

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING  
APRIL 28, 2011 7:00 P.M.

in

City Hall 2nd Floor Ackermann Room  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

Brendan Sullivan, Chair

Constantine Alexander, Vice Chair

Timothy Hughes, Member

Tad Heuer, Member

Thomas Scott, Member

Douglas Myers, Member

Slater Anderson, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:05 p.m.)

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

CONSTANTINE ALEXANDER: The acting Chair will call this meeting to order. And as is our custom, we will start with continued cases. And the first continued case we're going to call is case No. 10056, 1686, Massachusetts Avenue.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair.

CONSTANTINE ALEXANDER: Good evening, Mr. Hope.

ATTORNEY SEAN HOPE: Members of the Board, for the record, Attorney Sean Hope, 130 Bishop Allen Drive, Cambridge, Mass. 02139.

Good evening. Yes, so I wasn't -- this is a continued case. I wasn't retained for the previous one, but I did look at the record, talked to neighbors and the Petitioners. So this is a Use Variance to move a fast order restaurant from its current present location at 1706 Mass. Ave. a couple blocks to 1686 Mass. Ave. This is a unique case, unlike some other Use Variances in regard to fast order restaurants where this is an established restaurant, has been there for 30 years, and you'll see in the correspondence in the file, that they're well-known and well-respected, and run a successful business and are well-respected in the community.

What I did gather from talking to neighbors as well as reading the file, that there was an opportunity by the Board to have some further discussion, and they believed there was some conditions that could be

placed on the use to work with the neighbors to help alleviate some of the neighborhood concerns. There's a letter in the file. We met on April 18th. We met at the location with a group of neighbors -- not all the neighbors, but some of the key neighbors. And in summary -- I'd like the Board to later read that letter specifically, but in summary it was about moving all the activity from trash, to restaurant, to noise, away from the rear of the property to Mass. Ave., even including the mechanicals. And one of the six items that they list was to try to move the different rooftop mechanicals as close to Mass. Ave. as Zoning would allow.

So there were six items there that were listed. We met, we all met. We looked at plans. We've agreed on those six items. So, we believe that that would alleviate the majority of the neighborhood concerns. I'd also want to note for the Board as well, that

these concerns they listed weren't obviously for Harvard House of Pizza because they were a block away. On this specific stretch by 1686, there's Temple Bar (inaudible), so these are some were other restaurants that have had these issues.

One unique part about this particular location, is that the other restaurants actually have a rear access to Bowdoin Street to the neighbors. This actually doesn't, so this lot is actually land locked. There is a backyard area, but you actually can't get out to the street. So even though the guidelines we're adhering to that they propose I really believe these are guidelines or criteria to alleviate some of the issues that have occurred with other businesses.

CONSTANTINE ALEXANDER: But these conditions if we accept them are not going to be binding to the other businesses.

ATTORNEY SEAN HOPE: No, they're

not.

CONSTANTINE ALEXANDER: The neighborhood has to understand they've solved the problem as to one storefront. As to every other storefront --

ATTORNEY SEAN HOPE: Right. And I think part of it, and I won't speak for the neighbors, but part of this was to set the tone. Because this is a stretch that has plenty of restaurants on it, and they would like to see as other restaurants come, they would maybe abide to. So part of the idea was to see if these guidelines would make sense. And so we looked at -- one of the things was about trash. Where do you keep trash? Well, normally you maybe keep it in the rear, some keep it in a dumpster. Well, one of the things about this location, they actually have, like you see often in New York where you open up a grate in the front and you can actually pull totes up from the basement. So

that's another feature that the Petitioner said they would do and it would work and it would actually alleviate some of those issues.

Another thing is under Article 2, this is an eating establishment, but because of the type of service they have, it's considered fast order food. Majority is for takeout. I'd also want to highlight for the Board that in Business A-2, which is where this is located, restaurants, cafeterias, they're all types of uses that are allowed in this area. And this one not specific, but this is a retail establishment. It's a corridor that once acted as ground floor retail, and you'll see in the correspondence in the file that they have been good neighbors with the residents. It was really about these conditions that we feel we've met.

I don't know how deep you went into the hardship, but I know that the Petitioners,

you know, they've been at their current location, tenants-at-will for I think 30 years. And so the previous landlord who they know and they got along with, he has passed away. There's new management. And they, you know, currently not to go into too much detail, there is currently a summary process hearing in Cambridge District Court with the Petitioners just in terms of dealing with the landlord. So, needless to say, this is just a very difficult landlord they're dealing with, and this is adding to the financial hardship that they're under.

CONSTANTINE ALEXANDER: You're addressing what the prior counsel did, too, which is beside the point. The hardship has got to be relevant to the premises they want to move to. The fact that they've got hardship at the existing premises, is not a matter of our concern. But I think the point you want to make or are making is that at the

current location, it's a location that's suitable for a restaurant type of use.

ATTORNEY SEAN HOPE: Exactly.

CONSTANTINE ALEXANDER: And a fast food enterprise is not that different, it's different, not that much different than the restaurants to the left and to the right of them, and therefore -- and you can't build a residence and you can't do other kinds of activities there. So that hardship relates, I think, to the nature of the premises they want to move to.

ATTORNEY SEAN HOPE: You're right, Mr. Chair. And I also want to point --

TAD HEUER: Isn't there a residence behind it?

ATTORNEY SEAN HOPE: So, yes, there is a residence behind it. There's a six-family that abuts the rear of the property.

TAD HEUER: Right. It's attached

to it, isn't it?

ATTORNEY SEAN HOPE: Oh, within the building?

TAD HEUER: So if I'm looking at Stereo Jacks, there's that red brick building with the bow front.

ATTORNEY SEAN HOPE: To the left?

TAD HEUER: To the left, but isn't it immediately behind it, too? It doubles up and then the stair attaches as a built out storefront in the front.

CONSTANTINE ALEXANDER: But is the area behind it zoned residential or is it zoned BA?

TAD HEUER: That's my question.

CONSTANTINE ALEXANDER: I assume, now that probably is incorrectly. I assume that the BA district just runs along one set of storefronts on Mass. Avenue, and then starting behind those storefronts you're into a residentially zoned district.

ATTORNEY SEAN HOPE: It is. I'm not exactly sure if it's on the property line, but it is in the rear, so that the next street over is Res B for Bowdoin Street.

TAD HEUER: Right. The rear of the Mass. Ave. properties, I think what the Chairman is saying, you probably have a hundred foot something or some odd line to here, that's BA. And anything that crosses that into towards the west, even if you're on that same lot, so it's a split zoned lot.

ATTORNEY SEAN HOPE: I don't, I don't know.

TAD HEUER: All right. And I guess this kind of -- if you don't mind.

CONSTANTINE ALEXANDER: No, go ahead.

TAD HEUER: Can you just explain to me why we're hearing a Variance and not a Special Permit?

ATTORNEY SEAN HOPE: Yes, that was

my first thought as well.

So Article 11.3 allows for a Special Permit for fast food restaurants, but in Article 4, all these type of restaurant uses are allowed, but fast order food is not.

CONSTANTINE ALEXANDER: For some reason in the BA district, fast food --

ATTORNEY SEAN HOPE: Right. If it was an allowed use on Article 4, then it would be by Special Permit because 11.3 says it is. But since it's not part of that listing uses. But also to that point, in 11.23 it also talks about fast order restaurants within 500 yards being able to move as long as they're within 500 yards and they also aren't -- the new location doesn't have a larger gross floor area. So, even though we're not under that section because it's not a Special Permit, I just wanted to point out that the Code does allow for fast order restaurants to be able to move within the same distance that we're

actually trying to move if it was an allowed use.

CONSTANTINE ALEXANDER: We've had these cases before. What we do, if it's our desire to grant relief in the Variance, we also as part of that the condition, that you meet the requirements for a Special Permit for the fast food. So we effectively get there, although we don't grant the Special Permit.

ATTORNEY SEAN HOPE: That same criteria that's for the Special Permit.

CONSTANTINE ALEXANDER: Yes. I think that's how we've handled it in the past, and how we propose to handle it tonight, assuming we grant the Variance. The fact that you're not here for the Special Permit is not going to make a difference for what relief we give tonight.

