN SULLIVAN: I'm very reluctant to put any further burden on you, No. 1. However, there is somewhat of a cloud hanging over it, and maybe it would be prudent

to reschedule this somewhat soon. It's not impacting your ability to live there. It's just that this is hanging over the thing. And that we correspond, communicate to the Law Department, saying that we have a number of issues and that it doesn't give us a warm, comfortable feeling without knowing some fuller scope of what's going on here. Is that correct?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY KATHLEEN McCABE: Very fair.

BRENDAN SULLIVAN: All right. So we'll entertain a Motion to continue this matter until?

SEAN O'GRADY: May 12th.

BRENDAN SULLIVAN: May 12th.

CONSTANTINE ALEXANDER: Case heard. Can everybody make it on May 12th?

BRENDAN SULLIVAN: I make a Motion to continue this matter until May 12, 2011 at

seven p.m. as a case heard. Which means all five of us will have to be reassembled. And in the meantime, Kathleen, if you can get to Valerie and we also will, and just say hey, thanks, but no thanks.

ATTORNEY KATHLEEN McCABE: And Ranjit also knows the whole --

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: We need a Motion to continue the case with the usual conditions.

BRENDAN SULLIVAN: And we'll continue on the prerequisite that you sign a waiver of the statutory requirement for a timely hearing.

That the posting sign be changed to reflect the new date of May 12th, and the new time of seven p.m. And that that sign be maintained for at least two weeks prior to the hearing.

ATTORNEY KATHLEEN McCABE: That's

fine.

BRENDAN SULLIVAN: All those in favor of continuing the matter?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(8:10 p.m.)

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

BRENDAN SULLIVAN: We'll reopen case No. 10074, 7-9 Foch Street.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman. We have discovered the legal issue that Mr. Heuer brought to our attention will necessitate the filing of a subdivision to the Variance. Whatever else happens here it seems that there's an obvious benefit to separate for Zoning purposes, these homes. It was a late title change based upon a financing requirement without an adequate understanding back in October as the Zoning implications of this. So, I've had an opportunity to explain it to Ms. Kale, and we presume that the Board would find that given the current state of the dimensional form,

the proceeding this evening with the Variance would not be seen as appropriate. If people felt otherwise, we'd be happy to.

CONSTANTINE ALEXANDER: If we have a merged lot, and apparently we do, do we have proper notice of this hearing to all of the persons who should have gotten notice or all the new abutters if you will?

ATTORNEY JAMES RAFFERTY: Good question. I haven't looked at the abutters' list to be able to conclude one way or the other if that's the case. We also don't have enough information about the other lot to make an intelligent modification to the dimensional form. So my expectation was given those deficiencies in the application, that we would not be able to go forward this evening. In which case we are asking for a continuance of this case. We discussed -- my understanding of the schedule is that there's opportunity, if we moved quickly, to perhaps

get a new case on for the subdivision case on for the second hearing in May. Mr. O'Grady says that this case could be continued to the same time. Hopefully we can deal with the subdivision case. When we were done with the subdivision case, we would then proceed with this dimensional form, this lot, this house if the subdivision were requested. So request is to allow a continuance until the second hearing in May for this case with the expectation we file a companion case to address the lot next week.

BRENDAN SULLIVAN: Okay. May what, Sean?

SEAN O'GRADY: 26th.

BRENDAN SULLIVAN: This is a case not heard? What's the feeling of the Board?

CONSTANTINE ALEXANDER: We never got into the merits of it. We got only into the procedural matters.

TAD HEUER: Yes.

BRENDAN SULLIVAN: All right. Let me make a Motion to continue this matter to May 26, 2011 at seven p.m. with the condition that the petitioner sign a waiver to the statutory requirement for a timely hearing. And that the posting sign be changed to reflect the new date of May 26th and time at seven p.m.

All those in favor of continuing the matter?

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

ATTORNEY JAMES RAFFERTY: Thank you.

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

TAD HEUER: Same for the --

TIMOTHY HUGHES: 10068?

BRENDAN SULLIVAN: On the previous one can we withdraw that one? That was on the former case.

Ms. Kale, on the previous case --

TAD HEUER: We're going to have to continue that case --

SEAN O'GRADY: Continue it right after the 26th?

ATTORNEY JAMES RAFFERTY: I'm sorry, the previous case?

TIMOTHY HUGHES: There's a continued case on the dormers you're keeping alive.

BRENDAN SULLIVAN: You're not going to go forward with that, right?

ATTORNEY JAMES RAFFERTY: I didn't know this was on there.

SUSAN KALE: I don't have a clue what's going on.

TAD HEUER: You had the first case you brought was for dormers. And we continued that to this hearing because we were expected we were going to hear the roof heightening case. And if we had granted the

roof heightening case, we would have just told the other one to go away or vice versa. Now that we need this third case in order to subdivide the lots, we need to continue the raising the roof case, continue the dormer case, and then bring it all to that same hearing so that we can hopefully do the subdivision and then move on to the real substantive issue that you're before us for.

CONSTANTINE ALEXANDER: Just so you know, the result of all this you're going to have three signs on your property. Just make sure you have them up.

ATTORNEY JAMES RAFFERTY: I apologize, I wasn't aware of that.

BRENDAN SULLIVAN: And the alternative would be to just withdraw the case. The thing to do is to continue. Okay?

So let me make a Motion, then, that we continue case No. 10068, 7-9 Foch Street to May 26, 2011 at seven p.m. Again, on the

condition that the Petitioner sign a waiver to the statutory requirement for a hearing, and that the posting sign be changed to reflect the new date and time.

All those in favor of continuing that matter?

(Show of hands).

CONSTANTINE ALEXANDER: We don't need the waiver because we already have one.

BRENDAN SULLIVAN: There's one in the file.

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

(8:15 p.m.)

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

BRENDAN SULLIVAN: Board will hear case No. 10051, 175 Huron Avenue. Is anyone here on that matter?

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, James Rafferty on behalf of the Applicant. We filed a request to continue the matter and done our best to notify interested abutters of the continuance.

BRENDAN SULLIVAN: Okay. Is there anybody else interested in that case?

(No Response.)

BRENDAN SULLIVAN: I see none.

On the Motion to continue this matter, case No. 10051 to May 26, 2011, all at seven o'clock, Sean?

SEAN O'GRADY: Was there a preference for that evening? Because we actually have an earlier night.

ATTORNEY JAMES RAFFERTY: Yes, it was -- thank you, but we have some design work to do. So, in fact I may need to file a modified the application.

SEAN O'GRADY: You've got three continued to that night, but two of them are Foch Street.

BRENDAN SULLIVAN: Right, okay. On the Motion to continue that on the condition that you change the posting sign to reflect the new date and time.

All those in favor?

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

ATTORNEY JAMES RAFFERTY: Thank you.

(8:20 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10076, 209 Lakeview Avenue. Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you. Good evening, Mr. Chairman. James Rafferty on behalf of the applicant. Seated to my left, Roger Theberge T-h-e-b-e-r-g-e and Linda Caswell C-a-s-w-e-l-l. They're the owners of the subject property. And to my right is the project architect Robert Linn L-i-n-n.

TAD HEUER: And you submitted a revised dimensional form; is that correct?

ATTORNEY JAMES RAFFERTY: We did.

TAD HEUER: Good.

ATTORNEY JAMES RAFFERTY: There was a little confusion around the lot area that it was changed, it was corrected. And it had a flow through on the FAR as well.

CONSTANTINE ALEXANDER: Since I wasn't -- I saw the old form. Just in 50 words or less, what's the result of the change?

ATTORNEY JAMES RAFFERTY: The result of the change is that the lot area in the original submission reflected a larger lot by a few hundred square feet. We had listed the lot area at 4662. We had a reason for doing that. There's a different story. There had been a conveyance to the proponent by the abutter of some land as part of a conversation. It was then discovered that that was done without benefit of Zoning counsel, and it had unintended consequences for the abutter who had conveyed it. So it

was conveyed back that an easement was retained. And you'll see the plot plan reflects an easement. It's relevant for the case, in one area the setback in this area is less than a foot, but there is now an easement. So the easement will allow for passage around the building and will allow the applicant to seek relief at the building code (inaudible) around the issue of an opening within three feet of the property line because there's a no build easement. So nothing could be built in that three feet. So the exclusive control of easement area is now with this property. So they don't have the fee interest. So the 46 went back to the original 42.

CONSTANTINE ALEXANDER: But the basic Zoning issue before us tonight is still the same. You're now in compliance from an FAR point of view, 0.49 as I see here in a 0.5 district. And if we grant you the relief

you're seeking, you're going to go to 0.62. So you're basically -- that's your issue before us tonight.

ATTORNEY JAMES RAFFERTY: Our issue is largely GFA but there's also a setback issue as well.

CONSTANTINE ALEXANDER: There is a setback issue as well?

ATTORNEY JAMES RAFFERTY: Yes, on that side that I just described.

TAD HEUER: But I believe there's also a change in that square footage; correct? Is that right? I have 434 under the old form, and it's only an addition of actually 514 under the new form. So there's not only a change in -- it's the same request, but there's actually a larger request irrespective because of the lot size.

CONSTANTINE ALEXANDER: Thank you. I appreciate that.

ATTORNEY JAMES RAFFERTY: Right.

So, and we would just in the context of the plan and I can have Mr. Linn go through it, and I think Ms. Caswell and Mr. Theberge can fill in the details. But essentially the house, if you've had an opportunity see it, a semi-attached mansard, two-story. The existing square footage is just around 2,000 square feet. There's two bedrooms upstairs, and a conventional layout of kitchen, dining, and living on the first floor. The Theberges are raising their teen-age son there. They love the house, they love the neighborhood. It has a very deep rear yard. They've been working with Mr. Linn around a program that would allow them to put an addition on the house. Given the existing density, the lot is very small at this size. It's somewhat undersized. So they looked at an addition that would have a minimal impact on the surrounding properties as well. Half of the GFA here is even -- it's about evenly divided

between ground level as in basement GFA and first floor. So it's roughly 500 square feet. It's about 250 on the first floor and 250 in the basement.

We all know the story about basement GFA, and if the ceiling was below seven feet, it wouldn't count. And now under the state building code, I'm told you can't go to six nine or six ten and use it. But the reality is that there's an existing basement now which has a room -- it's not a finished basement, but it has a room that can be used. So it is currently a two-bedroom house. But the real objective here is to get a little breathing room in the house.

If you look at the floor plan, you'll see the basement will contain a family room and a playroom which will open right into the yard. And the rear yard is one of the nicer features of the house.

The addition itself it extends beyond

the rear of the house, initially seven feet. There's a notch, and it goes back about another four and a half to five feet. So the increase in the setback all in is about 12 feet and it expands the width of the house. Given the size of the lot, the number 500 square feet on the FAR does represent a number that starts to admittedly look large, but the nature of the space and the manner in which it's designed, half of it being below grade, there's no change to the second floor. This is not a case of a property owner coming in recently acquired and looking to supersize the house. It's really an attempt to let a growing family remain in the neighborhood, in the house with a modest style addition.

As I said, if you look at the floor plan, the program on the first floor really doesn't change. It just gets a better kitchen, a better-sized den. The second floor is unchanged entirely. Two simple bedrooms.

It's the ground floor. It's the first floor living space, and it's this ground floor family room. I advised them not to bring the 15-year-old son tonight, but they told me a lot of this is being driven by the social and academic needs of a 15-year-old who would like a little space to himself and to make a nice playroom. So, that's what the case is about.

The dimensional issues are represented both in the GFA in the setback. It has a zero setback with the adjoining lot. The good news is that every abutter, conceivable abutter and then some, have sent strong letters of support. The abutters on both sides. The abutter that shares the party wall with them. Mr. Linn has, I think, done a very sensitive job in pulling the addition in from the sides, not at all visible from the public way, and it is a one-story addition with a below grade element. And I think we

calculated the numbers at about 240 of it being above grade. The 60 feet of it are a covered entry in the rear. As you know, that covered entry adds to the numbers as well. So it has those three components to it.

CONSTANTINE ALEXANDER: You're not adding any more bedroom?

ATTORNEY JAMES RAFFERTY: Not adding another bedroom. There's already the bedroom in the basement now. That remains where it is. It really -- if you look at the floor plan, it really gets a den or a family room, a playroom in the basement and a little --

CONSTANTINE ALEXANDER: And the hardship is there's insufficient living space beyond bedrooms for the people who inhabit the house?

ATTORNEY JAMES RAFFERTY: Yes. Undersize house built in a different era, not able to accommodate the needs. Narrow lot.

The lot is only 40 feet wide, so it leads to an undersized lot.

TAD HEUER: Well, it's only 28 feet wide according to --

ATTORNEY JAMES RAFFERTY: Thank you. Right. Even as a double lot, it's really small. So I know so much of the discussion here on the design side is about context and scale. I think you'd find that the context and scale of this addition are very much in keeping with the form of the house and the neighborhood. And the hardship really is personal, it's financial. It would give this family an opportunity to remain here and increase the size of their house and get a program without having to move to a bigger home or find another house. And it's, it's really a -- it's heartfelt. And it's something that they put a lot of effort, and a lot of work into for the past year, working with their neighbors. And I

encouraged them to make it as small as they could. We did talk about well, you can play the basement game and it would only be 250-foot addition at the end of the day. I think we ought to call it what it is, design it the way it works for you and we'll rely upon the judgment of the Board.

TAD HEUER: And is this, it's going to go to a design question. Do you have another, do you have another copy? You said it's not visible from the public way. Is that because it's pulled in towards the zero lot line enough? I mean, when I look at that house, you know, I see it's narrow next to its neighbor. But I seem to think I can see all the way down to the rear lot line.

ROBERT LINN: You would -- from this side-view. From this exact vantage point, you would see this extending another seven and a half feet. So this is from the street looking between the two homes. It's really

continuing that line another seven and a half feet.

TAD HEUER: And then drops back.

ROBERT LINN: And then it drops back and then it steps back another four and a half feet.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: I guess there's a point I'd like to make. My point was it's entirely in the rear of the building.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: But I suppose if you stood there, you could see that edge of it.

TAD HEUER: That's my only question. Because I know I can see the back at the rear.

ATTORNEY JAMES RAFFERTY: But it's one story, we can never see through it.

BRENDAN SULLIVAN: How long have you owned the house?

LINDA CASWELL: We bought it in

December 2006 and moved in in January or February 2007.

BRENDAN SULLIVAN: I guess my only comment was when I first saw it, is that it appears that the entrance into the basement from the outside is rather grand. It was somewhat typical and it almost looks like an entrance to a --

ATTORNEY JAMES RAFFERTY: A second unit?

BRENDAN SULLIVAN: Separate unit.

ATTORNEY JAMES RAFFERTY: We talked about that, and maybe you can address that because it's definitely not that.

ROBERT LINN: The real asset to this house and this lot is the long backyard. And the architectural pieces beyond just the functionality were to do things to take advantage of the backyard. So the access from the basement and the access from the first floor which may appear grand, were

really just about, you know, making it an easy flow in and out so that they could sit in the backyard, come into the basement and bring in lawn furniture and bring in gardening tools. Use it as storage down in the basement, but able to access the backyard. And that was the, that was the intent.

LINDA CASWELL: We're in our backyard all the time. We're like not many of our neighbors use it as much as we do. We eat breakfast out there, we eat dinner out there. And right now it's not renovated at all. We haven't done anything with it since we've moved in because we've been waiting to do this renovation so that we can really do a nice garden job. But we've done it in the front, but not in the back yet.

THOMAS SCOTT: Is there a modification to the dormer in the rear?

ROBERT LINN: There is. On the second floor bathroom. Currently

there's -- in the shower space there's a dormer for only about half of the shower. So we're just extending that across. But we counted the entire second floor as part of the FAR. So there's no increase in FAR. It's just the headroom.

ATTORNEY JAMES RAFFERTY:

(Inaudible).

THOMAS SCOTT: Yes.

LINDA CASWELL: And in fact the attachment to the house because they did that so that would match.

ATTORNEY JAMES RAFFERTY: That isn't part of the relief because we concluded that's an as-of-right move but it is shown.

THOMAS SCOTT: Yes.

BRENDAN SULLIVAN: So your wish list is to, you occupy the second floor. That you gain a little bit of a family room, redo the kitchen on the first level, and your son occupy the basement basically. That's his

space. That's sort of it in a simple form?

LINDA CASWELL: Right. The family room would be in the basement as well. But right now we have the TV in the living room. We really want to sit in the living room and read. We want to put the TV downstairs and use that as a place to have the TV downstairs so it would be his room and that area as well.

ATTORNEY JAMES RAFFERTY: But it's expected on the occasion the 15-year-old would allow the parents to use the room unlimited.

TIMOTHY HUGHES: Is it safe to say he doesn't read as much as you do?

LINDA CASWELL: Actually, no. He's pretty amazing. He might.

TIMOTHY HUGHES: In front of the TV he's got a book open.

TAD HEUER: Just a cardinal direction question. On the last page, that doesn't actually mean south elevation west

elevation, does it? That can't possibly be right.

ROBERT LINN: It's the --

TAD HEUER: That means east elevation and --

ROBERT LINN: It's the rear. It should be rear and side. Yeah, you're right. It's the wrong labeling. But the top one is the rear and then the bottom one is the side.

BRENDAN SULLIVAN: That rear faces east.

TAD HEUER: So we can also change the notation at the bottom of the dimensional that still has the old 34.4 that's now the difference between 514.

ATTORNEY JAMES RAFFERTY: Yes.
Thank you.

TAD HEUER: So my question and the reason I was asking about cardinal directions, this will bring out the house a bit in the back. Your neighbors on the other

part of the duplex, have they -- should we be expecting in a few months that we'll get a similar matching proposal from them? Not that it matters one way or the other.

LINDA CASWELL: No.

TAD HEUER: I'm just wondering about the windows on that side and other kinds of things that may affect their ability to do something similar if we were to grant you.

ROBERT LINN: We spoke with them. They didn't have any issue with this, and I think they recently done some work in their basement and renovated their house. I don't think they had any intention to do this. But we actually put no windows on this side and set our addition back two feet. So quite frankly, they could mirror what we're doing here, and there wouldn't be any really any difference. They wouldn't be looking at each other and they wouldn't be abutting right up against each other.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Any other questions?

CONSTANTINE ALEXANDER: No questions.

ATTORNEY JAMES RAFFERTY: I think their house happens to be slightly bigger, too, as well. The neighbor's house.

BRENDAN SULLIVAN: Tim, any questions at this point?

TIMOTHY HUGHES: No, I'm good.

BRENDAN SULLIVAN: Let me open it public comment and then you'll have a chance to add or retract from.

Is there anybody here who wishes to speak on the matter of 209 Lakeview Avenue.

(No Response.)

BRENDAN SULLIVAN: There is correspondence in the file from a Roger Booth and Claudia Thompson at 206 Lakeview Avenue. They're writing in support of the petition.

It's in need of attention, and it's a pleasure to see them create a beautifully landscaped entryway and to have upgraded the house in many ways. They enthusiastically support the plan and hope the Board will grant the relief.

There is a correspondence from Tom and Joelle Flan at 216 that they write in support of the addition, and they have no concerns for the completion of the work as requested.

There's correspondence from Thomas Chen who lives at 211 Lakeview Avenue who is writing in support of the home renovation and construction project. "They invited me over to review their plans. They have taken every measure to plan ahead and demonstrate a commitment to work with their neighbors to make the construction work go smoothly as possible and hope that they will enjoy the new space in their home for their family gatherings."

There's correspondence from Ann Aubrey A-u-b-r-e-y, 207 Lakeview Avenue, writing in support of the petition to make a modest addition to the property at 209 Lakeview Avenue. They are next-door neighbors, and they have continued to consult her and they have her great support.

Correspondence from Herbert Wagner, 223 Lakeview Avenue writing in support of the petition to allow them to make a modest addition to the property. "If they are inclined to construct an addition to the back house, it would significantly improve their interior living space and will have minimal impact on theirs and their abutting neighbors backyard lots. Look forward to the completion." And they strongly urge that the Board grant the relief requested.

And that's the sum and substance.
Mr. Rafferty, any further comments?

ATTORNEY JAMES RAFFERTY: Just

briefly, I think. We appreciate the opportunity to present the case, recognizing the challenges associated with the application, but hope that the Board would be able to find this to be consistent with the purpose of the Ordinance, to allow for a reasonable accommodation for a home that is undersized and the lot that's undersized as well.

BRENDAN SULLIVAN: Okay. We'll close the comment part and the Board will take it under discussion.

Tim, any thoughts?

TIMOTHY HUGHES: No.

BRENDAN SULLIVAN: Gus?

CONSTANTINE ALEXANDER: Well, a few thoughts. I came into this hearing very skeptical about whether we should grant relief. The amount of additional space being sought is going to increase the size of the house by 25 percent. 500 square feet on

a roughly 2,000 square foot house. There were no new bedrooms being added, so it looked like a grand addition. And you had a room under for a matter of right solution under the old dimensional form since you were a 0.44. But I've learned a lot of things tonight.

One, is something I should have realized myself and that half of the new FAR or the new gross floor area is in the basement, and I'm of a mind I don't get too worked up personally -- worked up about FAR in the basement. No. 1.

No. 2, with the modified dimensional form, showing the existing condition of 0.49, there really is no as-of-right solution. And there is also the issue setback which I didn't see before, again, the result of a new dimensional form. So all that put together, I think there is a hardship to warrant granting a Variance. The only question is does it have to be as big as proposed? But,

the result of this we're going to go to 0.62 in a 0.5 district. With a little bit of reluctance, I can live with that. So all said, I'm in favor of relief.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: Given that most of the additional work is -- it's all in the rear of the house. It's not really visible from the street. It seems modest enough. And like Gus says, a good portion of it is in the basement. I'd be in favor of it.

BRENDAN SULLIVAN: I sort of agree with the same thoughts you did at first reviewing it, I had to go back and review it again and even reviewed it again this afternoon and started to, I guess, come around to your way of thinking on it anyhow.

TAD HEUER: Yes, I'm kind of in the same position but probably exists on the other side of the line.

CONSTANTINE ALEXANDER: What else

is new.

TAD HEUER: I do think that it's essentially a narrow lot is where the hardship comes in. 28 feet is about as narrow as you get in the city before you're not even worth having gotten that lot. And the fact that it's not only narrow but also, it makes up for it by being abnormally deep. I think it's something I think that the architect has tried to accommodate by pushing most of this as far humanly possible into that, you know, towards the zero lot line which means it's not as visible to the street. Particularly if the neighbors are okay with it, that solves some of my concerns because they have a right to the zero lot line and along that lot line.

The 514 square feet is a big number to me regardless of whether or not it's in the basement. I think I too agree that basements are not much to get worked up over. They're

not seen. They're not any -- they're hard to finds an impact to the neighborhood. But a 500 number is a big one. Even if this were a 250 square foot addition, I think it would still give me pause to give a ten percent addition to a house on a very small lot.

I guess I'm kind of two minds as to the no extra bedroom question. Usually what we're asking them as hardship because someone needs extra bedroom space because it's a growing family. Here it's maybe a vertically growing family. But, I guess I have a bit of hesitation on an extension of that much space which usually we look at toward necessary family space for more people, and here it's just expanding the amount of space in the house for the same number of people. So, I guess my initial thought the, same one, does it need to be as big as it is? Yes.

ATTORNEY JAMES RAFFERTY: They

would not accept the condition of requiring more children.

TIMOTHY HUGHES: I was going to ask.

BRENDAN SULLIVAN: The street, the area really was not good urban design because the lots are all somewhat narrow, but go way back and they're all front loaded.

Everything's up to the street. And, you know, maybe at the time that was the way to go, but I think that as time has shown, it makes it very difficult to be able to do anything to those houses without having to come down before the Board.

TAD HEUER: That's true. And I think I still have my standing objection yet again tonight, that at certain point the Board's obligation is to towards the City of Cambridge. The City of Cambridge has an interest I believe in maintaining a housing stock that is and can be a transitory for those who need smaller houses into larger

ones. And the more that we add to a 2,000 square foot to make it a 2500 square foot house, the more of those properties become unattainable to anyone who's not already established perpetuates a level of stability perhaps, but also it moves housing stock in a lower purchasable housing stock at a lower square foot. Not that I believe the city desperately needs as many people come before us asking for additions or had the benefit of being able to take advantage of the home they purchased almost by definition.

BRENDAN SULLIVAN: Yes, I would find my troubles from the city is that to allow something like this, allows people, Mr. Rafferty said, allows people to stay in the city. And when they look at a house and yes, it has a few spots and a some blemishes, but we can make it work. And, you know, you buy a house, you make a big investment and first thing you want to do is to change it.

And, you know, after you've lived in it for a while, then you realize, you know, yeah, we like the neighborhood. We're very comfortable here. We want to stay here. I don't know where you work, but somewhere close by. But with a little bit of tweaking, we can make this work and we can spend the rest of our days here. And also it encourages family harmony which is what we, you know, we're not Judge Baker's guidance center but it does help.

TIMOTHY HUGHES: I have my doubts about that last part, family harmony, and whether or not this is going to prove all the beneficial effect they expect.

ATTORNEY JAMES RAFFERTY: Well, if you look at the housing that's been created in the last ten years, the workhorse unit is two bedrooms and about 1,000, 1200 square feet. They're vertical in most cases. But this house at the end of the day will still

be a 2500 square foot house that is a fine family home, not a McMansion. But I understand the issue, but I do think --

TAD HEUER: Yes, point well taken.

BRENDAN SULLIVAN: I mean, my involvement in youth sports, people could not stay in the city, and these are very valuable people who bring little leaguers down to the park, hockey players down to the rink, and they could not stay in the city without some, you know, expansions and to make things worth their while. You know, yes, they could go out to the suburbs and get this 2500 square feet or 2800 square -- and everybody lives in their own little space and everything is wonderful, but they really want to live in the city. But to find a house that they can afford that they can tweak one way or the other and still make it doable, affordable is very difficult.

TAD HEUER: And I'm looking 25 years

down the road at the people, when these fine folks, to the extent they decide that it's off to Florida for them, want to sell the house, I presume, will be selling at a premium for 2500 square feet and not 2,000.

CONSTANTINE ALEXANDER: I think for the record, I absolutely agree with the principle that Tad has said. I just come out differently on the facts. I think in this case you come out okay. It's exactly right.

BRENDAN SULLIVAN: Well, we can't hold them there forever. Let me make a motion to grant the relief requested as per the proposal submitted and the drawings submitted with the dimensional form.

The Board finds that a literal enforcement of provisions of the Ordinance would involve a substantial hardship to the petitioner because it would prevent this modest addition to the house to be constructed.

The Board finds that the hardship is owing directly to the existing non-conformity of the house. A vastly undersized lot, quite narrow. And that the hardship is inherent. And that any expansion thereof would require some relief from this Board.

The Board finds that the request is a fair and reasonable one, and that desirable relief may be granted without substantial detriment to the public good and would not nullify or substantially derogate from the intent and purpose of the Ordinance.

On the condition that the work be completed in compliance with the drawings. These are the drawings? No changes? Which would be initialed and dated by the Chair.

Anything else?

All those in favor of granting the relief requested?

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.
One opposed.

(Sullivan, Alexander, Hughes,
Scott.)

BRENDAN SULLIVAN: Anything to add?

TAD HEUER: Nothing other than the
reasons that had been stated before.

ATTORNEY JAMES RAFFERTY: Just one
thing, Mr. Chairman. Mr. Linn points out to
me that the elevation depicts a window that
will require relief from the state building
code board. In the event it weren't -- it is
not obtained and that elevation wouldn't
contain that window that appears.

BRENDAN SULLIVAN: Because of the
setback.

ATTORNEY JAMES RAFFERTY: Because
the proximity to the lot line.

BRENDAN SULLIVAN: Right.

ROBERT LINN: Fire separation
issue. So if the Board didn't grant it, we

would just do no windows.

BRENDAN SULLIVAN: I think it's understood.

CONSTANTINE ALEXANDER: I think we should not assume, we should put it as part of the motion. That in accordance to the elevations, except that to the extent that you have to eliminate a window because the state building code requirements permitted you to do so.

ATTORNEY JAMES RAFFERTY: Thank you.

BRENDAN SULLIVAN: Okay, just to be more specific that would be on --

ATTORNEY JAMES RAFFERTY: Which elevation is that, do you know? Give him the sheet.

ROBERT LINN: Sure. That would be on the miss -- A3.0. And the one that should say south elevation but it says west.

BRENDAN SULLIVAN: West 0.02 which

is basement window?

ROBERT LINN: It's the -- this basement window was just shifting. And this was shifting. It's really these two. These two new windows. These windows all exist. These two.

BRENDAN SULLIVAN: It would these two windows which are in the side yard setback.

ROBERT LINN: That's right.

BRENDAN SULLIVAN: With the possible exception of the two windows, shown on sheet A3.0 is the south elevation, the two windows within the allowable side yard setback for fenestration, and should the state building appeal board not allow those windows, then the Board will allow a no window in its place. Those windows to be taken out or eliminated. Okay.

(8:50 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case 10077, 53 Smith Place. Okay, all yours.

ATTORNEY EDWARD FITZGERALD: Thank you. My name is Edward FitzGerald and I'm here with Mr. Madrid and Mr. Leal in connection with this 53 Smith Place. This application is to change a use currently at the location is Jasmine Scientific. I'm not sure if you know the area. I've actually brought a couple of aerial photos so that you can see. I've circled the property on them. And you can see that it's quite a distance from the residential areas in the industrial zone of Smith Place. Currently the Jasmine Scientific employs approximately five

people. It's employed as many as eight to ten in the past. The plan is to -- Mr. Mailman, who is the current owner of Jasmine and 53 Smith would like to transfer the property to these gentlemen. They operate a company called Eurotech. It's at 45, I believe, 45 New Street. And they do auto repair, auto body work. It's a very congested area over there. And this location will give them, you know, a significantly increased space. Currently they're located -- their building is at 4700. And this building will have 5642.

These gentlemen have been in the business for about eight years. They started in Brighton. They moved to Cambridge when they needed more space. They've been successful here. And specifically what they're trying to do is they're trying to establish a new location that will be entirely green. And I have some

information on that that I'd like to give you as well. This technology will essentially eliminate the use of solvents in the painting of the vehicles. And this is a technology that should be standard within five or -- five years or so. It's used in many states now, including California, it's required because --

CONSTANTINE ALEXANDER: Do you have to move to a new building to put this in? If you don't, then this is irrelevant.

ATTORNEY EDWARD FITZGERALD: Well, the building they have right now is very cramped. They need a new drying booth and they need new equipment. So that's why the increased size of the building that they're going into makes sense.