ATTORNEY SEAN HOPE: Right. You want that same threshold about traffic --

CONSTANTINE ALEXANDER: Right.

We'll get into that before we take a vote. I won't do it right now.

I want to focus a bit on the conditions. I'm sorry, I thought you were going to ask me something. And my primary question is simply this: These conditions are appropriate. If your client wants to do them and the neighbors like them, they're not kind of Zoning conditions. From an enforcement point of view, it puts the City at a very difficult position. Every time some employee starts, for example, smokes a cigarette out back, some rogue employee, some neighbor is going to see it perhaps, call Sean, Sean may have to run up there. It doesn't work very well. Have you thought about entering into a contract, an agreement, with the neighbors embodying these conditions so that the Zoning relief and the Zoning situation is clean and then the

parties have their own private remedies should these conditions not be satisfied?

ATTORNEY SEAN HOPE: Well, we actually took the opposite view. Instead of having neighbors in litigation over, you know, or you know, employees smoking cigarettes and whose cigarettes they were, we thought one -- it's specifically about the rear door, and one of the neighbors, Bhupesh Patel came up with a good idea, that they have a commercial panic door. So basically when you go to the rear, which is really no reason because they're not storing things out there, they have the fire alarm would go off. Now, obviously, you know, if it happens several times, but I think the idea of self-monitoring, especially in that rear sensitive edge, we thought it would be better to at least have the conditions into the Variance as a condition, because these are really the conditions that would allow the

neighbors to feel comfortable with having an additional restaurant in this location. So, we felt it better to at least have those in the record. Now obviously enforcement -- and you're right, I'm not trying to make Sean's job more difficult, and the neighbors may still choose to litigate over that. We just felt that having them on the record at a public hearing gave everyone the most comfort, as opposed to getting maybe how many? 15 neighbors, and what about the abutter of the abutter of the abutter. We felt this was more an appropriate forum. I know the idea about employees smoking cigarettes, but I think things like rooftop mechanicals, you know, there are different elements about trash pickup. Things that maybe we can petition the City. There's also talk about another loading zone that would help that area. Not that you can do that, but these are getting these on the record, I think

helps the neighbors out --

CONSTANTINE ALEXANDER: You can get it on the record which you've done to some extent. You kicked the can down the street to this guy's office from the neighborhood and the owner dealing with it. If that's where you want to go, you know -- I can't live with -- from a Zoning point of view I want to propose some modifications to these conditions.

One condition that you have in here, that the rear door must be locked at all times and locked from the outside.

TAD HEUER: That's Triangle Shirt Waste all over again.

CONSTANTINE ALEXANDER: Yes. That's going to violate the building code. I mean, you're going to lock people in the building, if there's an emergency and they can't get out.

ATTORNEY SEAN HOPE: So, if the door

is locked from the outside, so that the backyard is landlocked. The only way you can get in is from inside the building.

CONSTANTINE ALEXANDER: If you're in a burning building and you want to run out the back door, how do you get out the back door if it's locked from the outside?

BHUPESH PATEL: It's not locked.

DOUGLAS MYERS: You can push it open from the inside, it's inaccessible from the outside I'm assuming.

TAD HEUER: I mean what if -- I'm looking at the list of conditions. Condition 6 seems to solve condition 1, condition 2, condition 3 and condition 4, because you can't loiter and smoke if you can't get out there unless you set off an alarm. You can't make deliveries through a rear door if it's set off by an alarm. You can't bring out trash if it sets it off by an alarm. And you can't do maintenance and

service of equipment if it's going to set off an alarm.

I can see 5, mechanical equipment being installed on the front of the roof to the near front of the facade as much as possible. That's something Inspectional can deal with because they can walk out if you object and determine whether it's near to the front of the roof or whether it's not near the front of the roof.

They can certainly walk into the building and say is there or is there not a commercial rear door panic bar attached to this building? If there is, there is. If there is not, you're in violation. And it would seem that having that panic bar solves the first floor issues, which simultaneously are very difficult for Inspectional Services to have to enforce because you're going to ask Sean to drive down there, now maybe when he'd prefer to be having dinner because someone is

smoking a cigarette. It doesn't -- I would almost suggest that 5 and 6 are the ones, and 6 encompasses all the issues in 1 to 4, but that's just me.

ATTORNEY SEAN HOPE: I would definitely defer to the Board's wisdom on how to craft these. Part of the reason why there are six items, and some of them overlap was to make sure that the neighbors took a lot of time to put these conditions together. And I didn't want to seem like I was summarizing them. So I didn't mean to create more work for the Board, but I didn't want it to be my summary of those because those were the six, and when we talked about it, they expected to see six, too. I would want to hear their feedback, but we defer to the Board in terms of enforcement. Because I think that's the whole idea is to attach these, and make these somewhat enforceable and not make them arbitrary and things that, you know, you get

calls about that you can't do anything with. So, I would definitely defer to your wisdom on those.

CONSTANTINE ALEXANDER: One more time, there's no way of getting to the rear of the building from Mass. Ave. or to the side? The only way you can get behind the restaurant building is through the building?

ATTORNEY SEAN HOPE: So, no. You can get to Bowdoin Street. There's, there's a, you can cross --

CONSTANTINE ALEXANDER: Can an employee walk up, dying for a smoke, walk out the door and get around to the back of the building and smoke and cause a problem? That's what I'm trying to get at.

ATTORNEY SEAN HOPE: An employee couldn't go -- would have to go around through Bowdoin Street, cut through a rear driveway of someone else.

SLATER ANDERSON: Cross someone

else's property?

ATTORNEY SEAN HOPE: Yes.

SLATER ANDERSON: There's not an easement to do that, do you know?

CONSTANTINE ALEXANDER: You've answered my question.

ATTORNEY SEAN HOPE: That's kind of for debate whether there's an easement or not. But either way, you can't go from -- you can't go from the front of the property go out front and walk around without going all the way to Bowdoin Street and coming through to the rear.

TAD HEUER: So would that be a prescriptive easement, is that what you're saying?

SLATER ANDERSON: Which may be relevant for some of the deliveries and trash and other things like that.

ATTORNEY SEAN HOPE: Well, and part of one those conditions we actually wanted to

make sure that everything is in the front. So that's why that's there. So, even if you could figure out a way to get over it through the back, it was the intention to keep the trash away from the residential end and keep it all on Mass. Ave., and that's what we're committed to doing.

TAD HEUER: Could you forfeit a prescriptive easement?

ATTORNEY SEAN HOPE: I would have to check the statement.

TAD HEUER: Right. Okay.

SLATER ANDERSON: I've got a question on the fire door. I agree that probably you could bundle a bunch of those, and I understand the neighbors may want a recitation of the reason why it's being proposed a certain way, but you probably could state No. 6 to say the fire door's being put in to prevent these things from happening. Do we know if the fire door is

acceptable to the fire chief?

ATTORNEY SEAN HOPE: I know it's been -- and the way I described it, but I know that there's been another restaurant in that area that has used what we were trying to encapsulate as a commercial fire door, so I know it's been done before and I know it's been permitted. So I would say yes. Now I may not have described it that same way, but what we would envision is what's up to code and acceptable by the fire department. So, I mean any of these things would be subject to, and that's why we said the mechanicals, as close to possible we're not going to violate any Building Code. So all these things are subject to. But there was an example, and that suggestion was actually by one of the neighbors who designed that for another restaurant in Cambridge that worked. So that's where -- I personally hadn't had any experience with that.

CONSTANTINE ALEXANDER: Do you understand, I mean you're prepared to put a new door in and the expense of putting a new door in if the door that's there now is not sufficient?

MICHAEL STAMATAKIS: (Gesturing).

CONSTANTINE ALEXANDER: I want to make sure you understand.

THOMAS SCOTT: The door is not tied to the fire alarm. It's just an alarmed door, right? It doesn't set off -- it doesn't bring the fire department to the building?

UNIDENTIFIED MALE: It's an alarmed door.

THOMAS SCOTT: It's a local alarm that if somebody hits it and opens it, and it goes off.

TAD HEUER: It could.

THOMAS SCOTT: I don't think so.

SLATER ANDERSON: It could go to a

security company.

THOMAS SCOTT: A security company.