The area there is an industrial area. There are many commercial uses in that area. All commercial uses in the area, including those involving automobiles, both storage

and repair. Cinderella Carriage is right around the corner. We have the ambulance company next-door. We have the Verizon location with many vehicles. This type of business doesn't generate that much traffic. People come -- actually, their cars are sometimes towed in because of a crash. Cars are actually sometimes delivered back to the customer instead of people coming to pick them up. Cars are usually left on-site for a couple of days while the repairs are being done. So it's not -- it doesn't increase the traffic, and it won't increase the traffic for this location.

CONSTANTINE ALEXANDER: This is a picture of the building. Where are the cars going to get into the building for the auto repair?

ATTORNEY EDWARD FITZGERALD: Well, it's our intention to apply for a building permit so that on the right-hand side of the

picture where the white vehicles are --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY EDWARD

FITZGERALD: -- these cars. We're going to put in an overhead door here. We've talked to the Building Department about that.

CONSTANTINE ALEXANDER: So you're going to modify the structure if you get relief tonight?

ATTORNEY EDWARD FITZGERALD: Right. Drive in into the building.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: There another plan there, I think.

ATTORNEY EDWARD FITZGERALD: There is a large plan that's a floor plan. There's also a parking plan.

So the floor plan shows the proposed modification to the interior of the building, how cars will come in and how they will exit. Right now there's a loading dock, and we're

discussing modification of that loading dock so that the cars could come in one door and out the other.

THOMAS SCOTT: So they'd come out where the loading dock is?

ATTORNEY EDWARD FITZGERALD: Right.

THOMAS SCOTT: Would there be a ramp of some kind?

ATTORNEY EDWARD FITZGERALD: Yes.

CONSTANTINE ALEXANDER: We're talking about substantial modification to the structure if we grant relief. And once that modification is done, that structure would be pretty much useable for an auto body shop. It won't be able to go back to a scientific use unless you modify the building back to where it was.

ATTORNEY EDWARD FITZGERALD: Right.

CONSTANTINE ALEXANDER: I'm not criticizing.

ATTORNEY EDWARD FITZGERALD: It can

also be used any by other company that uses vehicles: Delivery, you know, package delivery, taxis, that kind of thing. Many other uses.

BRENDAN SULLIVAN: The loading, this is Adley. Is it Adley Place or something like that?

ATTORNEY EDWARD FITZGERALD: Yes, Adley's down around the corner, yeah.

BRENDAN SULLIVAN: And the front door of the building is here, they're going to put an overhead door to get in. There's no exit at the loading dock.

THOMAS SCOTT: They're proposing one. They're proposing to put a ramp there. It's not shown there. I think that's what they just said.

BRENDAN SULLIVAN: Is that what we understand?

THOMAS SCOTT: You're going to put a ramp here and exit.

ATTORNEY EDWARD FITZGERALD: Well, first people can come here and then go out if the loading dock is not -- right now it's not shown. So the anticipation is people coming and going. If the -- if it's allowed, we need to investigate further the -- you know, there's different types of ways to get in and out of the building. They could put a lift there; pull on, go up, pull in. Or they could put a ramp there. And the cost of that and everything else hasn't been determined. So right now this is what we're proposing, just the way it was submitted.

BRENDAN SULLIVAN: Off of your building how much land do they own facing the building and to the right side here?

ATTORNEY EDWARD FITZGERALD:
Between the two buildings?

BRENDAN SULLIVAN: Yes. Well, no, no.

THOMAS SCOTT: There's three lots

there, right?

CONSTANTINE ALEXANDER: This is where you come into the building.

ATTORNEY EDWARD FITZGERALD: Let me show you -- there's a picture of the site.

BRENDAN SULLIVAN: How much of the property --

ATTORNEY EDWARD FITZGERALD: There's actually a right of way here. 30 feet is the right of way. It starts, you know, three to four feet off our building and stops about three or four feet off of the next.

BRENDAN SULLIVAN: All right. So what you're saying, even if a ramp were to be put in here, it is going to be encroaching the right of way. It would have to be.

ATTORNEY EDWARD FITZGERALD: Well, yes, it would be on the right of way. Everything would be on the right of way.

THOMAS SCOTT: Parking's on the

right of way?

ATTORNEY EDWARD FITZGERALD: Yes. Just, you can sort of see some lines here. See this vehicle parked? That car is also parked on the right of way. So, the right of way is so wide that -- and the definition of the right of way and the deed is that it's to be used for all purposes for which ways are used in the City of Cambridge which would include parking in the case law.

CONSTANTINE ALEXANDER: There wasn't -- there's some correspondence in the file, actually an e-mail challenging the parking issue. Are you going to address that at some point?

ATTORNEY EDWARD FITZGERALD: Yes. So, the parking, why don't we do that first? So the corresponding to the parking is that from the Traffic Parking Department, yes, that was -- we learned about their concern about two weeks ago, but I worked

closely with them and I know that there's -- should be another letter in the file from Mr. Shulman over at Traffic and Parking accepting that number of parking spaces that were there prior to 1990. We were able to find some aerial photos at the DPW.

CONSTANTINE ALEXANDER: Okay. So the issue has been resolved?

ATTORNEY EDWARD FITZGERALD: Yes.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY EDWARD FITZGERALD: So, we talked about the use there. We talked about traffic.

It's our contention also, that there wouldn't be any adverse influence on any adjacent property for the following reason:

Issuance of the Special Permit requires that any bit of work that they do be done inside the property. They can't do work outside the property. They understand that.

At their current location they actually do a little bit of work outside the property, minor work. They understand they're going into a larger space, the purpose of the larger space is so that they can do all the work inside.

Let's see, we actually received phone calls from neighbors concerned about that, concerned about the work outside, concerned that their work might impact the right of way. We only have so many spaces. They know that. They know that they have to do the work inside. Obviously there's an enforcement procedure. If they violate their Special Permit, there's an enforcement procedure. There's not going to be any type of nuisance here for noise. The work is all done inside. And the work that's done is clean. There's not going to be any environmental hazard or no waste that they need to deal with.

TAD HEUER: Is it going to be loud?

ATTORNEY EDWARD FITZGERALD: Well, it's going to be inside the building. I mean, it's going to be inside the building. There's lots of other industrial uses around there. There are vehicles, for instance, trucks that pull into the ambulance company that allow -- there are sirens from the ambulances that --

TAD HEUER: But is your use going to be loud?

ATTORNEY EDWARD FITZGERALD: No. The sound of an auto body, maybe a wrench or a machine operating like any other garage. You know, the heaviest piece of equipment is probably the air gun, you know. It's certainly not as loud as a siren.

TIMOTHY HUGHES: So the answer is yes.

TAD HEUER: Right, okay.

ATTORNEY EDWARD FITZGERALD: A little bit.

TIMOTHY HUGHES: Because air guns are loud.

ATTORNEY EDWARD FITZGERALD: They are loud, but they're not as loud as other things like sirens.

We've worked closely with parking. We're going to -- we've submitted to them that we would do some measures that they recommended, bicycle racks and some other things and would require whatever it is that they want. We want to be a good neighbor. We think that, you know, have it first green establishment like this in the city is a bonus, and we think that would be a great benefit for the City of Cambridge.

TAD HEUER: For the six parking spaces that you have, are those going to be parking space for employees or is that going to be for --

ATTORNEY EDWARD FITZGERALD: Some. Right now they have, where they're currently

located, they have seven to ten employees. It goes up and down. So, they don't all park at where they are now. They come by T, they come other ways.

TAD HEUER: Right. But is any of the parking going to be used for location of vehicles that are being serviced?

ATTORNEY EDWARD FITZGERALD: They're not going to be serviced outside.

TAD HEUER: Right. But would it be like waiting to go inside?

ATTORNEY EDWARD FITZGERALD: Yes. A vehicle might get dropped off there and it would be sitting there, not moving and then towed inside.

TAD HEUER: Are you allowed to use, when you say use of any use of a public way, are you allowed to park an inoperable vehicle on a public way?

ATTORNEY EDWARD FITZGERALD: Well, these are registered vehicles. These are

registered vehicles. If it -- and in some cases they're operable most of the time. It's the total wrecks that obviously they're totaled, they're not repairable so they're not going to be there. So if it's a car that's repairable and it's registered and it's movable except for maybe a flat tire where it got hit or something like that, that's the only reason it would be there waiting for an insurance adjustor.

CONSTANTINE ALEXANDER: But if the car ceases to be registered, you have to remove it immediately.

ATTORNEY EDWARD FITZGERALD: Right.

CONSTANTINE ALEXANDER: You understand that? Or you client needs to understand that.

BRENDAN SULLIVAN: Who either owns or controls the spaces directly across from the front door on that main road?

ATTORNEY EDWARD FITZGERALD: And a

little to the left?

BRENDAN SULLIVAN: Well, you come out your front door, it's right in front of you along the chain link fence.

ATTORNEY EDWARD FITZGERALD: My understanding is that those spaces belong to the building there, Bob Ray, I think. I'm not sure if he has an entity that owns it, but the old terminal where there are some condominium spaces.

BRENDAN SULLIVAN: Okay.

ATTORNEY EDWARD FITZGERALD: Industrial condominiums there. So a lot of those are assigned to his. According to Traffic and Parking they're his spaces.

BRENDAN SULLIVAN: Okay.

ATTORNEY EDWARD FITZGERALD: A significant number of them. I think there's 23 or something like that.

You know, and the alternative, you know, if parking ever became an issue, if they

grew and became an issue, then we would obviously have to deal with finding parking off-site in another location. You know, there is parking available there. We just don't think we need it right now or want to go for it.

BRENDAN SULLIVAN: One of the concerns that I have is the overnight parking of vehicles that are being worked on up on New Street that face of the property to the immediate left along the fence there. Now, you do have somewhat of a fenced-in yard there, but there are a couple of vehicles that haven't moved since the first snow came down. And my concern is then those are also totally inoperable. I don't know if they're being cannibalized for parts or what, but they've been there for a long time. And that would be my concern, is that vehicles would be parked down alongside the building by the loading platform which makes a very nice spot

to put big chunks of iron and let them sit there. And if I were to go out, one of the conditions, among many, would be that there be absolutely no overnight store the vehicles. During the day it may not be problematical. But I don't want to turn it into a junk yard. And I don't mean to do disservice to your business or anything, but for lack of a better term.

ATTORNEY EDWARD FITZGERALD: Right.

BRENDAN SULLIVAN: So, anyhow, just to have that thought in your mind anyhow.

Anything else? You do get a chance to come back again and talk anyhow.

Any other questions?

THOMAS SCOTT: What's the use in the two adjacent buildings here?

ATTORNEY EDWARD FITZGERALD: Across the straight of way here is the ambulance.

BRENDAN SULLIVAN: Professional ambulance.

ATTORNEY EDWARD FITZGERALD: I'll see if I have another picture for that. And on the other side --

BRENDAN SULLIVAN:
Micro-continuum.

CONSTANTINE ALEXANDER: Another auto body shop.

ATTORNEY EDWARD FITZGERALD: We own that building.

BRENDAN SULLIVAN: Tim, any questions at this point?

TIMOTHY HUGHES: I don't have any questions.

BRENDAN SULLIVAN: Tad, any?

TAD HEUER: No.

BRENDAN SULLIVAN: Let me open it to public comment, and then you'll have a chance to speak again.

Let me open it to public comment. Is there anybody here to would like to speak in favor of the proposal, Smith Place.

CHARLES MAILMAN: I'm the owner.

BRENDAN SULLIVAN: Give your name and address for the record.

CHARLES MAILMAN: My name is Charles Mailman. I'm the owner. And I'm in favor of this sale. I've been there since 1977, and I'm getting older and I have some medical problems and I have to sell.

BRENDAN SULLIVAN: Okay, thank you.

Is there anybody here who would like to speak in opposition to the proposal?

LINDSEY WHITE: Yes, please.

BRENDAN SULLIVAN: If you please, stand up and give your name and address.

LINDSEY WHITE: I'm Lindsey White. I live at 12 Blanchard Road in Cambridge. My wife and I own the building sort of four feet to the -- well, it's on your plan. It's to the west. No, I guess it's to the north of the building. I wear two hats in this. First is as a member of the study commission

of the Alewife area, which including the shopping center, triangle and quadrangle. We studied the area looking at alternatives for development for almost two years. We worked with the Cambridge Planning Department and Goody and Clancy architects. That commission has finished its work and had a series of conclusions which were then embodied in a Zoning -- set of Zoning Regs. The conclusion is the Zoning should be set up to encourage the following: Multi-family housing along Concord Ave. Research and compatible light and industrial use north of this housing. On the west side of the quadrangle, lower height and buffer zone towards the highlands residential area. An eventual grade crossing of the railroad track accessing the triangle and Alewife Station and eventual bus service to the area. What you see if you drove in to Spinelli Place, which is -- it's sort of in this area, is what

we saw as the fabric eventually of the research of light industrial. This is one of the few remaining areas of Cambridge where less expensive loft space is available for i-tech startups. The area around Kendall is really taking it up. And as such, is extremely valuable to the Cambridge economy.

My plea is that the Zoning on which we worked so hard, and which we hoped will guide the development of this area over the long haul, not be overturned for short term financial expedience. That's one hat.

The second hat.

CONSTANTINE ALEXANDER: Before you go to the second hat, sir.

LINDSEY WHITE: Sure.

CONSTANTINE ALEXANDER: That report is okay, but the Zoning Law allows an automotive repair shop. The Zoning Law that's now in existence does not reflect that report. You can only draw the conclusions

that the City Council didn't accept that. They didn't change the Zoning By-Law to prohibit automotive repair shops in this area. So I don't know what the relevance of that -- it's a nice thought. From the -- and it's well thought out. It's just not our Zoning.

LINDSEY WHITE: I was told that the Zoning would be restructured --

CONSTANTINE ALEXANDER: It hasn't been.

LINDSEY WHITE: -- to encourage the kinds of development you want in the area.

CONSTANTINE ALEXANDER: It hasn't. Specifically by Special Permit, you can have an automotive repair shop in this area.

LINDSEY WHITE: Well....

CONSTANTINE ALEXANDER: Okay.

LINDSEY WHITE: Let me put on the second hat.

CONSTANTINE ALEXANDER: Please.

LINDSEY WHITE: Second hat is owner of 57 Smith Place which is a neighbor to 53 with a four-foot of separation between them. Our tenants are Adaptive Optics and subtenant Micro-continuum. There are two particular problems with a body shop in this location:

One, we hope to have our tenants be able to operate an environment of similar upscale businesses. There is much blight in the area. The telephone company in the building is currently derelict. The Adley building is currently surrounded with non-conforming uses. We are trying to clean-up this blight rather than extend it to other properties. Let me apologize to Eurotech Auto Body regarding this wording. My impression is that your business is clean, it's well run, and is certainly well respected, but we see it as a non-conforming use for purposes that we were trying to establish and we would like for our building.

And parking around our building is severely limited, and that includes the 53 as well. Though common parking wasn't parked at the architect's plan when the reworked quadrangle -- or was part of the architect's plan in the reworked quadrangle, they led us to believe that they would have some centralized parking that we all could share in working that quadrangle. They haven't supplied it and we don't see it coming along any time terribly soon.

In the meantime we were cooperating to accommodate employees and clients cars. Heading toward New Street, it appears the demands on local parking would increase. That's the extent of mine. Did you have something to add to that?

SUSAN WHITE: I'm Susan White and I'm at 12 Blanchard Road and also owner of 57 Smith Place. Chuck and I have been co -- have been neighbors for a long time. And I'm not

trying to oppose you, however, I do think that having anything that brings in more cars like this is a problem. There's a serious issue that needs to be looked at more carefully and that is that I have a company there for a number of years, and then an adaptive office (inaudible). We used to be able to park against the fence that abuts the Verizon property. That is no longer possible. So I think there are some very clear issues here about the use of, quote, the right of way, that should be looked into further. And just to be able to have, again, we're hoping for small high tech and light industry in the area, and to have tow trucks, disabled cars, cars in process, there simply is no parking or space for that there. I believe that Jasmine only has what, about three spaces in front of the building? Maybe four? Maybe about more.

CHARLES MAILMAN: There's five. At

least five.

SUSAN WHITE: Some of which will go away when the ramp is put in. So I think the parking is very, very, very real issue as well as the whole intent of the area.

So, thank you.

BRENDAN SULLIVAN: Anyone else who wishes to speak for the matter?

JOHN DiGIOVANNI: Good evening, my name is John DiGiovanni (phonetic), and I'm with Cambridge Highlands which owns the 2931 Smith Place building. I submitted a letter, I think, for the Board so it outlines my concerns. I think you're correct, I'm not sure that all of the Zoning was changed, but I think there's an overlay district that was established as a result of the study committee. And I think the Special Permit requirements were one of the reasons that we're here. And I also don't want to oppose businesses. We have businesses in our

building. And in fact, the ambulance company, and I will tell you they're not sitting there waiting for a call and their sirens aren't making any noise on their way out. They're actually out in the city just like a police station. We in fact also have a police substation in this building. I'm sure on occasion that could happen, but 90 percent of the time they're out in the city. So, I'm not suggesting that isn't a business use, it is. I'm concerned quite frankly as the Chair mentioned about the exterior of the current operator and what likely could happen with this type of use if they continue in their success and they continue to bulge again, what happens? And that's the concern here. That doesn't happen with office space. The majority of our building is that. If you run out of space, you can't operate outside the building. You must stay within it or move. And given the kind of investment

these gentlemen are putting in this building, I asked them to seriously to consider that, because the alternative use, I think this is a great point, that how you do you reuse it? Now you're limiting yourself again as to your potential resale. And if you're as successful as you have been and you continue to expand -- I do have photos of Eurotech's -- and it was only a couple weeks ago, about cars being repaired outside. I have those. I can submit those.

I think the Chair actually recognized that there are cars out there disabled and actually on lifts being repaired outside the space. So that's the concern. I share the concern of the neighbors on the other side of what that's like. And quite frankly, because parking's a problem, it's even more of a problem in the winter. And quite frankly at the end of Adley Road, at the end of the right of way, I don't know how -- I

don't where you put the snow if cars are going to be coming out from there. I didn't realize there was actually a door installed on the back. I thought everything would be coming in from the front. So I think there are some operational concerns that aren't being considered. It is an issue of that right of way as it begins to narrow that down with cars parked, and I think it's -- I don't know how it gets enforced quite frankly if someone's repairing their car outside. It's almost impossible I think for the city to be able to really enforce this as the Special Permit you must be doing all the work inside the four walls. Quite frankly, the ambulance folks don't bring their patients back here. They bring them to the hospitals. They're not coming back here. The staffing or loading up their ambulances and they're out in the city. And I'm just genuinely concerned about what this could lead to. In

fact, I do have some images from that study committee report as to what they were hoping this area would become to look like. And quite frankly, it's sort of -- their front of their building is sort of what they're proposing and they're bringing it back to something that -- and this was part of the study committee. And I think of sort of this here and possibly that is sort of their hopes. And that's sort of what their building looks like, the one-story office, and I think it's going to look more to that style. They do, they did hope to put residential and so forth. I'm not suggesting that all of those were -- Zoning changes were actually implemented.

I also, I guess a neighbor also that wanted to submit, and I don't think he got it in on time, I'm not sure. You already have my letter, but this is a letter that a neighbor on Spinelli Ave. asked that I would

submit and his concerns. I only have three. I apologize, of that letter. I don't have a copy of Spinelli Place who actually was a member of the study committee. I attended those meetings but I was not a member.

CONSTANTINE ALEXANDER: When was study committee's report issued, roughly? I don't need an exact date. Two years ago, three years ago?

JOHN DiGIOVANNI: Well, this was submitted in April of 2005.

CONSTANTINE ALEXANDER: Five. So six years ago and the City Council has not taken any action to change --

JOHN DiGIOVANNI: I think in fact they did something, which is why we're here --

CONSTANTINE ALEXANDER: They didn't change the Special Permit for an auto body -- automotive repair shop. That suggests the City Council believes that

certain with the right conditions, that you should have or can have an automotive repair shop.

JOHN DiGIOVANNI: And I think you're right. And my concerns about some of the issues are actually being filled, those obligations. And that's really what I'm here saying. As in my letter, I really think the taking into account that they're currently operating, and I put a request to Mr. FitzGerald about the size and space of the inside and outside. When he says it's 4700 square feet inside, how many square feet outside that they're currently operating? And if that's the case -- no, no, I'm talking about Eurotech's current capacity. If they're doing inside and outside, does it total the 6500 and are they at capacity again right now?

ATTORNEY EDWARD FITZGERALD:

Actually, they have about 800 outside.

JOHN DiGIOVANNI: So now we're talking about 5300. I'm sorry, 800 outside? So about 5500 square feet. They're going about a thousand, which is a couple of cars.

ATTORNEY EDWARD FITZGERALD:
(Inaudible).

JOHN DiGIOVANNI: And you have seven to ten employees. So you're going to have a couple of employees parking cars in there. My concern is whether they'll be able to fill it with a Special Permit parking requirements.

CONSTANTINE ALEXANDER: If we were to grant the Special Permit, they have to, as this gentleman points out, have to do the work inside. If they don't, any abutter or neighbor can immediately complain to the city officials and the Zoning Law will be enforced. So it's not -- they're going to be able, if you have vigilant neighbors, they're not going to be able to do repair work

outside. I think that's a strong end, a fear that warrants it. The work will have to be done inside. If they can't do the work inside, they don't have enough space, they've got a problem. You don't have a problem in terms of work then moving outside.

JOHN DiGIOVANNI: I appreciate that, and I guess the question then is what is the test for the Board to know whether or not this is something they can --

BRENDAN SULLIVAN: Well, it's an enforcement thing. It becomes a phone call to Inspection Services who sends out the building inspector. And the building inspector may observe something at the time, may not, may come back maybe over a period of a few days or something, and if he observes something, then he will file a complaint or institute some kind of enforcement action which then triggers a sit down with Inspectional Services, yada-yada, and they

may very well come back and say there is an infraction on the permit and then your permit is in jeopardy. So they really roll the dice, and there's an awful lot on the line if they were to exceed any of the conditions. That is just going to be one of the conditions, but there are going to be a number of them which is going to make it a very green operation, but also a very quiet operation.

JOHN DiGIOVANNI: No, I appreciate that. And I guess the biggest issue I guess from our standpoint is that they're fully aware if that and wouldn't want folks thinking of the change in the rules. Let me submit these for you.

BRENDAN SULLIVAN: Should we grant that they will be more than aware and would do well to heed whatever's being granted.

JOHN DiGIOVANNI: Thank you for your time.

BRENDAN SULLIVAN: Is there anybody

else who wishes to speak in opposition?

MALE: No, I raised my hand when you said in favor of.

BRENDAN SULLIVAN: Sorry. Yell, scream. Throw something at me. I'll get back to you. Okay, you have the last word.

Anybody else in opposition?

(No Response.)

BRENDAN SULLIVAN: No, all right. There's letter in the file from a Joseph P. Purell (phonetic), 36 Spinelli Place. "To whom it may concern: This letter is very difficult for me to write. I've been wrestling with it for weeks. I was appointed to serve on the Concord Alewife study group and worked for the city official business and property owners. I am concerned and have reservations that the proposed use of this cite under the proposed Special Permit would be counter to these goals and objectives and would stifle future development of the area.

I visited the site and can't visualize how an auto body repair shop would operate without using the yard space which is on the street frontage. I consider myself pro business and pro development, but regrettably I would ask that this application be reviewed carefully and denied as it will impact the larger and future plans of the area.
Sincerely, Joseph Purell."

There is a letter from the Professional Ambulance, 31 Smith Place, which is on the other side of the right of way if you will.
"Dear Zoning Board Members: As the primary tenant at the property at 29-31 Smith Place, I am writing to express my opposition to the above-captioned Special Permit application to locate an auto body paint shop at 53 Smith Place. We have worked in conjunction with the City of Cambridge providing the 9-1-1 ambulance service in the city for over 30 years. We have been operating at our current

location for over six years. As you can imagine, the access and egress from our location is critical to our emergency operation. Having seen the plans for 53 Smith Place presented to you, I have significant concerns with the delineated parking scheme. Having cars parked on the Adley Road side of 53 Smith Place would have extremely negative impact on our ability to access and exit our garage door on the Adley Road side of our building. It is our hope that another alternative can be found rather than the parking plan impacting Adley Road. Very much appreciate this opportunity to provide my comments on the Special Permit, Bill Mergendahl M-e-r-g-e-n-d-a-h-l, President and CEO of Professional Ambulance."

And a correspondence from a John DiGiovanni who already spoke. There was correspondence regarding the parking plan

where there was some question that Traffic and Parking had no parking registration for 53 Smith Place. This was dated March 31st, addressed to the Commissioner. There is a subsequent letter dated April 12th from Mr. Adam Shulman to Counselor FitzGerald, counsel for the petitioners stating "Yes, we accept that there were six spaces at 53 Smith Place prior to 1990 based on this 1987 photo, and in review of our files by me and Sue Clippinger, the director. You do not trigger a small PTDM plan because of the number of spaces you propose.

LINDSEY WHITE: Do you know whether those include any spaces across the right of way on the telephone company side?

BRENDAN SULLIVAN: It just says please complete your interdepartmental registration form for six spaces at 53 Smith Place so we can update our records with, that the current owner in parking layout plan for

six spaces to serve employees and customers only at 53 Smith Place.

CONSTANTINE ALEXANDER: Is there a parking plan in the file?

BRENDAN SULLIVAN: There is one in the file.

ATTORNEY EDWARD FITZGERALD: I can address that question when I close.

BRENDAN SULLIVAN: And that is the sum and substance of the correspondence. Now, one gentleman who would like to speak in favor.

BILL DILLAN: My name is Bill Dillan (phonetic) and I'm a real estate broker. I've been working that neighborhood for about 30 years. I know a lot of the people there as -- I'd like to say that, you know, in general, most property owners are against auto body shops coming in next-door. So I'm not surprised by some of the comments. The problem is that there is very little space in

the City of Cambridge that allows this type of use, and every city needs some place where people can, you know, work with their hands, actually make things, repair things, Cinderella Carriage is not even a hundred yards away. It might be 30 yards. They've been there a long time. They do essentially the same thing. Cars come in, they get fixed. And, again, I've worked this neighborhood a long time. I've never heard anybody complain about what goes on at Cinderella Carriage. I can see the abutters being, you know, nervous, sort of the near of the unknown. I had actually had a conversation with Mr. DiGiovanni about a place in Watertown called O'Reilly's. It's in the central business district, it's an auto body shop. And it's as neat as a pin. I think Julio used to work there many years ago. There's a new residential complex going up right next-door to it. So I would

say to you that there's, you know, living proof that there's -- that an auto body shop can be run neatly and be a good neighbor at the same time. And I'd be happy to submit those pictures if anyone is unfamiliar with O'Reilly's.

CONSTANTINE ALEXANDER: Sir, do you have any involvement?

BILL DILLAN: I am the broker for this transaction.

CONSTANTINE ALEXANDER: Thank you.

CHARLES MAILMAN: My name is Charles Mailman. I live at 53 Smith Place and I'd like to say a couple words if you don't mind. First of all, my one neighbor is my ambulance, they have seven to eight ambulances parked on their side. We have usually nobody just to accommodate them. And they're over the line that they own. And if they're talking about a problem, they've created the problem.

Also, No. 2, my office is facing their

opening. Oftentimes the ambulance start to -- you're talking about noise, they start their ambulance noise, the siren as they're coming out the door. Talk about noise, there's a noise there. On the other side I've been friendly with the Whites for a lot of years. They have a lot of problems. They have -- we've accommodated them. They have a generator from time -- one time that they put in half our property, half of their property. They have a loading dock there that probably once a week they have 50 or 55-foot truck comes in, blocks the entire roadway. I mean, if you're talking about spaces and everything, everybody's got to move their cars to accommodate them, and this particular truck that will stay there for maybe half hour to an hour. So, we've worked hand-in-hand with a lot of these people for a lot of years trying to accommodate them. I don't see where there would be a problem with

these people moving into this property.

BRENDAN SULLIVAN: Mr. FitzGerald anything further?

ATTORNEY EDWARD FITZGERALD: With respect to the concerns of the Whites, they asked questions about the parking --

THE STENOGRAPHER: Can you please speak up?

ATTORNEY EDWARD FITZGERALD: The Whites expressed concern about the parking, and specifically and across the way, we don't have any of those parking spaces across the way, diagonally across. Those all belong to the Adley building. I don't know when that happened. I don't know when they lost access to those spaces, but they were unrelated to us. We have no right to them. And they are not the six parking spaces that the Traffic and Parking is talking about. You know, he also mentioned the report and I'm glad here that it was not fully enacted but it also

provided I think some -- there was some understanding in it that -- regarding the type of development, and he's brought some photos. There's also industrial uses in that area that are shown. They're not residences. They're not all residence. You can't put housing everywhere. And this is one of the, you know, main industrial areas in the City of Cambridge. And I think we've beaten the access on that right of way to death here. There have been -- there's historical problems with the ambulance company and the parking on that right of way. I think we can leave that alone.

All and all I think that they have an understanding. They cannot do work outside the property. They know that. And it's a clear enforcement issue if they were to violate it.

BRENDAN SULLIVAN: Let me close the presentation part of the case and we'll let

the Board discuss it among themselves. Gus, what are your comments?

CONSTANTINE ALEXANDER: Well, I can well understand people's reluctance to have an auto body repair shop as a neighbor. But our Zoning Law says you can have it if you get a Special Permit. And our Zoning Code says, I'm reading from 10.43: Special Permits will normally be granted where the specific provisions of this Ordinance are met except.... And then there are a number of things which we have to pass on to grant the Special Permit. So you start with yes, it can be done unless. And it seems to me -- I haven't heard your conditions yet, Mr. Chairman, but I suspect that the conditions will satisfy any objections. So given that, I think we have to -- I'm in favor of granting the Special Permit.

BRENDAN SULLIVAN: Tom.

THOMAS SCOTT: I just have one more

question about the operation. Is there any type of exhaust? Like, there's a painting crew, right? Where they paint, you know, painting of the cars. Is there any exhaust that comes?

ATTORNEY EDWARD FITZGERALD: It's a -- not a solvent-base, it's a water-base product. So there's a drying booth and it's basically is water evaporating.

THOMAS SCOTT: Are there odors associated with it?

ATTORNEY EDWARD FITZGERALD: I think if you -- some small amount. If you read the pamphlet, I think you'll see that it's in excess of 80 percent, 83 percent or something like that less than it would be if it was a regular shop.

BRENDAN SULLIVAN: Are there going to be any exhaust fans on the roof of the building to exhaust any air out of the interior?

ATTORNEY EDWARD FITZGERALD: Yeah, I think it would have to be.

BRENDAN SULLIVAN: More than bringing in fresh air and exiting stale air. I mean, is there -- what are the exhaust fans?

NERY LEAL: It's going to be. I think there's 15 feet high of the roof. I mean, they're going to have some fans.

THOMAS SCOTT: Is it filtered in some way?