CONSTANTINE ALEXANDER: Let's hear from the neighbors. I think the Board has made its points about the conditions, and we can maybe shorten the list of conditions and make it more Zoning friendly by doing what he has suggested. Clearly you may, you and your clients have made, have communicated to the neighbors what you intend to do, and so I think they heard from you privately and tonight, that you have good intentions of complying with all the things they want. But I am concerned about, personally about putting in those conditions, these long laundry lists, a number of which on their face are not appropriate I think from a Zoning enforcement point of view. Certainly appropriate from a neighborhood protection point of view, but not necessarily from a Zoning point of view. And if I can, unless

other Members of the Board want to continue this line of questions, can we hear from the neighbors on this point?

ALLEN SAYEGH: My name is Allen A-l-l-e-n, last name S-a-y-e-g-h. I am the owner of 1684 Mass. Ave., and right next-door abutters. And somehow I wasn't involved in this discussion. I wasn't informed about this. I have a few things to say. I know for a fact on my property there's no easement. It's --

CONSTANTINE ALEXANDER: What's on the property right now, your property?

ALLEN SAYEGH: What's on the property? Is under construction it's building my office. And I think for good reasons this area -- I like their business. I have nothing against their business, but for good reasons this area doesn't allow fast food restaurants, and I clearly don't see the hardship in terms of the building. I would

question if next month I would want to rent it for McDonald's, can I do it? My building is exactly identical to them. And I have a very nice space where my clients can go in. So that's my, that's my concern. And I don't, again, this business, I have nothing against it, but in principle I bought the building three years ago. I want to put my office there, and I don't like the idea if they want to sell it to another fast food chain, that can happen. So I just, I don't see the hardship in terms of --

CONSTANTINE ALEXANDER: So you're opposed to granting any relief? You're not dealing with the conditions, you just don't like the relief.

ALLEN SAYEGH: I don't like the idea, I don't have anything against, you know, a restaurant going in, but the fast food restaurant --

CONSTANTINE ALEXANDER: You're

opposed to the relief?

ALLEN SAYEGH: Yes.

CONSTANTINE ALEXANDER: I want people to speak to the conditions. Your point is valid, but let's try to confine our discussion right now should we grant relief based, subject to these conditions or can we use an abbreviated form of conditions.

ALLEN SAYEGH: The conditions again I'm not, I just heard them. Again, I wasn't involved in the discussions, so, I wasn't contacted as part of -- it's basically I think it's -- what's happening from my understanding, the neighborhood is using this as a catalyst to solve a lot of the problems in the back which I understand. I mean, there's a lot of problems in the. The back is, you know, it has all these restaurants in the back and all the service is in the back and there are residences in the back. So, but I don't think that's the point

of it. I mean, I'm not -- from my perspective I don't think we should be discussing that. It's just if I can -- because I had a lot of difficulties at the beginning when I purchased my building because I wanted to do something different, I couldn't do it because there are certain rules in place and I think that should be fair in that sense. And so that's my point.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

BHUPESH PATEL: It's basically the same letter. The neighbors just wanted us to issue it with the attachment of the old letter. But it's basically the same letter that Sean submitted to you.

So this is the what the neighborhood really wants me to make sure you see for a reason why there's six conditions. There's actually -- this is their space. There's six condos in here. I live here, and most of

the people that are on the sign-in sheet are on Bowdoin Street which is here. Generally speaking, we know the business from the corner and we realize that it's classified as a fast food restaurant so we understand that relocating here as a fast food restaurant comes up to vote, but basically most of the neighborhood goes to the pizza place and we know it quite well. So he's bought the building I don't know how long ago, it's been how many years.

MICHAEL STAMATAKIS: Eleven.

BHUPESH PATEL: We know he's wanted to move there for quite a long time. And a lot of the neighbors have been quite supportive of the process of him moving there, knowing that the level of fast food that he runs, we know quite well because he's been there for 30 years. So we were more than welcome to support him on that. We just wanted conditions mainly because of the other

violations from the restaurants that are existing.

We know that the sort of laundry list of conditions sound, laundry list-ish rather than just being focussed on what the Zoning Board would typically address. Those conditions really exist because when we've gone to the License Commission to license the Floyd Barber Shop and the Ratro (phonetic), there was a bit of loophole on how the trash was dealt with there. The same thing happened with Rafiki. They actually had a condition where in the 1970s there was literally a condition through the License Commission that said they had to have a panic bar that was connected to their fire alarms on the back door mainly because there were a lot of constituents, specifically police officers that used to frequent this place and hang out in the back. So, we actually went in front of the License Commission when they

transferred the license to make sure that 1970-something document was honored. Since the new restaurants have come in they have not honored that. They just put a push bar back there, not alarmed. They do use the back door for deliveries and things of that nature. They also keep a bin back here that allows a bakery delivery to come at 4:30 in the morning, and things of that nature. And they actually will park right here which is where Anna lives.

So we're slowly dealing with this with the Licensing Commission. But that's basically why the community has a feeling to meet sort of list a laundry list. I've communicated to the community that the last two items are really for the Zoning Board to deal with. There's no reason for Sean to be running out there, like you said. But again, you have to remember there's a lot of people involved when it comes to these four

restaurants, and they're all in 100 percent support of the pizza place coming here. They just felt this was their chance to attach to a Variance these requirements as sort of the design guideline as Sean reiterated already.

Generally speaking, though, as long as the panic bar is connected to an alarm system, and if the alarm system is contracted to Diebold or somebody else who will eventually call the fire department, yes, there will be an indirect connection to the fire depth. But obviously all there has to be is a panic bar that's connected to an alarm system that's contracted to somebody. If that's there, it's basically dummy-proof. There's nobody that can go in and out of there without the alarm going off.

Granted we did have the Forest Cafe, you can actually pull the alarm from the hydraulic and just open the door and use it as a delivery if you want to. But that's a

clear violation and that can be enforced.

The other four items are really supposed to be enforced by the License Commission. I explained it to the neighbors, it's just that we haven't had the ability to be able to do that (inaudible) with the other units. It just takes man hours for the community to do it, and they just haven't had the time to do it. So I think -- I mean, I can't speak for the entire community, but I think because I've already reiterated to them several times that the last two conditions are the real conditions that the Zoning Board can really enforce. But they're well aware of the fact that I did the Bosfrus Restaurant (phonetic) in the old Portuguese Social Club and it has 400 occupants grandfathered in there. So that has the same condition. And the neighbors were very into restricting any kind of activity. They wanted a bookstore or a

hardware store and that's pretty much it.

So, we did the same thing there. We said look, we know there were stabbings in the 70's and so forth and so on. But a restaurant is very viable here. I worked two years with the building owner. Put on new roof, put new mechanicals in. We put in new a storefront in the storefront program. Then we actually got a tenant, we got the tenant in there, and it's 120 feet deep and 40 feet wide. But we pretty much put a panic bar in there that's connected to the fire alarm and nothing can go out the back. There's been one complaint in the four months that they've been there, and it's basically because of an abandoned shovel, snow shovel in the back alleyway that was there, and one of the neighbors felt like it shouldn't be there. But that's the one complaint that was sent in to Maria. And, Sean, you didn't hear about it because Maria decided that's really not an issue.

Basically no one can even access that alleyway. They can actually go around the side street and get to it. But here, as you can tell, this is the red property, and there's another piece of property here and another piece of property here, it is virtually land locked. There's an easement in question that we're actually already committed to with them to resolve, and we're in that process. And we don't think it's something that needs be -- to pretty much delay this Variance. We're quite confident we can work that out.

TAD HEUER: Where's the easement? Where would it be? Where do you think it is?

BHUPESH PATEL: I'm really not sure yet.

TAD HEUER: Is it through that fence? Is that fence on the -- between the large resident -- the condo building and Rafiki, is that a gate?

BHUPESH PATEL: This building and Rafiki? There is a gate here.

TAD HEUER: Is that a locked gate?

BHUPESH PATEL: It's not. It is an open gate. It's used. Again, where the actual easement is still up for debate.

TAD HEUER: Right. But it's possible that there is one because it hasn't been shut off by an open and notorious fence? That's my question.

BHUPESH PATEL: Correct.

And as far as the overlay district, it's 100 feet from the center line of Mass. Ave. so that is the overlay district, the BA 2. So basically this red box where the restaurant is falls within that 100 feet, the blue is residential. And this grey box is just rendering the fact that this is the old historic building that exists there. And this is the one-story Stereo Jack that falls out. And these two boxes are to illustrate

where the fan and the AC unit can be located which is where we worked out with the pizza place. I think that's pretty much everything.

Obviously we didn't need loading zones here and tried to keep trucks from coming back here and parking illegally and using the loading zones for deliveries where we're working to extend that. There's a master plan to redo Mass. Avenue, so we're doing that. There's also a master plan to fix this street. They'll be a delay in fixing the street because the trucks basically pretty much are just are -- cut up the street quite a bit. We've already done two intersections here with new concrete. They've already been broken up by the trucks. So the City's well aware of the fact that they need to extend these loading zones and work out the situation, including the 30-minute parking spaces, the two-hour parking spaces,

and three kinds of criteria that create parking on Mass. Ave. The loading zones, the 30-minute parking spots and the two-hour parking spots. And we've been brokering that with all the retailers for about four years, so it's pretty close to being done.

That's basically everything. And again, just to reiterate, we know it's fast food, but we've done the business for 30 years. We're well aware of how it runs and the community has no doubt that --

CONSTANTINE ALEXANDER: First of all, thank you. For me, very informative and I think it's also solidifies my own thinking. But we're really only going to -- I'm going to propose anyway to the Board only the last two conditions. Not to say the other four don't count, but they are, they are things you're going to have live with. You're going to get effectively the other four by the virtue of the two at the end. Plus you've

heard from these Petitioners that they've been trying to work with the neighbors from the beginning. They're an established business in the area. They hear you loud and clear about what's covered in the first four conditions. Practically you're not going to be able to violate them, and I think also as a practical matter, too, they're not going to. I don't want to clutter up our Zoning and the enforcement issues by butting on conditions that are not appropriate. That's pure and simple.

TAD HEUER: I have a question, not only about all the conditions, but maybe some conditions. Usually when we do fast food, it's a Special Permit. And Special Permits are attached to the operator. So every time a new fast food entity as we may or may not see later this evening, comes in to replace another one and they need to come back for a Special Permit even though the building was

already used for it. Here as a Variance, this could be a situation which we change the Zoning essentially for this lot to allow fast food in this lot regardless of whether or not the Petitioner or another Petitioner is in that structure. Hearing the abutter's comments I still do have somewhat of a question about where the hardship is because as the Chairman mentioned, it has to be for this lot not the lot you're coming from. But if I'm able to get to that, my next question is shouldn't we be time loading this in a manner that would approximate what the real purpose is, which is to turn it into a Special Permit. The quirk here is that it's a Variance. We're actually -- we're giving them greater relief than I'm comfortable giving them, because normally we'd be allowed to by Special Permit and it would expire if they decided to leave the lot. I'm not as comfortable zoning this in perpetuity as a

fast food location.

CONSTANTINE ALEXANDER: I absolutely agree with that. I was hoping when I got to framing the conditions, that we would be able to come up with a condition that would say that this owner -- that anybody who operates a fast food enterprise from this property must meet the conditions for a fast food enterprise Special Permit. And so that if you sell it to someone else, and the McDonald's -- the hypothetical McDonald's comes in and does it, can't, they would not be able to use the Variance to operate their fast food. I think that's how we have to try to get there. It's not clean, but the other alternative is to grant the Variance tonight and ask them to come back for a Special Permit in a separate hearing and I don't want to do that.

TAD HEUER: Or it's to grant it time limited and they come back in five years and

you do it all over again.

CONSTANTINE ALEXANDER: Can we grant time limit to Variances?

TAD HEUER: You can grant time limit on use. You can't grant it on a condition that a certain individual or owner remains on that property. I'll look it up while you're talking about other stuff.

SLATER ANDERSON: Can I ask a quick question? The direct abutter, and I'm assuming you're in this building right here?

ALLEN SAYEGH: Correct.

SLATER ANDERSON: Okay. He said that he wasn't involved in the meeting with the neighbors. Was there an attempt to get in touch with him?

ATTORNEY SEAN HOPE: So, the meeting came about from the letters in the file. So this wasn't like we tried to paper again and there's, you know, there are people across the street. There are lots of neighbors.

So I looked at the letters in the file. I looked at the conditions of approval. So we didn't try to, you know -- I mean, this is not a new situation with the abutter. I mean, he was here at the last hearing and I know he was opposing it before. So as you can see, the letter really focussed on the conditions of the letters of the residential abutters. The people who have to deal with this in the evening and the first thing in the morning, not a potential business that may be impaired. And I did want to make a distinction, you now, the code does say fast order, it doesn't say fast food. And I think when we tend to think fast food, we think ok, we don't want Wendy's, we don't want -- but it actually says fast order. So in Article 4, even a cafe, even a cafe that may -- let's say it's not Starbucks. Let's say at 1369, it could have sandwiches that are made very similar to pizza where people are coming and

going, and you can have the same intensity of use. And so what I haven't heard, and I'm not necessarily asking the abutter this, but what I haven't heard is what's the real distinction? Is it because a restaurant versus a pizza shop so that if -- and technically if they actually change the ratio of tables to booths, I mean you could try to finagle it into making it a restaurant. So, it's not just the --

TAD HEUER: That's your specialty isn't it, not ours?

ATTORNEY SEAN HOPE: I'm just saying really --

CONSTANTINE ALEXANDER: You have to have linen table cloths. You can't have plastic utensils. You could make it a restaurant, but it would be a very difficult thing.

ATTORNEY SEAN HOPE: Right. And I mean you also look at the size of the space.

The existing size of the space other than that lends to the hardship of what it would actually be used for. What I was hearing, and I knew the abutter had issues with it, and he had issues with the fast food. And he says he doesn't have issues with the fact that it's pizza. Well, if it's the fact that people are going to be coming in and out instead of taking up parking spaces along the lot, I mean there are in some ways with three restaurants there, this use is actually probably less intense for any property. So maybe is it the stigma of what a pizza shop is? I really -- what hasn't been articulated is the distinction. So, I'm really saying that when I look at the code, when it says fast order, what it does -- what the criteria lays out, it seems to speak more about how often are people going to eat there? Are they going to take the food to go? And whether or not, you know, they talk about printed menus.

But it doesn't talk about, I guess, the aesthetics and I think that's what's here. I think the space itself, because it's first floor, because of the size of it, lends itself to something that's more fast order because it really doesn't even have the size to be a restaurant. So I don't think it's a space that would be a restaurant.

TAD HEUER: That's true. Couldn't it be used as a record store for instance?

CONSTANTINE ALEXANDER: That's the point exactly.

TAD HEUER: Or the metamorphosis across the street or a furniture store?

ATTORNEY SEAN HOPE: The thing is I don't understand how --

TAD HEUER: That's what it's actually zoned for.

CONSTANTINE ALEXANDER: This place could be used for a lot of other retail uses.

ATTORNEY SEAN HOPE: Exactly. And

a chain cafe --

CONSTANTINE ALEXANDER: You're back to the food.

TAD HEUER: By right it could be used as, I don't know, pick one, a furniture store --

CONSTANTINE ALEXANDER: Clothing store, grocery store.

ATTORNEY SEAN HOPE: There are a myriad uses. I guess I'm just trying to focus on the intensity of use, not the type of use. And I think the intensity of use isn't any different. And that's the point I'm trying to make. I don't think -- I think when you say McDonald's or whatever, there's a stigma that's put on there that may not necessarily be relevant to this client because they have been in the neighborhood for 30 years, because people know the type of business they do. And I just, so when I hear the idea of timing the Variance based on a

McDonald's coming in, I just wonder if that's --

CONSTANTINE ALEXANDER: I want to make it very clear. Our Zoning Law and our Zoning Board of Appeals does not distinguish or discriminate against McDonald's or Kentucky Fried Chicken. We have a definition, fast order food enterprise. It covers McDonald's. It covers pizza places like use and it covers a lot of other things in between. If you folks were McDonald's, we would be having this very same issues and the very same comments. Nothing turns on the fact that it may be -- you're not a McDonalds. I want to be very clear about that. Because otherwise we would be basically violating the law, and I'm not about to go there.

ATTORNEY SEAN HOPE: Okay.