CHARLES MAILMAN: They're all filtered. We have a building that's behind us that's biotechnology, and at one time they had a lot of problems with exhaust. They were told to make it filter proper. They did that and now there's no problem.

BRENDAN SULLIVAN: That would all have to comply with your license anyhow. Your licensing requirements as far as exhaust and the interior those conditions.

NERY LEAL: The shop is going to have

a brand new spray booth inside there, exhaust and everything. Plus, you know, with no more fans, no solvents, it's going to be all water.

BRENDAN SULLIVAN: Okay. You all set?

THOMAS SCOTT: I'm all set.

BRENDAN SULLIVAN: Tim.

TIMOTHY HUGHES: I have your concern about the parking spaces becoming a place where inoperable unregistered vehicles will linger for a long time. Put the provisos in there inoperable or unregistered vehicles to sit in those spaces for longer than I don't know, whatever period the Board deems. It would be fine with me. I mean, I think it's already footnoted in the Table of Uses that the work has to be done and contained inside the building.

CONSTANTINE ALEXANDER: That's exactly right.

TIMOTHY HUGHES: Right.

BRENDAN SULLIVAN: Sir, your thoughts.

TAD HEUER: I think I have the same kind of concerns, and I'm looking at the photographs that Mr. DiGiovanni came with, and I noticed the same thing when I was looking at the existing site. You know, the kind of thing that I'm worried about is, you know, I understand the cars that are jacked in some of these pictures, you know, that kind of work will be done inside now. What I'm concerned about is it looks like a kind of ill begotten, I don't know what it is. Toyota, maybe? What is that?

TIMOTHY HUGHES: I couldn't tell you.

TAD HEUER: It's ill begotten which means I couldn't even tell you what it is.

TIMOTHY HUGHES: It's not a Volvo because it would be around the corner at Cinderella.

TAD HEUER: Right. But that's the kinds of thing that I'm worried about having cars that are slowly not claimed. You know, the owner doesn't want to pay for it. The adjustor doesn't come out. You know, through no fault of your own you end up having accumulated, you know, orphan vehicles. You don't want to really pay to get rid of them because you were hoping to fix them and get paid and they leave. I think I would agree generally with the notion that the Ordinance says what the Ordinance says. You know, the purpose of Zoning is if you go way back, is that it's the intention to separate uses, you can agree with whether or not that's a good thing, but the intention of the Zoning Ordinance is separate uses, not including noxious uses. Not to pejoratively call this a noxious use, but I think historically auto uses have been classified as noxious uses. And that cities should have a place where

these things to exist. I think Cambridge has done a fairly good job in cabining where these things exist. The fact that, you know, that happens to exist in the Alewife area, may be somewhat unfortunate for those who live there, and I understand the concerns, and so I think that any Special Permit would have to be appropriately conditioned. But I think fundamentally the city has decided that if it is going to allow auto body uses, it's going to allow them only in certain areas and this happens to be one of those certain areas. So we're somewhat constrained in what we could do even if we were inclined not to grant this. Mr. Alexander says the presumption on the Special Permit is different from Variance to Variance. We go in presuming you can't get it versus you should, and I hear with a Special Permit you go in presuming you can get it as long as certain conditions are met.

The one thing I do have a bit of concern

about, and it's this notion of the loading dock turning into an egress. I would say that it's not on the plans that were submitted to us, and therefore any use of that loading dock for egress purposes would require coming back before this Board. It's not something I would be willing to draw in right now freehand, and it's something I think would be a substantial enough change to the property that would require further relief. So I would say that for now the only egress and entrance for the site should be the one that's indicated in the plan which would be through that new opening made in the front of the building.

BRENDAN SULLIVAN: Can you just go back on the right of way, and case law which says that parking on a right of way is protected, allowed.

ATTORNEY EDWARD FITZGERALD: Yes. The right of way as it's contained in the

deeds, says that the right of way is to be used for all purposes for which ways can be used in the City of Cambridge. And I did some research on how Cambridge allows ways to be used. Parking is one of the principal ways. You can't -- you can park on a right of way. You cannot block throughway. You can't block someone from going through.

BRENDAN SULLIVAN: Is not a right of way an allowance to traverse a property -- well, obviously unencumbered but that any party, abutting properties can use the right of way to traverse from one area to the next to access their property for maintenance purposes or what have you.

ATTORNEY EDWARD FITZGERALD: There are lots of different types of rights of way. Some of them actually have language that pass and repass. And this particular one it says for all purposes for which ways can be used in the City of Cambridge.

TAD HEUER: I guess one of the other questions is let's say that I've parked on this right of way, can you dedicate a portion of a right of way to parking for a certain structure or isn't it that that the right of way should be traversable for all uses and allowing for throughput, but that there's no dedication allowed in the right of way unless that's granted an easement.

ATTORNEY EDWARD FITZGERALD:

Actually I looked at that, too. And I've looked at cases all way back to the thirties. And the answer is yes, you can dedicate a portion of the way for parking areas.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: I know areas in Cambridge where it's done.

ATTORNEY EDWARD FITZGERALD: We didn't do that. We're not asking to do that right now. It's just, you know, we were satisfied with what --

BRENDAN SULLIVAN: That all parties abutting the right of way agreed to that? Or can a party unilaterally decide I'm going to park in this right of way?

TAD HEUER: You need easements or not?

ATTORNEY EDWARD FITZGERALD: Actually, the problem is solved by the Traffic and Parking Department because to increase parking beyond what it was in 1990, you have to do the PTDM plan. Even if you wanted to add one space to your -- any commercial use. And there are some other commercial parcels in that general area that don't have registered parking with the city right now.

BRENDAN SULLIVAN: You're giving up. You're abandoning what is now existing two spaces in order to put in the entry doorway.

ATTORNEY EDWARD FITZGERALD: Well,

if you look at the plan, we actually have six spaces on the plan. So we're just moving them to the side.

BRENDAN SULLIVAN: But where there is an existing parking space, that's being --

ATTORNEY EDWARD FITZGERALD: That's going to be utilized by the door, right.

BRENDAN SULLIVAN: That's being abandoned right here. There's obviously the front entryway. So there is a one, two, three, four -- there's potentially five spaces in the front now existing.

ATTORNEY EDWARD FITZGERALD: Right.

BRENDAN SULLIVAN: And two of those spots are being abandoned and relocated around the side to allow tandem parking on the right of way.

ATTORNEY EDWARD FITZGERALD: We could essentially do a new plan, a PTDM plan and ask for parking along the whole length. And as it is across the right of way where you

see angled parking, to do something like that. To me what the problems with this right now with the ambulances coming and going, across the right of way, it would just exacerbate the problem. So, that's why we elected not to do that. And it would require a PTDM plan which is many, many months you know.

BRENDAN SULLIVAN: Because they would have to sign off on a Certificate of Occupancy.

ATTORNEY EDWARD FITZGERALD: They would.

BRENDAN SULLIVAN: So if they were not to accept this plan, there's a potential problem. In other words, if they were okay, we acknowledge that you have six spaces.

ATTORNEY EDWARD FITZGERALD: Right. If I tried to get eight, yes.

BRENDAN SULLIVAN: In other words, have they seen this plan? Or is the question

do you have six spaces?

ATTORNEY EDWARD FITZGERALD: Yes, they've seen that plan. Exactly like that. Not that drawing, but this has the same parking.

BRENDAN SULLIVAN: Okay, so that.

ATTORNEY EDWARD FITZGERALD:
They've seen that, yes.

TAD HEUER: And those are going to be lined, those spaces?

ATTORNEY EDWARD FITZGERALD: Yeah, right now they're not. They're going to need to be, yes.

BRENDAN SULLIVAN: Something tells me instinctively that nothing has parked along here --

ATTORNEY EDWARD FITZGERALD: Well, actually the photo --

BRENDAN SULLIVAN: Because in order to access this loading dock, a truck would have had to have come down here unencumbered

and not have cars parked along that.

ATTORNEY EDWARD FITZGERALD:

Actually, that's true. They would have to be moved. If it was a long truck. But the photo that I found, the aerial photo from 1987 actually had vans parked down by the loading dock.

BRENDAN SULLIVAN: On a day --

ATTORNEY EDWARD FITZGERALD: Right against the building.

BRENDAN SULLIVAN: Well, you know, on the day there was no deliveries I guess. Whatever, anyhow. That was an obvious snapshot in time.

ATTORNEY EDWARD FITZGERALD: Right, exactly.

BRENDAN SULLIVAN: I don't know. I mean, I have concerns of being able to come in and out of here with cars being parked along the way. Your presentation is that these parking spaces are for your vehicles

and customers; is that correct.

NERY LEAL: Yes.

BRENDAN SULLIVAN: People who would come and drop off a car and you would park it here to move it inside the building?

NERY LEAL: Yes.

CONSTANTINE ALEXANDER: How about employees, where are they going to park?

JULIO MADRID: Some employees come on the train. Some come with another employee.

CONSTANTINE ALEXANDER: Every employee is not -- there's not going to be any employees driving to that space?

NERY LEAL: There probably going to be some.

CONSTANTINE ALEXANDER: Yes, but where are they going to park?

NERY LEAL: We're going to have to --

CONSTANTINE ALEXANDER: I mean, I

think they have to use up some of those six spaces.

ATTORNEY EDWARD FITZGERALD: I think you're right. And we're not saying that those are all going to be used by --

CONSTANTINE ALEXANDER: That's what I heard. That's why I stopped him.

BRENDAN SULLIVAN: How many -- you're proposing one, two, three, four, five, six, seven, eight bays.

TAD HEUER: Nine.

BRENDAN SULLIVAN: Oh, sorry, nine.

ATTORNEY EDWARD FITZGERALD:
Location is parking area.

BRENDAN SULLIVAN: How many cars can you accommodate now on New Street inside?

JULIO MADRID: I would say about 18.

BRENDAN SULLIVAN: 18.

NERY LEAL: You can handle more cars inside there.

BRENDAN SULLIVAN: This is just the

way the numbers work out.

NERY LEAL: Yeah.

BRENDAN SULLIVAN: And typical you just cram them in wherever they go? Just your --

NERY LEAL: We want to run a nice, clean shop that's the reason why we want this place. I mean, it's going to be like one of the nicest shops in Cambridge.

THOMAS SCOTT: I think your question is how many cars are in the existing, in the shop, not outside? How many can the existing shop hold today?

NERY LEAL: Like 18 cars inside.

THOMAS SCOTT: 18?

BRENDAN SULLIVAN: Well, again, I think there's a few concerns. No. 1, is that everybody needs an auto body repair place, but nobody wants it in their neighborhood. No. 1.

No. 2, is that where they are on New

Street now is disaster zone as far as repair shops, but that's historically what it's been. I live around the corner on Garden Street and, you know, going back and forth on New Street to JC Adams and to the parking and to the shopping center all the time, I see the daily workings. I don't notice that much or hear that much noise, but cars are parked all over the place. And it's a typical auto repair area. The area there that they're trying to change obviously with the development next to JC Adams, and yet does it make sense to push those auto places out in time possibly, but you know, jack modification I guess will still be there. And when you move out, somebody else is probably going to move in. And the question is where do these places go? My thought is yes, a place like Smith Place does accommodate auto repair because historically it's been very industrial, and a lot of

trucks, a lot of activity in those buildings. Looking forward to the future I can understand where people don't want auto repair facilities because there's a stigma attached to auto repair places. And their fear is that we would prefer to have a nice startup biotech, high tech, you know, the new Microsoft whatever it is, is going in there. And that again, a rising a tide lifts all boats, and that only enhances once a place goes in and attracts another and another and another. And, you know, hence Kendall Square west if you will.

NERY LEAL: Right.

BRENDAN SULLIVAN: But the dilemma is where do these places go? And I'm not thrilled about it, but it is still allowed as you point out, for the City Council should have instead of Special Permit said no to it. The reason why they have a Special Permit is to allow this Board to put some rules and

regulations for those establishments in there. Anyhow, I'm not sure how we go with it. But let me make a motion to grant the relief requested to allow for the Special Permit and the relocation -- the location of the auto body repair/paint facility to go in at 53 Smith Place as per the proposal, the plans submitted, parking plan and the interior layout of the building.

The Board finds that the requirements of the Ordinance can be met.

The Board finds that traffic generated, patterns of access or egress would not cause congestion, hazard or substantial change in the established neighborhood character.

The Board finds a continued operation of and development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

The Board finds that there would be no

nuisance or hazard created to the detriment of the health, safety or welfare of the occupant of the proposed use or to the citizens of the city. And that the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

The Board also finds that the new proposed use is not inconsistent with the urban design objectives set forth in section 19.30.

The Board grants the relief requested being cognizant of the overlay -- the Alewife Overlay District provisions under 20.94.2 that all dust fumes, odors, smoke or vapors be effectively confined to the premises or disposed of so as not to -- I'm sorry, so as to avoid air pollution.

That any noise, vibration or flashing is not normally perceptible without

instruments at a distance of 100 feet from the premises.

Further, on the condition that all repairs to any vehicles be not done exterior of the building. All repairs be done interior. That there be no painting, spraying or otherwise. No painting or spraying be done exterior of the building.

That there be no display of cars for sale exterior of the building.

Your hours of operation are going to be what?

NERY LEAL: Eight to five.

BRENDAN SULLIVAN: Eight o'clock. Eight a.m. to five p.m. Monday to Friday.

CONSTANTINE ALEXANDER:

Mr. Chairman, may I interrupt you there? Why don't we give them a little leeway on that. Because there may be a day where at 5:15 they finish up a job. Make it eight to six or something like that.

BRENDAN SULLIVAN: Well, I'm thinking --

NERY LEAL: I was going to say more like eight to six, too.

BRENDAN SULLIVAN: The hours of operation would be eight a.m. to six p.m. Monday through Friday. There's no Saturday work?

NERY LEAL: There is -- Saturday is half a day, eight to twelve.

BRENDAN SULLIVAN: Sorry?

NERY LEAL: Half a day. Eight to 12.

BRENDAN SULLIVAN: Monday through Saturday.

NERY LEAL: Yeah.

BRENDAN SULLIVAN: That there be no storage of repair vehicles. No storage of repair vehicles parked overnight exterior of the building.

Now, are you going to have a dumpster

on the premises?

CHARLES MAILMAN: There is one now.

NERY LEAL: Yeah.

BRENDAN SULLIVAN: Where is that located?

CHARLES MAILMAN: It's in the back near the ramp.

BRENDAN SULLIVAN: Okay. Is that dumpster the size of the dumpster that you would need?

NERY LEAL: Let me see it. That's the size that we have.

BRENDAN SULLIVAN: Okay. So that's what a ten yarder?

NERY LEAL: Yes.

BRENDAN SULLIVAN: That there will be one ten yard dumpster allowed on the property next to the loading dock.

That there be no storage of vehicle parts outside of the building.

That the parking plan, which would be

initialed by the Chair, entitled, "Parking plan located at 53 Smith Place," and dated December 14th, initialed by the Chair. Be the plan and no additional other parking be allowed other than what's on the plan proposed.

Anything else?

CONSTANTINE ALEXANDER: No, but I think that one slight modification. I think with regard to the findings in your motion, those findings being made because of the conditions that you suggested and, therefore, failure to satisfy the conditions means Special Permit is void.

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: I think we should -- when we get to framing it, it should be on that base basis. Because of those conditions, we can make the findings that you propose.

TAD HEUER: Also that to the extent

that there's a proposed use loading dock as entrance or an egress than what we are granting is the structure as proposed that's on the floor plan provided and no modification will be allowed after.

BRENDAN SULLIVAN: Right. We are accepting the parking plan and the interior layout plan as submitted.

Okay, Tim, anything else that we should add to it?