BHUPESH PATEL: The community --

CONSTANTINE ALEXANDER: One second, Mr. Patel. You'll have a chance. Not yet.

Go ahead, Sean.

You had your hand up next.

ALLEN SAYEGH: He's asking he doesn't understand what's the difference between a record store and a fast food.

ATTORNEY SEAN HOPE: That's not the question I asked. I didn't say between a record store. I was asking about the intensity of use of a restaurant. You said you didn't mind a restaurant, but you minded Harvard House of Pizza.

ALLEN SAYEGH: No, I didn't say Harvard House of Pizza. I said a fast food. And I can explain to you, I'm an architect and an urban designer. I can talk to you forever what's the difference between a restaurant and a fast food. And there are very good reasons why there are stretches of Cambridge at Mass. Ave. that fast food is not part of the Zoning. And I mean, I don't think we should go into this because it's very

obvious.

UNIDENTIFIED FEMALE: And this isn't just a daytime operation. They work into, they work into --

CONSTANTINE ALEXANDER: We understand that. That's the issue before us tonight specifically. The Zoning does not allow a fast order food enterprise in this district, and they're seeking a Variance to allow it. And we're looking at should we grant that Variance? And if we should, should we or ought we put conditions on it to minimize the potential adverse impact of the fast food order enterprise. That's the issue before us tonight.

Mr. Patel, did you want to speak again?

BHUPESH PATEL: Basically the community did ask me what happens if somebody else comes in there? And I said that it's really up to the purview of the ZBA to decide if they want to limit that. One of the

neighbors is a lawyer, and he brought up the condition of a time limit so forth and so on, and I said, basically -- the clean discussion was can somebody else come in there underneath this fast order license? I said, yes, they can. They do have the same conditions that we're going to attach to that, but they can. There was some solis in the fact that they do still have to go in front of the Licensing Commission. So there is ability to restrict their use, they don't abuse the right that they have. But I made it clear to the neighborhood that we cannot discriminate what goes in there. If it's McDonald's and they abide by the rules, they can go in there. And I specifically picked McDonald's and Dunkin' Donuts because we dealt with it in Union Square. And we had this big problem with traffic created from it and it was a big issue. And the time limit came up in the e-mails that went back and

forth between the lawyer that basically introduced the issue.

CONSTANTINE ALEXANDER: I hear you. We'll discuss among ourselves how we want to, whether we put a time limit on it some other ways of controlling the use of it. I personally am not fond of time limits because five years from now everybody, including these folks, will have forgotten about it and then we'll have after the fact violations.

BHUPESH PATEL: And that's what I relayed to the community. I said, it's really going to be up the ZBA. All I can tell you it's hard to put a time limit on something and who is going to keep an eye on that?

CONSTANTINE ALEXANDER: Okay, thank you. Anyone else wishing to be heard on the conditions first of all?

(No Response.)

CONSTANTINE ALEXANDER: Okay. Now, I'm sorry I interrupted the -- I think

you made your presentation.

Other questions from members of the Board?

TAD HEUER: I would point out it's 10.34 which says, and I'll quote: In granting a Variance the Board may attach such conditions, safeguards and limitations of time, use and other development features, such as those listed in Section 10.44, as are determined necessary to protect the surrounding neighborhood; including the continued existence of any particular structure, but excluding any conditions, safeguards or limitations based on the continued ownership of the land or structures to which the Variance pertains by the Applicant, Petitioner or the Owner.

So we can attach pretty much any related condition we wish as long as the condition is not based on the continued ownership or non-ownership of the structure.

CONSTANTINE ALEXANDER: Thank you.  
Other questions or comments from Members of  
the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: I guess  
not. Any further comments from the public?

(No Response.)

CONSTANTINE ALEXANDER: The Chair  
will now close public --

UNIDENTIFIED FEMALE: I'm sorry,  
just one more.

CONSTANTINE ALEXANDER: Go ahead.

ALLEN SAYEGH: Again, I bought the  
building two years ago. And if I knew a fast  
food was going to go in there, I wouldn't have  
purchased this building. That's the last  
thing I would like to say.

Thank you.

CONSTANTINE ALEXANDER: Okay. I  
will now close the public testimony.

The Chair notes that we are in receipt

of a letter that was handed to us tonight that I will not read into the record. It will be incorporated into the record, and essentially it repeats materials that were submitted by Mr. Hope, the conditions that have been agreed to by the neighborhood, and also the initial letter that was given to this Board when we first had the hearing some months ago.

Any final comments, Mr. Hope?

ATTORNEY SEAN HOPE: No, I would like to hear where the Board is.

CONSTANTINE ALEXANDER: You will.

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Okay, I'll open it up to comments from Members of the Board before we go to a vote. Any observations? Non-observations?

Well, maybe I'll start it off. I think we should -- we have to talk about -- I will and let me try again. I think the Petitioner

does satisfy the requirements for a Variance provided that there are sufficient conditions imposed, appropriate conditions that minimize the potential, the adverse impact that granting relief could have on adjoining properties. I think clearly two of the conditions are the conditions which I'll refer to -- I'll read into the record -- numbers 4 and 5 -- no, 5 and 6, I'm sorry, of the letter submitted by Mr. Hope that was basically agreed to by the neighbors who were involved in the drafting of these conditions. I think we need to have a third condition dealing with the nature of the fast order food enterprise that will be in here, and as Tad has pointed out, it can't be tied to your continued ownership. We can get there either by proposing adopting, it seems to me, the requirements for the Special Permit that would be required by anybody who would want to operate a fast food enterprise

here. So that if you sell to another pizza owner, I want to get away from McDonald's, that person if they can't satisfy the conditions, they would have to come before us to get a Special Permit. They won't be able to just go in as a matter of right. The other alternative is to put a time frame; five years, three years, whatever for people to come back. As I've expressed already, personally I don't like that approach just because it doesn't seem to work in practice. But I will defer to other people of the Board.

DOUGLAS MYERS: Could you explain a little more about how the first alternative would work? In other words, if someone -- if present owner, present applicant were no longer to operate premises, then you said another applicant comes along to run a different type of fast food establishment there, under different ownership, and then you said that person is unable to satisfy the

conditions?

CONSTANTINE ALEXANDER: Well, the condition --

DOUGLAS MYERS: What do you mean by that?

CONSTANTINE ALEXANDER: That's a fair point, Doug. And maybe I'm being a little bit glib about this. I would suggest we look at the Section 11.30 which is the section for Special Permits for fast food enterprises, and say that this Petitioner, not this Petitioner, but the relief, if it were granted, is on conditioned on whoever operates this property, meets each of these: Doesn't create traffic problems. Doesn't reduce available parking. It doesn't threaten the public safety. It doesn't attract patrons primarily from walk-in trade, etcetera, etcetera. And then if someone comes in, the neighbors believe that whoever comes in, doesn't meet each and every

one of these, they will be able to challenge the ability of the new owner to operate in that situation.

DOUGLAS MYERS: What would be the effect of the new owner of the specific conditions we're attaching to the Variance regarding pushing the door, the operation --

CONSTANTINE ALEXANDER: They would be there no matter what.

DOUGLAS MYERS: They would be there no matter what?

CONSTANTINE ALEXANDER: No matter what. Maybe I'm off base. If other Members of the Board feel a different approach. Time approach on one hand is simpler, it sounds simpler.

DOUGLAS MYERS: No, I just wanted to understand. I really am not coming from any particular direction except for the desire to understand.

SEAN O'GRADY: Just a question.

So, if the neighbors felt that one of these -- that they were creating a traffic problem, where would that go? Who would judge that?

CONSTANTINE ALEXANDER: You mean they would file -- they would presumably call you up and say that the conditions for the Variance are not being satisfied, and therefore, the fast order food enterprise is operating in violation of the Zoning Law or the laws of the City of Cambridge.

SEAN O'GRADY: And then back, and through us to you ultimately?

CONSTANTINE ALEXANDER: Yes. If you agreed with that determination, then the then owner could take an appeal from your decision or otherwise contest your determination. But I don't think it would be an appeal from your decision. It would come back to us.

SEAN O'GRADY: I imagine we would

have to give it to you straightaway.

CONSTANTINE ALEXANDER: You very well may. I haven't thought it through. That's how it would work I think.

SEAN O'GRADY: Okay.

CONSTANTINE ALEXANDER: Well, let me ask, is there a preference for a time limitation as opposed to what I've been fumbling about? Would you prefer to just put a time limitation?

DOUGLAS MYERS: I am speaking for myself only, I'm satisfied with your answer to my question. And I think the two-step procedure you outlined, I think it works and I would defer to a time limitation.

CONSTANTINE ALEXANDER: Tad, Slater?

SLATER ANDERSON: Yes, I think so. I'm still a little hung up on the direct abutter situation.

CONSTANTINE ALEXANDER: If we grant

relief is that what you're saying -- regardless of what the conditions are, you're not sure -- we haven't got to that yet.

TAD HEUER: I'm still kind of there, too.

THOMAS SCOTT: Can you explain how the time limit would work?

TAD HEUER: We slap on a five-year limit. And after five years they've got to come back before us and have the same hearing before us again.

THOMAS SCOTT: Same hearing?

TAD HEUER: Yes.

THOMAS SCOTT: Same issues? And we can then determine whether they've met the conditions that we imposed.

CONSTANTINE ALEXANDER: We can impose new conditions.

TAD HEUER: And then we can impose new conditions. We can extend it for another

five years. We can extend it for six months. We can deny it.

CONSTANTINE ALEXANDER: It would be a blank slate five years from now.

THOMAS SCOTT: But who ensures that they come back? What if they just say oh, the heck with it, I'm not going.

TAD HEUER: Five years from day one you're out of compliance. If the neighbors are this interested, I'm sure someone will set it five years from tonight to make sure that they come back.

THOMAS SCOTT: So the burden's on Sean again.

SEAN O'GRADY: That's fine. That burden is fine.

SLATER ANDERSON: If we were to opt for a time limit, I would argue for a shorter time, three years, something like that. Because --

CONSTANTINE ALEXANDER: Well, I've

got to frame the Motion. You want me to frame the Motion in terms of a three-year time limit? Do you want me to frame a Motion in terms of no time limit or the other approach? Which is -- just give me some sense to at least start the process.

DOUGLAS MYERS: If it's going to be a time limit, I favor a five-year time limit.

THOMAS SCOTT: Do we have to convene the same Board?

CONSTANTINE ALEXANDER: No, completely new matter.

SLATER ANDERSON: I would just say, I would be more inclined probably get over my concerns about the neighbor's concerns with a time limit rather than the other scenario.

CONSTANTINE ALEXANDER: You would like a three-year time limit?

SLATER ANDERSON: That's sort of where my mind is.

CONSTANTINE ALEXANDER: Okay.

Tad, before we get to -- I'm not asking you to commit on the merits. Would you prefer a three-year time limit, a Motion that goes with a three-year time limit and then up or down?

TAD HEUER: I don't know, I kind of prefer both.

CONSTANTINE ALEXANDER: Both? A time limit and --

THOMAS SCOTT: I'm kind of there, too. I prefer both I think, you know.

CONSTANTINE ALEXANDER: Okay. That makes it easier.

THOMAS SCOTT: Administer the conditions and then put a time limit.

CONSTANTINE ALEXANDER: You understand, gentlemen, that if we do --

MICHAEL STAMATAKIS: A little bit.

CONSTANTINE ALEXANDER: It means you may have to come to see us again -- not may, will, if you want to continue to operate

a pizza joint there, see us three years from now. Assuming the Motion passes at all. I'm making that assumption.

ATTORNEY SEAN HOPE: Just for my benefit, so, if you did a three or five-year time limit, this would mean you would grant the Variance for a period of time, either with or without some conditions, and then after that time expires --

CONSTANTINE ALEXANDER: Blank slate. You're back before us just as if you were today.

TAD HEUER: I mean, we could grant one portion to grant the land and the rest not. We could say that the conditions 5 and 6 are conditions for all time I presume. There's no reason that --

CONSTANTINE ALEXANDER: No reason not to.

TAD HEUER: -- we couldn't do that. Therefore, whoever moved in would need to

follow these conditions.

SLATER ANDERSON: And the use has a time limit?

TAD HEUER: And the use has a time limit.

SLATER ANDERSON: My hope would be that this would allow for maybe the neighbor to gain some comfort with you as an occupant, and there's pleasant agreement and it's an amicable relationship, and three years from now it gets stamped here by the Board to continue maybe for a longer period of time. That's, that's the only way I sort of feel like I'm on board with it.

CONSTANTINE ALEXANDER: Sounds to me like the condition like that, if there's going to be relief granted, it's going to be on the space -- I don't think we get the four votes necessary unless we do something like this. So I'm fine. We're ready for a Motion?

ATTORNEY SEAN HOPE: And is the three-year versus the five-year, I mean is that more the three years less hash than five.

CONSTANTINE ALEXANDER: I think three is if it's not working out, would like to know sooner rather than later.

SLATER ANDERSON: That's my point.

CONSTANTINE ALEXANDER: So, rather than have the neighbors subject to a new intolerable situation for five years, we'll know pretty quickly.

ATTORNEY SEAN HOPE: My only thought is like a marriage of benefit, when you're working things out to be stuck in it. And three years meaning you could not talk to each other for three years, not the five, but it's one of those things if there's an idea about really figuring out how to live peacefully both ways for, you know, Harvard House of Pizza, but that was my only thought, not that five years is a magic number.

CONSTANTINE ALEXANDER: What would happen if you don't talk to each other -- three years from now, you're going to come back, and either the people will come in with a laundry list of grievances or they won't bother to show up, or they won't be able to cite anything that's caused a problem. In which case, presumably it will make our job or the job of the Board sitting three years from now a lot easier than it is tonight. Tonight we're dealing with the unknown, and a lot of concerns from people of the unknown, and we're trying to bridge that. That's what we're trying to do.

I've covered public testimony. I think it's time for a vote.

TAD HEUER: Well, I mean I still have a question that Slater made. Do you still have your question about --

SLATER ANDERSON: About?

TAD HEUER: -- about whether we're

going here at all or not.

SLATER ANDERSON: I'm okay with the three year, and I think on the use -- and the other thing can be in perpetuity. I don't really care. I think they're good for any use. So that's where my mind is.

TAD HEUER: I just still appreciate and would like someone to articulate for me, and I think I heard bits and pieces of it where the hardship is relating to this lot especially the hardship being moving from a lot to this lot, and the hardship is being financial hardship on another property. Usually we get the hardship is created to the property that I'm on because of its use, topography, shape, whatever, and I can't do what the City would want me to be able to do on that lot by the code because of some quirk about property. Not there's a quirk about a property down the street that forces me to get into this property. That the property at

1686 doesn't know about the existence of 1706 and doesn't care.

CONSTANTINE ALEXANDER: I tried to deal with that and help Sean along with that issue, but Sean, it's your call. But basically I think the issue is you have -- I mean, the hardship is you have a storefront, a business space that sits in a group -- among a group of restaurants or a food enterprises. And it's the kind of space that though it can have uses other than a fast order food enterprise, it is, it is one that is in the concept of all that's there, particularly well suited to it. And to require the Petitioner to try to rent this place out to some other commercial use, which may lead to vacant space for a long period of time, and a financial hardship is not appropriate. And I think we can comply with the intent of the Zoning Ordinance because we do have a business area. We have an area that's got

many food enterprises, restaurants, basically. I don't have more than that. If you have more to add to that.

ATTORNEY SEAN HOPE: No. That's one thing I didn't leave out. That right now they are landlords for the space that they want to be in. And there is a financial hardship because it's a difficult space to rent. They do have Stereo Jacks that's there. But when we're talking about finances, and that was part of the original application where they spoke to the idea of operating the business that's one piece, but also being able to financially manage the building. There's obviously a mortgage. They purchased a property on that. So, there is a financial hardship, meaning you have a space there that's retail that is not really meeting their needs. So that by moving there, they would be able to satisfy the financial burden as well as -- I think it's

not the size of the lot, but the space itself. It's on restaurant row. It doesn't lend itself, because of the limited space, to a full restaurant, which, you know, if it did, we'd probably be doing different things than going through these hoops. It's the shape of the existing space. It's a tight and narrow lot. And also the location of it compared to other restaurants and adjacent properties.