TIMOTHY HUGHES: I don't think so.

BRENDAN SULLIVAN: All those in favor of granting the Special Permit?

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Alexander, Hughes, Heuer, Scott.)

BRENDAN SULLIVAN: And one opposed.

(Sullivan.)

9:55 p.m.

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

BRENDAN SULLIVAN: Okay, the Board will hear case No. 10078, 215 First Street. Mr. Kelley.

FRANCIS KELLEY: For the record, my name is Frank Kelley. I'm an employee with SAI Communication, I'm here representing AT&T, New Cingular Wireless. What we're proposing here today --

BRENDAN SULLIVAN: Before we get into it, Mr. Kelley, only because we would have to reassemble the same four Board. A member, two members at least have some concerns about the photo simulations being inadequate, I guess, if that's the right word to use. And I guess I would have to agree

that I sort of feel, and I'll let the other members speak for themselves, that it's really quite a distance, No. 1. Whether it be intentionally that, you know, it doesn't have much -- look like it has much of an impact because it's so far away. But it's hard to tell even what's there or what's being proposed. And I would guess that you could probably do a closer shot of it. So I agree that the photo simulations are somewhat problematical without getting a little bit better ones I guess. And I would see if any other member has the same concern.

TAD HEUER: I would have that concern, I think, and I'm not intending to get to the merits, but an attempt to make sure that if this is continued, consolidate it. Ballast mounting is, in my mind, in general hypothetically even worse than pipe mounting. Ballast mounting is throwing something up on the roof and sticking a

sandbag up on top of it for all intents and purposes, to keep it down. And to the extent that these are, and I believe they are, ballast mounts essentially large whips. I would encourage, not only better photo simulations, but maybe I would suggest that we also at least make some attempt at a stealth installation. At least try.

CONSTANTINE ALEXANDER:

Particularly with this property, First Street, this is an architecturally significant building. We don't want to get on the merits. I'm one of the ones who doesn't want to hear this case tonight because I'm just -- I can't assess the visual impact from those photo simulations. They look like they were taken from Arlington Center they're so far away from the building. So I don't want to say any more about it. But I do share what Tad's saying about the nature of the equipment and the nature of the design

as well as the photo simulations.

FRANCIS KELLEY: Yeah. I did speak with Sean yesterday, and he addressed -- told me those concerns on it. I actually had our A&E guy go and -- and we haven't changed anything here except we blew up the view. And I have copies of this if you want them.

CONSTANTINE ALEXANDER: These are new photo simulations?

FRANCIS KELLEY: They're just -- there's a blow up of the antenna that they're the same.

CONSTANTINE ALEXANDER: They got to be in by five p.m. or close of business on Monday before.

FRANCIS KELLEY: It's not a -- it's just a point of clarification in order to help you visualize what the other photo simulations look like when you get in the close ups so it's not a -- we're not asking that the Board approve a change in what we're

doing up there. We're not asking them to approve something that's not on the photo sims that are in the package that's submitted. We've got further clarification that show -- that will help the Board better see -- the problem with this site is that because they are ballast mounts that aren't on the edge of the building, you have to get a ways away in order to see them because it's -- because of the, you know, if you have a vector coming over with the edge of the building hanging out -- so you do have to get them away. And I think, you know, we're not asking for the Board to approve something that's, that works -- what we're submitting here, we're just providing additional information to allow the Board to see what's on the other ones.

BRENDAN SULLIVAN: You know, I thought the Planning Board was always adamant not to have any antenna above the roof line.

Now, I guess there were some existing obviously, but then there were also some proposed.

TAD HEUER: Cabot Library, this is the same issue that we had, ballast mounted. I think we had the same concern then, and that was moved up the street to the other facility, I believe it was just last month, and put behind a fiberglass screen and the remainder of them were side mounted on that facility.

BRENDAN SULLIVAN: And the other concern I have, again, without getting into the merits of the case, but really, particularly it seems like we're just taking more equipment, we have more technology, we're just adding another piece of equipment and another piece of equipment. And I just cannot believe that you cannot wrap all of these antenna into a single or two antenna. I'm just not convinced. We probably have about a hundred thousand of these antenna

sitting in a warehouse ready to go, but I cannot believe that the technology, which is advancing at a gallop, cannot find a way to wrap these antenna into a nice box and do the same purpose and not have all of these protrusions all over the place. Am I wrong in my question?

TAD HEUER: No, that's kind of the similar approach that I think we've had for a while. And every time we ask we find that there's something else out there that we didn't know about.

BRENDAN SULLIVAN: And I keep going back, would you be allowed to put this on Beacon Hill? And I think the answer would be no, they would not allow it. And so show us what you would -- what would fly before the BRA on Beacon Hill or the Beacon Hill Protection Society or something.

FRANCIS KELLEY: We're not adding any antennas here. We're just swapping

three of the existing antennas.

BRENDAN SULLIVAN: Moving them around.

FRANCIS KELLEY: We're not moving them. We're just swapping them. We're leaving them in the same spot. There's nine antennas existing now. There will be nine antennas after. All of the antennas will be in the same spot. On some of the sectors we're relocating one of the existing antennas, you know, we're swapping around. But all -- we're just -- we're not adding any --

CONSTANTINE ALEXANDER: Wait a minute. I'm reading from your public notice. The new antennas are going to be slightly -- whatever that's going to be mean. Slightly wider, that's a change. You're also going to add additional cabinets on the existing platform, and you're going to add a three-foot conduit. You're making a number

of changes. It's not just the matter of swapping exactly the same as it was before. It's going to be different. And you're giving us photo simulations that don't show me anyway the difference.

TAD HEUER: It's also not so much that, but it is that, but in addition to that, there may be ballast-mounted antennas that have been up there since what, these are '97 I guess?

FRANCIS KELLEY: '96.

TAD HEUER: Yes, so they've been up there for 12 years. We've gotten a bit more strict I think than we were 12 years ago. Twelve years ago there were concerns about health and safety. I think that's what I was reading in terms of the original concerns about those issues. So it was, you know, how far away can you get it from people? And apparently the best way to do that was to get it up on a ballast mount in the center of a

large building. Now that, you know, regardless of what you believe about that or not, you're precluded from using health and safety as a reason of antenna placement. I think we're back at the issue of, you know, you need -- you're entitled to do these as an FCC carrier, but you're not entitled to do and where we do have the ways to put the equipment wherever you want on any building because telecommunication's access trumps all. The Federal Act, in my reading, is not just that broad. It's pretty broad, it's not that broad. And there is a role for the Board to say is this, as the Chairman said, the best you can do. Once you've said this is the best you can do, and we believe it on a reasonable basis, then you are essentially entitled to the Special Permit regardless of what we want to do. And we see ballast-mounted antennas knowing that we have other mounts in this city that we have seen recently, and we have seen

stealth-mounted antennas from other providers come in, and you know, there are still questions about numbers and massing stealth antennas that make them not so stealthy, but to the extent we know those are possible alternatives being presented. Simply with a swap in swap out ballast-mounted antenna, it's not just swapping and swapping. It's we may have not made an accurate determination 12, 15 years ago, and the swapping because you want the new facilities, means that you may have to meet some higher standards. We're not the Historic Commission where we're seeing you're swapping a window for a window and, therefore, it's okay. We're seeing every time you want to do this for the Special Permit, our standards have been tuned and sharpened over the years, those are the new standards, that evolution of standards is what applies. Sorry for the long

explanation.

BRENDAN SULLIVAN: I think you're right. Once you start changing equipment, we want to see that what Tad is saying is this the only way it can happen? Is this the only location? You may say we're going to take this antenna and we're going to put another one there, but it's a little bit bigger and because it's 4G and what have you. And we're saying well, to be honest with you, it doesn't really belong where it is now, and sure in heck the new one doesn't belong where it is. And is there an alternative? And I think it's too easy for engineering and accounting to say we'll just pull this one off and put another one on there. As a Board we're concerned of the visual impact of it. I'm not convinced that is in the best public interest, is to take that antenna off and put another one that's a little bit bigger next to it or in lieu of it, in place of it. So,

I would -- I'm not satisfied that what is before us is the only way and best way that we can accomplish you to get your 4G and all the other stuff.

TAD HEUER: Solely on the basis of photo simulations. We take other things into account.

BRENDAN SULLIVAN: On the basis of the photo simulations, which are difficult to decipher.

FRANCIS KELLEY: We did review this with the Planning Board and they, they didn't think it was a -- that the visual changes are insignificant given the location on the rooftop and the height of the antenna and the antennas from the Planning Board.

BRENDAN SULLIVAN: Right. I was a little surprised at that, because I think that they're a little more in tune to the aesthetic attributes or lack thereof, and so consequentially we can't count on them so I

think we need to --

CONSTANTINE ALEXANDER: It could be that they feel that they could decipher the photo simulations to their satisfaction. At least for this Member of the Board, I'm not as good as they are in that regard. I want better photo simulation.

BRENDAN SULLIVAN: So I guess my thought is to go back and just say -- and I may need some help here from fellow Members of the Board, is that the photo simulations are inadequate. That the ballast mount appear to be problematical. Is that the right word?

TAD HEUER: Yes.

BRENDAN SULLIVAN: And that we would like to see an alternative to the proposed mounting scheme, and also better photo simulations which are quite a distance. And I think that they could be far more discernable. So that's my thought on that.

Anybody wish to add to any of that?

CONSTANTINE ALEXANDER: I think we need to emphasize in our decision it's because of inadequate photo simulations. Otherwise we'll be getting into the merits of the case.

FRANCIS KELLEY: I guess if I could have some guidance as to, you know, whether you think that these other ones would show enough information or whether we're going to have to do something else with the photo sims so we don't run into the same problem.

BRENDAN SULLIVAN: Well, it's --

FRANCIS KELLEY: There's really only one sector that's readily visible, and that's the ones that are coming and looking across.

BRENDAN SULLIVAN: Now, where is the cable?

FRANCIS KELLEY: You can't see the cable. It's all on the rooftop. This is

really the only sector here that's visible.

TAD HEUER: We have people that take it on a day when it's not cloudy and the white antennas don't disappear into the white clouds.

FRANCIS KELLEY: It's not in the clouds, it's other stuff in the background.

TAD HEUER: I'm looking at proposed conditions on photo location two purely hypothetically.

CONSTANTINE ALEXANDER: We have many cases, telecom cases with photo simulations, and for the most part we don't have problems looking at them and understanding exactly what the visual impact is. I think in these, and the other ones, the other case tonight I can't discern the visual impact.

TAD HEUER: I'm not in the business of promoting a particular photographer over another, but we have never had a problem with

the ones from different carriers. And we have seen dozens.

BRENDAN SULLIVAN: So I think that would be our concern for not opening the case. We feel that the photo simulations are inadequate to discern the impact. And that further along those lines that the proposed mounting needs to be reconsidered.

TAD HEUER: Yes.

BRENDAN SULLIVAN: So, consequentially I would encourage a continuance until, Sean?

SEAN O'GRADY: Until May 12th.

CONSTANTINE ALEXANDER:

Understanding you have to get the new photo simulations in by the Monday before. Will that give you enough time, May 12th? Will you have enough time to get new ones in?

FRANCIS KELLEY: Yep. Yep.

BRENDAN SULLIVAN: I'll make a Motion then to continue the matter until May

12, 2011 at seven p.m. on the condition that the Petitioner submit new photo simulations which will allow the Board to discern the actual visual impact of the antenna that are being proposed.

CONSTANTINE ALEXANDER: Yes. And they have to sign a waiver of notice.

BRENDAN SULLIVAN: And on the condition that the --

CONSTANTINE ALEXANDER: Waiver of time for a decision.

FRANCIS KELLEY: Yep.

CONSTANTINE ALEXANDER: Modify the sign.

FRANCIS KELLEY: Yep, with the new date on it.

CONSTANTINE ALEXANDER: And time.

FRANCIS KELLEY: What was the time that it's --

BRENDAN SULLIVAN: Seven o'clock. May 12th at seven p.m.

FRANCIS KELLEY: Okay, thank you.

CONSTANTINE ALEXANDER: Don't go
yet.

BRENDAN SULLIVAN: On the motion to
continue?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

CONSTANTINE ALEXANDER: Why don't
we take the other telephone case so we can let
this gentleman go. We have Cambridge Park.
I think we have the same issue on that.

(10:15 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10080, 150 Cambridge Park Drive. Sean, you have that one?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: And, again, it's the same issue, Mr. Kelley, on that. We find that the photo simulations are inadequate in order for us to determine the visual impact of the proposal. Is that correct?

And we would request a continuance.

FRANCIS KELLEY: Yeah. This building is a hundred -- the mounts are 140 feet in the air. It's -- there's not, you know, if you look at the -- this is a

neighborhood that, that's directly north of the other case you were just doing.

TAD HEUER: The neighborhoods are pretty charitable, you're right.

FRANCIS KELLEY: Well, you know, it's large parking lots. There are large sites. They're industrial areas.

CONSTANTINE ALEXANDER: Sir, I understand. Your points well taken. This is not the same case as the other one. There's more leeway here, but we still have to make a finding of visual impact. And without adequate photo simulations, we can't make that -- I can't make that finding. So I think your chances of success, personally speaking, are greater here than on the first one. But I still want to see photo simulations that would allow me to make a judgment.

BRENDAN SULLIVAN: It would behoove you to go back and address that issue.

So on the Motion to continue this matter to May 12, 2001 at seven p.m. on the condition that the Petitioner sign a waiver of a statutory finding for a hearing and decision, and to also change the posting sign to reflect the new date of May 12th and the new time of seven p.m.

All those in favor of continuing?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

CONSTANTINE ALEXANDER: You have two cases before us on April 28th. Take a good look at those. I don't see the photo simulations. Take a good look at those.

FRANCIS KELLEY: I think they're similar photo sims. If I take the same photo sims, and if I did a blow up like we had in here, would that be --

TAD HEUER: My suggestion is the

Board can opine on it is that we have, whatever we have here that's showing distance, that's fine as it is. As close to the building as you can get and still show an antenna as well, and then something that shows a blow up of what actually the equipment is up on the roof, reasonable enough that if someone were sitting out there looking at it the way I view and maybe no one else does --

FRANCIS KELLEY: From the street?

TAD HEUER: From the street. That they'd be able to, you know, have a -- if you had a good pair of binoculars and you wanted to really see the latest in panel technology, you'd be able to do so by looking at the photo sim that's provided.

CONSTANTINE ALEXANDER: That's true.

FRANCIS KELLEY: Okay, thank you.

BRENDAN SULLIVAN: We have a waiver one this one, Sean?

SEAN O'GRADY: Yes.

(10:15 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10079, 29 Pemberton Street. Introduce yourself for the record.

RYAN GUTHRIE: Good evening. For the record, my name is Ryan Guthrie owner/operator of Stateside Realty Group also owner of 29 Pemberton Street. And we're petitioning the Board for a Variance for a third floor deck, and a Special Permit to enclose approximately a 50 percent of a rear deck.

TAD HEUER: And that's already been done, right?

RYAN GUTHRIE: Yes, that's correct.

TAD HEUER: Can you explain why at least in the permit application you show a photograph -- do you have the photograph? A photograph here that shows the deck being framed and then the amount that's going to be enclosed, it looks like that's just a plywood covering where the deck used to be; is that right?

RYAN GUTHRIE: Yes, that's correct.

TAD HEUER: I was over there last night, night before, and that looks like it's been paneled in; is that right?

RYAN GUTHRIE: That is correct.

TAD HEUER: So the siding is actually on?

RYAN GUTHRIE: Yes.

TAD HEUER: So you applied for a Special Permit for something you weren't entitled to do, and then you not only continued doing it but you paneled it over with the finishing?

RYAN GUTHRIE: No. We were -- by right we were allowed to do the first and second floor because they were previously enclosed. The only thing we were petitioning the Board for was the third floor because that was an open railing on the third floor. So they said we needed to go to the Zoning Board to enclose the portion of the third floor only.

TAD HEUER: Is that right?

SEAN O'GRADY: That may well be right.

RYAN GUTHRIE: That is correct.

TAD HEUER: So you put the siding all the way up on the third floor?

RYAN GUTHRIE: Yes. We were granted -- well, we talked to Ranjit about it, and we had concerns of enclosing the lower portion and having it exposed to the elements all winter. He said to enclose it. We could actually side it. And if we did not granted

permission, we would have to remove it to convert back to a deck.

TAD HEUER: So, when was this picture taken?

RYAN GUTHRIE: That was taken in probably maybe November.

TAD HEUER: I'm not thrilled about that at all, but....

RYAN GUTHRIE: Yeah, we went on the -- you know, we asked permission from Ranjit and that's how we continued that way.

TAD HEUER: When did you apply for this?

RYAN GUTHRIE: The Special Permit and Variance was applied for in, I believe, February.

TAD HEUER: Why didn't you apply in November?

RYAN GUTHRIE: We just were -- we were still working on getting amended drawings. We actually sent in amended

drawings at the beginning of January.

TAD HEUER: But it wouldn't have mattered to you because you clearly had decided at that point you were going to build a porch, right?

RYAN GUTHRIE: No. We were hoping to be able to do that. Like I said, we had spoken with Ranjit and Sean. I actually had a meeting with them, you know, expressing my concerns about -- they said we could do the first and second by right. And they said, you know, we had some framing problems and enclosure problems. They said go ahead and enclose it and apply for your Variance and Special Permit.

TAD HEUER: All right, so let's say even that was true, why didn't you come to Special Permit before any of the -- you buy the building, you put down the down payment and you put the enclosing on it, and then you say the next thing I do is I better make sure

I have all the Zoning relief I need for this building before I start work.

RYAN GUTHRIE: Because we were actually under the impression that the third floor was considered FAR already and we could do that by right, which is how this all started. Because we had looked at the original property card and they actually list the enclosed porches in the back as FAR.

TAD HEUER: How are you able to do that as of right if you're in a 0.5, right? So you're at 165 in 0.5.

RYAN GUTHRIE: Yes. We thought because we had the roof overhead which is the existing structure, that created the FAR on that deck already. So I went through it thinking that I was doing it by right. And then when I talked to Sean and Ranjit about it, they said well, you can actually -- you can do the first and second by right, but you can't do the third floor without a permit.

And I had -- at that point we had already framed it.

BRENDAN SULLIVAN: The first and second floor could be done as of right because it was already done?

RYAN GUTHRIE: Previously enclosed, yes.

SEAN O'GRADY: I'm going to make some guesses here because I'm not sure I follow this process all the way through. I do remember them getting pulled over for exceeding their permit. There was some discussion about which floors were already enclosed and which weren't and that's where it was taken off my plate.

BRENDAN SULLIVAN: Is there a building permit in existence for the first and second floor enclosing?

RYAN GUTHRIE: Yes.

SEAN O'GRADY: Well, the argument there was that they were already enclosed.

And that it wasn't an enclosure, but like I said, at this point he was with Ranjit and Ranjit was making the calls.

RYAN GUTHRIE: We had provided pictures to Ranjit to show that the --

BRENDAN SULLIVAN: Yes, but historically do you know when a building permit was pulled to enclose the first and second floor?

RYAN GUTHRIE: No, there was nothing on record except for a permit that was pulled back in 1950 for this building for the front third floor deck.

BRENDAN SULLIVAN: So what you're saying is that even it was done outside of a permit, the fact that it was done ten years self-correcting; is that correct or not?

SEAN O'GRADY: Yes.

TAD HEUER: We know it's been ten years self-correcting?

SEAN O'GRADY: I can only speak for,

you know, for what Ranjit has determined. And so if Ranjit has determined that the bottom two are in fact enclosed then, you know, there's avenues for making that determination would be that, you know, it was either grandfathered or cured or conforming, and I agree it's not conforming.

BRENDAN SULLIVAN: So you had the third floor and half of it was over a completed second floor.

RYAN GUTHRIE: That's correct.

BRENDAN SULLIVAN: And how was that --

RYAN GUTHRIE: Well, the third floor had --

BRENDAN SULLIVAN: A porch on the roof --

RYAN GUTHRIE: -- that, yeah, had the existing roof over the third floor porch.

BRENDAN SULLIVAN: So the FAR underneath that is included, but the

enclosing of it is within the setback. Hence that triggered the Variance.

RYAN GUTHRIE: Right. Special Permit, yeah.

BRENDAN SULLIVAN: Sorry, Special Permit.

And the first and second floor had already been done. I mean, okay, so it somewhat weather-tight?

RYAN GUTHRIE: Yes.

THOMAS SCOTT: It was weather-tight with windows?

RYAN GUTHRIE: Yes. The first and second floor?

THOMAS SCOTT: Yes.

RYAN GUTHRIE: Yes.

BRENDAN SULLIVAN: Okay. So you proceeded on the basis that, I guess, it was somewhat allowable. You found out it was not allowable, and now you've come down and asked for us to put our improvata (phonetic) on a

deck that wasn't completed.

RYAN GUTHRIE: That's correct.

TAD HEUER: On the Variance side of things, we are being asked on one hand with the Special Permit to enclose a porch and take away useable open space. And then we're being asked to grant a Variance on the front of the building to add that open space back in, that doesn't make sense to me either. Talk to me about that.

CONSTANTINE ALEXANDER: And in talking to answering Mr. Heuer's question, tell me what the hardship is and what the special circumstances both of which are necessary to get a Variance.

RYAN GUTHRIE: Well, the hardship is the setbacks because of the angle --

CONSTANTINE ALEXANDER: No, no. That's not the hardship. What's the hardship to you if you can't have a deck?

RYAN GUTHRIE: The hardship is

limited open space, but you know the, you know, the only hardship is that there was existing -- there was an existing deck there, we would like to put it back. We think there's a case to be made that triple deckers all should have front porches.

CONSTANTINE ALEXANDER: Isn't it true, sir, you're developing this property?

RYAN GUTHRIE: Yes, I am.

CONSTANTINE ALEXANDER: You want to add an amenity to the property to increase the value of it. That's not a hardship. That's something that's a nice thing to have. And if I were in your shoes, I would like to have it, but that doesn't justify granting the Variance to you.

RYAN GUTHRIE: Okay. Like I said, we would like we think architecturally speaking that the structure would look a lot better if it did have that third floor deck. Typically on that street all the triple

deckers on Pemberton have third floor decks.

TAD HEUER: Yes, but around the corner Pemberton Terrace, they don't. You've got three of them that have just that first floor enclosed that is essentially the second floor deck. I mean, right around the corner actually. I can stand across the street from where you are, look down Pemberton Terrace and I can see a building that looks like that now. You're obviously talking about the one that's two or three down and you got the blue one next to you --

RYAN GUTHRIE: Right, it's a mansard, yeah.

TAD HEUER: And then you got one down and another one down.

RYAN GUTHRIE: Yep. And there's a brick -- brick multi and the next three or four in a row.

TAD HEUER: Right. So I mean, equally looking around the other corner, and

you've got one with that. I mean, I understand why you want one, you know, it seems to be kind of six of one, half dozen of another. But the combination of the add open space in conjunction with the Special Permit of lose open space, you know, if you get one, you don't get the other.

RYAN GUTHRIE: Right. But we've provided as well open space on the first floor. The second third floor and it's a brick patio. We've also provided open space on the first floor which is a pavered patio. So we believe we have a sufficient amount of open space. You know, the back deck was enclosed because we needed to find -- in order to make these a two-bedroom, two bath we needed to accommodate a closet, which is what that space had created for us. And like I said, the reason that we did move forward is because looking at the property card, it shows those decks in the back as FAR. I was

under the impression that anything with a roof over it was considered FAR and I proceeded with what I thought was by right. And then obviously speaking with Ranjit and Sean, they told me that yes, certainly -- somewhat by right you can do that, but not the third floor it's because of the setbacks.

BRENDAN SULLIVAN: Did the original drawings show the enclosure of the third floor porch at your building?

RYAN GUTHRIE: I believe, I believe it did, yes. I do have the amended set as well.

TAD HEUER: On your dimensional form you note the ratio of useful open space to lot area is 59 percent. Is that possible?

RYAN GUTHRIE: Yeah, I believe so. I mean.... the lot is -- the building is 1227 -- oh, about 3387.

TAD HEUER: That's the lot area.

Usable open space.

RYAN GUTHRIE: I thought it would be everything with the driveway.

TAD HEUER: But even though you've got a building on there.

RYAN GUTHRIE: Right, the building footprint is 1227.

BRENDAN SULLIVAN: So now you're down to 2100.

RYAN GUTHRIE: Right.

BRENDAN SULLIVAN: 2160.

RYAN GUTHRIE: The landscape gardens and that full back area is all now usable space, open space.

TAD HEUER: You don't have any -- you need 15 by 15 for usable open space, Sean?

TIMOTHY HUGHES: At least one spot.

TAD HEUER: One that's 15 by 15.

RYAN GUTHRIE: You do.

SEAN O'GRADY: Yes.

RYAN GUTHRIE: Which we have.

SEAN O'GRADY: When you're not moving open space and you're asking what open space is, it's a really hard question to answer. And so I, I guess I have some sympathy for odd numbers in that space.

TAD HEUER: Do I need a 15 by 15 square?

RYAN GUTHRIE: We have that at the rear corner of the lot.

SEAN O'GRADY: You do.

RYAN GUTHRIE: This bumps out. This is 13, 3 but this bumps out in this corner as you can see.

TAD HEUER: So that distance from the --

RYAN GUTHRIE: Porch to the front.

TAD HEUER: -- right rear --

RYAN GUTHRIE: Yes.

TAD HEUER: -- to the fence is 15?

RYAN GUTHRIE: And then from the corner to the inside of the fence is 26.95

feet.

TAD HEUER: Is it approximately 15?

RYAN GUTHRIE: It's 15 or more.

BRENDAN SULLIVAN: We could probably agree it's possibly 140.

TIM HUGHES: That's pretty close to correct because the fact that it's 64 before you deduct the driveway, so it probably does have 59 percent. Just doing the rough math.

RYAN GUTHRIE: Yeah, that's --

BRENDAN SULLIVAN: Well, I'm personally I'm all in favor of the front. I think that the front is -- regardless of how it got there, this looks a lot better than that. And I think the reason why there's probably wasn't one there, it fell into disrepair and people just took it down, and said we're not going to spend the money and no one uses it, so on and so forth. It becomes an amenity to people who use it. I don't know, I have a three-family. I have

three porches and my tenants use it. I love them. And architecturally I think it adds tremendous value to the house aesthetically. So I like the idea that they're adding the porch and it looks much better. But I'm not totally thrilled with the back, but the back is the back. If they can do two of them as of right, I --

TAD HEUER: I think the proper time they come in for the third one is before and not after. I am not pleased with having set a precedent for people saying I can fill in a rear porch --

RYAN GUTHRIE: Yeah, I apologize.

TAD HEUER: -- and every time I do it, the Zoning Board's going to say it's okay. I think the fastest way for that not to happen ever again, and we are seeing it a lot. It is for something like this to be said, I see you done it, you can't do it. And I understand it creates penalty and a problem,

and I'm not sure that anyone else is going to vote with me on this, but we are increasingly seeing people coming in begging for forgiveness rather than asking for permission. And that's not the way this Board should be handing out relief, regardless of Special Permit relief.

RYAN GUTHRIE: I understand your concerns. Like I said, I didn't do it intentionally thinking hey, I'll ask for forgiveness later. It was genuinely done thinking that I could do this by right. And after speaking with Sean and Ranjit, realizing that I couldn't, but I did ask Ranjit if I could have permission to enclose this to make it weather-tight --

BRENDAN SULLIVAN: Let me see the plans.

RYAN GUTHRIE: -- and he did grant me permission. And that's the only reason I moved forward. I would have left it as is.

Temporarily tarped it if that's what he had told me to do.

TAD HEUER: And I guess I'm still -- can you go over again why it was four months from that knowing that you needed relief and actually filing for the relief? I mean, when you get the relief, you still got to wait. Now you're --

RYAN GUTHRIE: Yeah, well we had to -- we amended the total set of drawings which didn't come out. I'm not sure of the date on those drawings but --

BRENDAN SULLIVAN: 10/30.

RYAN GUTHRIE: Right. So we just wanted to submit an accurate drawing as opposed to an old drawing that would maybe get granted a permit and then not be accurate to the current drawings.

TAD HEUER: But your accurate drawings are from October 30th?

RYAN GUTHRIE: No. Those are the

amended drawings that we submitted with the Variance. To be honest with you, I had a lack luster architect that took a ridiculous amount of time to spit anything out and I, you know, prodded and begged and did everything I could, but --

BRENDAN SULLIVAN: You had to reframe the first and second floor; is that correct?

RYAN GUTHRIE: Yes, we did. Yeah, because it was all rot. You know, it -- because of not enclosing the third floor and sealing it properly, it just became a raccoons' nest and everything else. This property was in a complete state of disrepair. I think what we're doing for the neighborhood by revitalizing this property is a benefit to the neighborhood. And I think all of the neighbors which I've spoken are very much in favor of what I've done there. We're not a slap'em up stick'em kind

of contractor. We've done some nice properties here in Cambridge, and I'd like to keep that reputation if I could.

TIMOTHY HUGHES: I'm still unclear as to -- the third floor deck in the back would have been counted as FAR. So why is it that it needs a Special Permit?

SEAN O'GRADY: It's got nothing to do with FAR. It's a setback.

TIMOTHY HUGHES: It's a setback, okay.

BRENDAN SULLIVAN: Which is 25 feet? 35?

RYAN GUTHRIE: No, I believe it's 25 feet.

BRENDAN SULLIVAN: 25, and it's 13.

TIMOTHY HUGHES: So it's a backyard setback.

BRENDAN SULLIVAN: Correct. But the drawings -- the permit drawings sort of do show the existing roof to remain somewhat.

The drawings themselves are not all that clear. Obviously they show the structure, but it -- you know.

THOMAS SCOTT: So you had to reframe all of the decks in the rear?

RYAN GUTHRIE: Yes.

THOMAS SCOTT: All of them had to be taken down and reframed?

RYAN GUTHRIE: Yeah, they were vastly undersized and (inaudible).

THOMAS SCOTT: But the first two levels were enclosed space?

RYAN GUTHRIE: Yes. Yep. Like I said, it's all stemmed from the third floor and the roof. (Inaudible). But this place was very overgrown in the back. It was littered with vines attached to the structure. Like I said, there was raccoon nest. They actually had -- when we bought the place, they had two traps up on the third floor porch up. The house itself was packed

from floor to ceiling with stuff.

BRENDAN SULLIVAN: It does show that the third floor the was open. It shows proposed. You were permitted for it, but then proceeded on the basis and then somewhere along the line it was thought that was in violation.

RYAN GUTHRIE: Right.

BRENDAN SULLIVAN: Is there anybody here wishing to be speak on the matter 29 Pemberton Street?

(No Response.)

BRENDAN SULLIVAN: I see none and there's no correspondence in the file.

Have you spoken to anybody at all about this?