TAD HEUER: Have you tried to lease it to anyone else?

UNIDENTIFIED FEMALE: No, no, we haven't.

ATTORNEY SEAN HOPE: I mean, and not to speak to the market, but also, it's on restaurant row. We're not commercial experts here, but I think if there was another more lucrative source, that may have been the idea. But in terms of the use that fits there, it's a restaurant row. It fits with restaurant and food eating type

establishments, and that's what they would like to use in that space. And it would be very difficult, I believe, to have another retail space. And if you would look further down Mass. Ave., you have small boutique clothing stores that are vacant now. You know, you have barber shops and other things that have been there for years and have closed. I think this is a corner that's struggled with ground floor retail, and this is a third year existing building that would fit in this very uniquely small space compared to the other restaurants that are adjacent to it.

CONSTANTINE ALEXANDER: I think we're ready for a Motion. I mean, you heard the answer to the question. You got the answer to decide whether you accept it or not?

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Okay.

The Chair will -- I'm going to try

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

That a literal enforcement of the provisions the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that what I'm going to characterize as unique to the area at least, business space will continue to be vacant which is, which is not desirable certainly to the Petitioner, but also not to the community itself.

That the hardship is owing to the circumstances relating to the shape of the structure. The structure is a retail in nature. It's relatively small, and so the kind of retail uses that can occupy it are limited, including the fact that restaurants, which are prevalent in, at least in the immediate area, this is space is not conducive to a restaurant operation. You need larger and presumably more attractive

space.

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

In fact, what's happening here is we're going to a fast order food enterprise move 20 numbers down from 1706 to 1686. That it is a kind of use of the property, at least in terms of the provisions of food, that's typical to the area. And there's been testimony from the neighbors that there is a need for a fast order food enterprise, at least that's one that's a pizza joint. The neighbors in the immediate area have testified that for years they continued to patronize this establishment, or this type of establishment.

On the basis of these findings, the Chair moves that a Variance be granted to the Petitioner subject -- or on the basis of

following conditions:

The first condition is that all mechanical equipment on the premises must be installed on the roof as near to the front of the facade of the building as reasonable as possible.

Second, that the rear door must be locked at all times and locked from the outside and equipped with a commercial fire door panic bar connected to the fire alarm on the inside to be used exclusively for emergency purposes. I don't want to say just emergency fire exit egress. Emergency purposes, because it's -- whatever the emergency is, that's what we need to deal with.

And on the third condition, this condition being 3A and 3B; 3A being that this Variance would be granted on the basis of the use of a fast order food enterprise on these premises for a period of three years.

Following which the Petitioner, or whoever owns the property, wishes to continue to operate a fast order food establishment must come back and seek further relief from us.

And on the further condition, which I'll call condition 3B, that in the operation of the premises, starting from the day we grant the Variance, that you would satisfy and must continue to satisfy the requirements that you would have to establish to be granted a Special Permit for a fast order food establishment. Namely, that you cannot create traffic problems. If you do one of these things you would be violating the terms of the Variance. Or you or whoever succeeds to your business. You can't be reduce available parking. The nature of the business should not threaten the public safety in the streets and sidewalks. That you will not be encouraging or producing double parking on adjacent public streets.

That you continue to attract patrons primarily from walk-in trade as opposed to drive-in or automobile-related trade.

That you will use biodegradable materials and packaging your food and utensils.

That you will provide convenient, suitable and well-marked waste receptacles, and encourage patrons to properly dispose of the packaging materials provided with the sale of the food.

And that you will comply with all state and local requirements for handicapped and disabled persons.

These last two conditions I characterize as 3B, would also extend for the period of three years. So at the end of three years, you have to comply with them sooner, from day one, but at the end of three years, you come back and revisit these issues, as well as just the nature of how the business

is being run. But regardless of what we do then, the first two conditions would continue to run. So if you sell the property to a bookstore, the bookstore is going to have to have that same door locked in the back, etcetera, etcetera.

Did I get it right, or any changes, conditions, instructions? On the basis of --

SEAN O'GRADY: I'm sorry to interrupt you.

CONSTANTINE ALEXANDER: Go ahead.

SEAN O'GRADY: They can, if they want it to be a bookstore, they simply abandon the Variance and they abandon the conditions.

CONSTANTINE ALEXANDER: You're right. They don't need the Variance, exactly. The point if someone else needs a Variance for some other kind of a business, then that Variance would be -- they have to be -- they have to properly be subject to those

two conditions.

ATTORNEY SEAN HOPE: You mean three years from when they can actually do it, so talking about --

CONSTANTINE ALEXANDER: Three years from the date of the decision.

ATTORNEY SEAN HOPE: From the date of the decision. Because they can't operate until the decision from the clerk is certified and recorded.

CONSTANTINE ALEXANDER: That's right. In practicality it would be something less than three years. Two years and eight months, nine months, something like that. But, again, to Slater's point, the shorter the period -- not too short, but the shorter the period, the better because that would allow everybody to take a second look at what's going on.

THOMAS SCOTT: On condition 2 we want to say that the door alarm is

connected -- it says connected to the fire alarm?

CONSTANTINE ALEXANDER: Right.

THOMAS SCOTT: Or do we want to say an alarm -- a monitoring alarm company?

CONSTANTINE ALEXANDER: No, I think --

THOMAS SCOTT: Because if somebody goes out the door, are we going to have the fire department show up? I don't know if that's something we should be encouraging. The fire department would, you know -- if it goes to an alarm company or a monitoring company, they'll call the establishment and say, what's going on? Did somebody exit the door? We're getting an alarm, is everything okay, before they call the fire department. So I think it just --

CONSTANTINE ALEXANDER: That's a good suggestion. I'm open to --

SLATER ANDERSON: I heard the

neighbor's expectation that there would be a monitoring company; is that correct?

BHUPESH PATEL: Correct, right.

CONSTANTINE ALEXANDER: I'm going to modify on the conditions that I said to take away -- change the reference to the -- to the fire alarm on the inside, and change it to an established monitoring system, so that there is a someone to call if the alarm is tripped. And that someone is not the fire department, not in the first instance anyway. Okay? Thank you.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Scott, Anderson, Myers.)

CONSTANTINE ALEXANDER: All opposed?

(Heuer.)

(8:10 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10058, 1531 Cambridge Street. Is there anyone here interested in that case?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence dated April 27th to the City of Cambridge Inspectional Services, Re: 1531 Cambridge Street. "This letter is to confirm that we are withdrawing the application for 1531 Cambridge Street hearing case 10058." And signed by Andrew Bram as an agent for the Petitioners.

Let me make a Motion to accept the withdrawal. All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor and

the matter is withdrawn.

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

(8:10 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10070, 1350 Mass. Avenue. Mr. Kelley.

FRANCIS KELLEY: Yes, this is the continued case?

BRENDAN SULLIVAN: This is the continued case.

FRANCIS KELLEY: I think what we're going to do is withdraw this one and go forward with the new case which is the next one on the agenda.

BRENDAN SULLIVAN: Hearing a request to withdraw case No. 10070, anybody hear wishing to be heard on that matter?

(No Response.)

BRENDAN SULLIVAN: I see none.

There's a Motion before the Board to accept the withdrawal. All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: And the matter is withdrawn.

CONSTANTINE ALEXANDER: Mr. Chairman, can I suggest the next case we hear is Technology Square so we can get Doug out of here? Because he's going to be here for that.

BRENDAN SULLIVAN: We can do that. Thank you, Mr. Kelley, appreciate that.

(8:10 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Thomas Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case 10083, 545 Technology Square. Introduce yourself, please spell your last name, give your address for the record.

JASON PARILLO: I'm Jason Parillo P-a-r-i-l-l-o, 25 Temple Street, Somerville, Mass. I'm representing Design Communications.

JEFF LOCKWOOD: Jeff Lockwood L-o-c-k-w-o-o-d, 400 Winter Street in Holliston, Massachusetts. I'm here representing Novartis.

MICHAEL WYTHE: Mike Wythe, W-y-t-h-e head of facility of operations working with Novartis.