RYAN GUTHRIE: Yes. I've spoken with Mildred. She was actually supposed to be at the meeting tonight. She's roughly 90-years-old and after the long night --

BRENDAN SULLIVAN: Who is that?

RYAN GUTHRIE: Mildred, the next-door neighbor. And I've also spoken with Rick who's on the other side of me. The pastor. We've actually -- we have sort of have gotten their opinion, and they're actually thrilled with what I've done with the property. They have no problems with anything we're doing. And Mildred is thrilled as well. She just wishes it was her house that was getting redone.

BRENDAN SULLIVAN: All right.

TAD HEUER: I will reiterate. I have no problem with the project as it is. It's clearly a phenomenally, phenomenal improvement on what was there before. And it is great for the neighborhood. And I'm thrilled that you're doing it. My concern is purely just this procedural one and you just happen to be the one that (inaudible). Don't --

RYAN GUTHRIE: Just to give you

some --

TAD HEUER: -- don't take any kind of implication on what you've done I'm against. I think putting all, you know, enclosing that is probably the right thing to do. Given your structure and, you know, what you need to do with it and how the floor plan is going to work, my soul issue here is timelines.

RYAN GUTHRIE: Just to let you know, I've never been before the Zoning Board before. I'm doing this without a lawyer, without an architect. And just hoping you guys would --

BRENDAN SULLIVAN: And nervous as hell.

RYAN GUTHRIE: Yeah, exactly.

BRENDAN SULLIVAN: You have my future in your hands.

Gus, what are your thoughts?

TIMOTHY HUGHES: Glad we made it easy for you.

CONSTANTINE ALEXANDER: Variance first?

BRENDAN SULLIVAN: Variance.

CONSTANTINE ALEXANDER: I can't support the Variance. I just don't see a hardship. This is not a case where people need additional living space. It's an amenity that I'm not sure how it would be used. We've never been keen about high third floor decks generally, usually in the backyard. We're also not very keen about more construction in the front yard when you're on a tight street like Pemberton Street. So for all those reasons I would not support the Variance.

BRENDAN SULLIVAN: Now, this is just for the --

CONSTANTINE ALEXANDER: Front porch on the front of the house, yes.

BRENDAN SULLIVAN: -- porch. Okay. Even though traditionally they've always had

porches.

CONSTANTINE ALEXANDER: Yes, I know. Tom and I were looking at this, we can't -- looking at the photos it doesn't look like there ever was a --

RYAN GUTHRIE: There was. There's actually a permit on record to remove the third floor porch in 1950.

CONSTANTINE ALEXANDER: Even so, I just can't get there if legal point of view.

BRENDAN SULLIVAN: What are your thoughts?

THOMAS SCOTT: It's kind of hard to tell from the photographs. I mean, it almost looks like, you know, especially with that little water table there, it almost looks like the original house never had a porch there. But if you say it's on record --

RYAN GUTHRIE: It is.

CONSTANTINE ALEXANDER: I believe you.

THOMAS SCOTT: Yes, in general I think most triple deckers in Cambridge have porches at both levels, or all three levels. And I think architecturally the elevation probably looks better with it so I guess I'd be inclined probably to support that.

BRENDAN SULLIVAN: Okay.

Tim, what's your thought?

TIMOTHY HUGHES: I agree.

BRENDAN SULLIVAN: Tad?

I just think it's, you know, moving the house forward, enclosing the front porches is something I'm adverse to, but the addition of a front porch which is a very traditional element is --

THOMAS SCOTT: And the recreation of something that was there originally, you know, I'm in favor of that.

TAD HEUER: The recreation of pre-existing non-conformance. What's the additional FAR on this?

CONSTANTINE ALEXANDER: About 210.
From 1.65 to 1.7.

TAD HEUER: Sorry. Square footage.

RYAN GUTHRIE: It's roughly 85
square feet I believe. It's about seven by
12.

BRENDAN SULLIVAN: Yes, 84 square
feet.

TAD HEUER: Is there way you can get
it to be (inaudible).

TIMOTHY HUGHES: Because he's
adding FAR, isn't it? The back doesn't
count.

BRENDAN SULLIVAN: It's the front.

TIMOTHY HUGHES: You mean cut it off
some place?

THOMAS SCOTT: Aren't you deducting
FAR in the back? No, it's all there.

CONSTANTINE ALEXANDER: It's all
there before.

RYAN GUTHRIE: Yeah, there's no way

to cut anything off. We haven't exceeded outside --

TIMOTHY HUGHES: We can go two feet of concrete in the basement again.

BRENDAN SULLIVAN: Well, not putting a roof over it still doesn't do it because it's above the second level.

TIMOTHY HUGHES: It still counts, doesn't it?

RYAN GUTHRIE: I'm not putting a roof above the third floor.

SEAN O'GRADY: It's actually when you put the deck up, it's the second floor that gains the FAR.

BRENDAN SULLIVAN: That's correct. That's right. It's the ceiling. Anyhow, I would support it. So, we have one.

TAD HEUER: Oh, I know where I am.

BRENDAN SULLIVAN: Want me to show him the picture again? When you go down Pemberton Street in the future when you see

that, you'll say yeah, it does belong there. It does look better. Boy, am I glad that wisdom spoke in my ear.

TAD HEUER: Part of my problem is that I have a feeling that -- I don't know, on the Special Permit I have a feeling I'm going to be the only one voting against it. Although I don't know.

CONSTANTINE ALEXANDER: I'm in favor of the Special Permit if that helps you at all. I'm going to vote in favor of that.

TAD HEUER: Can we do the Special Permit first?

BRENDAN SULLIVAN: We can. Okay, on the -- we'll hold that, Cathy.

On the Special Permit which would allow for the enclosure, partial enclosure, 50 percent enclosure of the third floor porch let me make a Motion to grant the Special Permit.

And also are you moving a window or

something?

RYAN GUTHRIE: No.

THOMAS SCOTT: On the front.

RYAN GUTHRIE: On the front we're just flip-flopping the window and the door.

BRENDAN SULLIVAN: Is that part of the Special Permit?

RYAN GUTHRIE: Yes.

BRENDAN SULLIVAN: So, it's the enclosure of the third floor by 50 percent. Okay. Let me make the Motion to grant the relief requested for the Special Permit enclosing the rear third floor porch area by 50 percent as per the proposal, and also relocating the windows in the front facade of the building as per the proposed.

The Board finds that the requirements of the Ordinance can be met. Traffic generated or patterns of access or egress would not cause congestion, hazard or established change in the established

neighborhood character.

Continued operation of and 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, hazard created to the detriment of the health, safety, welfare of the occupant of the proposed use or to the citizens of the city.

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

On the Motion to grant the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.
The Special Permit is granted.

(Sullivan, Alexander, Hughes,
Scott.)

BRENDAN SULLIVAN: Four

affirmative, one no.

(Heuer.)

BRENDAN SULLIVAN: On the Variance.

TAD HEUER: Sean, do we need a Special Permit for the front?

SEAN O'GRADY: I don't think you need a Special Permit for the front doors.

BRENDAN SULLIVAN: I'm sorry, that's right because it's fronting the street. So it would just be for the back.

So, Cathy, you can eliminate all of that nonsense about the windows.

A Motion to grant the Variance to construct a third floor porch as shown on the drawings.

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 the Petitioner from constructing a third floor porch which is a traditional

element on a three-family in this particular area, and that it would allow the residents to have outdoor living space, which is much desirable.

The Board finds that the hardship is owing to the existing non-conforming nature of the structure in close proximity to the sidewalk the fact that it is over the existing floor area ratio and the setback from the front yard line.

The Board finds that desired relief may be granted without substantial detriment to the public good, and relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

All those in favor of granting the Variance?

TAD HEUER: Can I add a condition?

BRENDAN SULLIVAN: Yes.

TAD HEUER: The condition that even

under the Special Permit conditions of our Ordinance these porches shall never be filled, that provision is precluded with the Ordinance.

CONSTANTINE ALEXANDER: It's meaningless. You can put it in, but because somebody can come down and ask for a Variance to change that condition. Yes, you can do it but --

BRENDAN SULLIVAN: It would get repealed then. Which is fine. That's fine.

CONSTANTINE ALEXANDER: Sure.

BRENDAN SULLIVAN: They would have to get a Special Permit for it anyhow even if they were to enclose it.

SEAN O'GRADY: I'm assuming they're in the setback. Are they? If they're not then no, they could just enclose it.

BRENDAN SULLIVAN: The front is at five foot, eight.

SEAN O'GRADY: That would be in the

setback.

BRENDAN SULLIVAN: And, yes, required is 15. So they would have to get -- all those in favor of granting the Variance.

(Show of hands.)

BRENDAN SULLIVAN: One, two, three, four in favor.

(Sullivan, Hughes, Heuer, Scott.)

CONSTANTINE ALEXANDER: Opposed.

BRENDAN SULLIVAN: One opposed.

RYAN GUTHRIE: I apologize again. And I definitely won't do that again.

(10:50 p.m.)

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

BRENDAN SULLIVAN: The Board will hear Parkway Terrace, case No. 10081, One Parkway Terrace. If you would introduce yourself for the record. Do you have a business card? No, that's fine. She has all the pertinent information.

DAVID STERN: My name is David Stern. I'm with Stern McCafferty Architects. I'm working and presenting on behalf of Asif and Jen Jilani. Asif is present. I appreciate that you saved the best for last.

So, our proposal was for a small

addition to the property One Parkway Terrace which is a little teeny road off of Grozier which connects Huron to Fresh Pond Parkway. The existing house is an early 20th century brick colonial. You've seen them before.

CONSTANTINE ALEXANDER: With a wooden addition on the second floor on the one side, right?

DAVID STERN: That's right 1964 addition.

The existing structure is non-conforming to the extent that the front vestibule is within a setback as is a small rear mud room.

We're proposing a one-story addition that is entirely conforming.

CONSTANTINE ALEXANDER: Wood frame?

DAVID STERN: Yes. Wood frame addition. It's one story.

The FAR allowable, it's 0.5 of the 9750 square feet lot which allows us a floor area

of 4875. And with the addition, we're at 4260. And obviously within the setbacks and height limitations. We also are well within the requirements for open usable space which is 50 percent requirement. We're at 72 percent. The open square foot area required is 3,000 square feet. We're at roughly 7,000 square feet.

BRENDAN SULLIVAN: Based on alterations for a non-conforming structure.

DAVID STERN: Exactly. And per the, per the Zoning Ordinance 822.2C if we're under 25 percent, we can apply for the Special Permit. And we're at 12.4 percent.

TAD HEUER: Is that -- someone can correct me if I'm wrong. The percentages that we use from this are often baseline at the time Zoning came in. So you mentioned a 1964 addition.

DAVID STERN: That's right. If it wasn't for the 1964 addition, we would fall

under the ten percent rule and be able to do it as of right. We're just over that ten percent rule because we're taking into account the 200 some odd square feet from the 1964 addition.

TAD HEUER: So the 10 to 25 percent rule that you're in that zone for Special Permit encompasses both the pre-existing 1964 addition and the proposed addition?

CONSTANTINE ALEXANDER: Yes.
Every time.

DAVID STERN: That's right.

TAD HEUER: I just wanted to make sure it was done.

DAVID STERN: That's pretty much it.

BRENDAN SULLIVAN: And what you're adding to --

DAVID STERN: It's a, the program use of the addition?

BRENDAN SULLIVAN: Yes.

DAVID STERN: It's basically an

extension of the kitchen. It's a small family room that sits out in the yard. And it's pretty much hidden from view.

TAD HEUER: What's are you cladding with? It looks kind of --

DAVID STERN: It's a panel. It's a wood semi-finished hardwood panel.

CONSTANTINE ALEXANDER: Is it going to resemble the wood frame on the other side of the house?

DAVID STERN: No. In fact, we're proposing to modify that to match this. But the idea being that to respect the existing masonry and make these the same. They're both the same. Instead of having two additions, the hope is that this supports the integrity of the existing structure.

BRENDAN SULLIVAN: What type of cladding are you putting on there?

DAVID STERN: It's a wood fiber, semi-finished. It's called hardboard.

BRENDAN SULLIVAN: So it's a cement.

TIMOTHY HUGHES: I'm ready to, vote Brendan, in case you're curious.

BRENDAN SULLIVAN: Have you spoken to the Sperlocks (phonetic) across the way?

ASIF JILANI: I had brief conversation with Susan.

TAD HEUER: Did she tell you what you were getting into before coming to us?

ASIF JILANI: I had no expectations. Interesting experience. So I did have a chance to speak to the Sperlocks, and they asked us what we were doing back there. And basically I explained that we were just expanding the existing kitchen and dining area into an expansion of the kitchen as well as a family room area on to what is really for the most part a deck type area right now.

BRENDAN SULLIVAN: She would have wrote to us or something, but not a problem.

Let me open it to public comment. Is

anybody here wishing to speak on the matter at One Parkway Terrace?

(No Response.)

BRENDAN SULLIVAN: I see none and there is no correspondence in the file. I will close public comments.

Questions, comments?

CONSTANTINE ALEXANDER: I'm good. As Tim would say, I'm good.

TAD HEUER: I have one minor question. That fence line on your rear there, just approximately how much -- it's pretty high fence, am I right? On -- off Grozier Road between the abutter on the left. So this one.

ASIF JILANI: The new fence? That was put in by the owner at 15.

TAD HEUER: Over there? I'm just, you know --

DAVID STERN: Actually, he took out a high fence and put in a low fence but the

rear part remains.

ASIF JILANI: There was an aged lower fence that went along the entire property line there. And the developer that renovated the property at 15 Grozier put in essentially what's kind of a corner-shaped fence that runs, I think, until about here. I think it basically just, you know, blocks the view of our home right to the corner and then maybe comes out about this far or so.

TAD HEUER: Right. My only kind of neither here nor there, but my question was whether that new addition will kind of also be blocked by that fence, you know?

DAVID STERN: Well, the --

TAD HEUER: Do you expect that if it isn't, it will be soon.

TIMOTHY HUGHES: He'll add a bigger piece of fence to it.

DAVID STERN: Yes. There's an existing fence here remained.

ASIF JILANI: No, that he took out.

DAVID STERN: He took out?

ASIF JILANI: Yeah.

TAD HEUER: Okay.

BRENDAN SULLIVAN: I would think if there are three lots there and somehow or other the end of the cul-de-sac got built on.

ASIF JILANI: Right here?

BRENDAN SULLIVAN: Yes. You would think the master plan was probably three blocks, but anyhow. I digress.

Let me make a Motion to grant the Special Permit for the work as requested as per the plan. And this is not going to change?

DAVID STERN: No.

BRENDAN SULLIVAN: As per the plan and the application submitted, the Board finds that the requirements of the Ordinance can be met. The proposed addition to the existing non-conforming structure does not

violate the dimensional requirements of Article 5 and the non-conforming structure will not be increased in area of volume by more than 25 percent. And the Board finds that the existing non-conforming nature, hence the setback from the front is triggered some relief from this Board.

The Board finds that traffic generated or patterns of access or egress would not cause congestion, hazard or substantial change in the established neighborhood. Continued operation of or development of adjacent uses as submitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use. And nuisance or hazard would not be created to the detriment of the health, safety, welfare of the occupant of the structure or to the citizens of the city.

And the proposal would not impair the integrity of the district or derogate from

the intent or purpose of the Ordinance. And that the work be done in conformity with the drawings submitted dated October 26, 2010 and initialed by the Chair.

All those in favor of granting the Special Permit?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(Whereupon, at 11:00 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 25th day of April 2011.

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

My Commission Expires:
April 23, 2015

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