JASON PARILLO: Okay, so the

Petition we have before you is to install two Novartis signs on their building at 545 Technology Square. One of the signs would be mounted facing west on the Main Street elevation on the Technology Square. And then the other sign would be facing west on the Technology Square elevation across the street from the parking lot. These signs conform to the by-law in every way except for the height off the ground. The building has a large allotment of sign square footage. They are exactly the same as the two Novartis signs that are on the building right now. There's a sign that faces north, and a sign that faces east. These signs are aesthetically pleasing. They fit the scale of the building. They're -- the signs illuminate in a blue -- for the most part, in a blue color which matches the windows in the building during the day. And at night they, they're, they're pleasing to the eye. And

there's a night photo in one of the existing signs in this packages that we passed out. These signs don't face the Charles River and also don't face any residences which I think is worth noting.

BRENDAN SULLIVAN: I noticed in your application there are two buildings involved at Tech Square. It's building numbered 100 and 200.

JASON PARILLO: 100 and 200, that's correct.

BRENDAN SULLIVAN: And that building 100 now has --

JEFF LOCKWOOD: Right here. Presently 100, the sign is there and there.

BRENDAN SULLIVAN: So, one and two on your graphic of is the existing?

JEFF LOCKWOOD: Correct.

BRENDAN SULLIVAN: And you're asking for?

JEFF LOCKWOOD: Three and four. So

this is the inner courtyard if you will, of Technology Square. So there's a parking garage here. This is the Technology Square garage here. This is Draper Labs right here. And then three is on Main Street.

BRENDAN SULLIVAN: Okay. And building No. 200 --

JEFF LOCKWOOD: Correct.

BRENDAN SULLIVAN: -- is --

JEFF LOCKWOOD: Right here.

BRENDAN SULLIVAN: -- is this building right here. And you're asking for one on 200; is that correct? Or is it all on building 100?

JASON PARILLO: Actually, both signs would be mounted to building 100.

JEFF LOCKWOOD: The buildings are connected. If you saw it in -- if we were there right now, you'd say it looks like one building but for --

BRENDAN SULLIVAN: It's just a

connecting --

JEFF LOCKWOOD: Correct, exactly. There's an atrium that connects the two buildings together.

BRENDAN SULLIVAN: So basically the signage is going on building 100?

JEFF LOCKWOOD: Correct.

BRENDAN SULLIVAN: Not in two.

JEFF LOCKWOOD: Correct.

BRENDAN SULLIVAN: Not for the tenant in Building 200 in a sense?

JEFF LOCKWOOD: Correct.

JASON PARILLO: Right.

BRENDAN SULLIVAN: And the reason for and the necessity for the signage?

JEFF LOCKWOOD: So....

BRENDAN SULLIVAN: More than just branding obviously.

JEFF LOCKWOOD: It really has less to do with branding and more with way finding. One of the reasons we came to Cambridge was

for collaborations with talent locally, etcetera. And we've exceeded what we thought we'd be able to do working with biotech academics, etcetera. And one thing we've heard consistently from folks who want to come and visit our associates in the labs and offices is, "I have a hard time sometimes finding your building." And so when we became a majority tenant in 200 Tech Square, we realized that there was an opportunity to identify the building as this is where you go when you want to see Novartis in Technology Square, if you're coming from the Main Street side. Or if you park in the Technology Square garage, when you walk out, you don't see 100, 200, all you see are these numbers, you don't know, they're small, where the actual Novartis building is. So we saw this as an opportunity really for way finding for people who are looking to work with us. And it's a fair amount of that that goes on.

BRENDAN SULLIVAN: So that almost seems to me that it's more of a street level need for identification, and hence would not a ground level sign pointing one way or the other work as efficiently for directional purposes rather than one very, very high.

JEFF LOCKWOOD: That's, it's a valid point. I think for us for consistency, the way the building is right now with the other signs that are, you know, positioned around, we saw it as a way to complete the loop of the way it's currently constructed.

CONSTANTINE ALEXANDER: I think part of the problems, at least at one of the entrances when I looked at the building, is that a so-called street level sign, not on top of the building, the architecture of the building is not that easy to put a sign that's sufficient size, let's say 30 feet from the ground level, because of the doorways and the window treatments. The only place really to

put the sign is on the top of the building. And it would seem to me that the impact on the community is no different from the top of the building or at ground level. So I think there are two reasons, I think. I thought of the same concern you did. When I looked at the property, I came to the conclusion that this is the probably the only place you can put the sign that it would really work.

DOUGLAS MYERS: Are your present signs at the same height that these proposed signs would be?

JASON PARILLO: Yep.

JEFF LOCKWOOD: Exactly.

DOUGLAS MYERS: Did you have an indication -- excuse me, that the present signs simply are failing to direct people to your building?

JEFF LOCKWOOD: It's, it's -- I think it's been pointed out to us that, not that they're failing, it depends on where

you're coming from. So if you're coming from that part of Main Street, is it north? I'm directionally challenged. So, going into that you have no way to identify that. And also if you're coming from the Technology Square garage or from Draper Labs or that part of Kendall Square, walking through Technology Square, there's no way to identify which building is the Novartis building.

BRENDAN SULLIVAN: I guess one of the reality situations in Tech Square now is that when you're looking for a building, is that you have to look up unfortunately now because that's where the signage is. So, it's sort of -- that's the *motus operandi* if you will of people looking for a particular building. But anyhow. Anything else?

DOUGLAS MYERS: I interrupted you, Tom, sorry.

THOMAS SCOTT: That's all right.

BRENDAN SULLIVAN: Is there

anything else?

JASON PARILLO: Yeah, I mean I think we really address in a matter it has to do with the pedestrian approaches to the building, the vehicular approaches to the building. The vehicular approaches to the building, and the scale of the buildings around this building are all large and I think these signs would really help for people to find the building.

BRENDAN SULLIVAN: Okay. Any questions from the Board?

THOMAS SCOTT: So the sign for is above an entrance; is that correct?

JASON PARILLO: Yes.

THOMAS SCOTT: Is sign three above an entrance? I can't tell from the photograph.

JEFF LOCKWOOD: It is not.

THOMAS SCOTT: It is not. But there is pedestrian here.

JEFF LOCKWOOD: Correct.

THOMAS SCOTT: And then are they illuminated as well?

JASON PARILLO: Yeah, just like the existing.

THOMAS SCOTT: And then on your graphic, you say proposed new location one, but I think that's three, isn't it?

JASON PARILLO: Yes.

THOMAS SCOTT: This one says two and I think it's four?

JASON PARILLO: Exactly.

THOMAS SCOTT: Okay. Just to clarify.

BRENDAN SULLIVAN: Anything else? Tim, any questions with this?

TIMOTHY HUGHES: No, I'm good.

BRENDAN SULLIVAN: I'll open it to public comment.

Is there anybody here who would like to speak on the matter? Please come identify

yourself and spell your last name, please, for the record.

CAROL O'HARE: Where shall I stand?

BRENDAN SULLIVAN: You can sit, stand wherever is comfortable.

CAROL O'HARE: Thank you. My name is Carol O'Hare. I live at 172 Magazine Street, Cambridge, Massachusetts. I am here not as an opponent necessarily. I sent unfortunately late in the afternoon, but right before the deadline I sent you all an e-mail. And I apologize that it was so late. I don't know -- if you've read it, please tell me because I won't read most of what I've read.

BRENDAN SULLIVAN: Well, I have, but it's fine to -- the other Members of the Board may have not.

CONSTANTINE ALEXANDER: I have not.

THOMAS SCOTT: I have not.

DOUGLAS MYERS: I have not.

CAROL O'HARE: Okay. So I'll read -- it's relatively short. Especially given a wide array of public outpouring of the opposition to the 2010 attempt to allow building identification signs, I hope and ask that you vet this Variance request thoroughly to at least learn and allow the public to learn some basic facts that were not evident from the public published notice.

And that's one -- I mean, that's one of my major concerns about this, is that from the public notice all we know is that the sign is going to be above the 20-foot height limit. Every citizen would have to go to ISD to find out how much higher than the height limit it is. Whether it's going to be illuminated. What kind of illumination it's going to have. Whether it's internal or external. You don't want people to have to do that. And so, there is an essential suggestion that I have for this Board is when you, when you prepare

or have your notices prepared for these types of hearings, the notice, not necessarily the legal part or some part of it, tell us, the public, how high is the sign going to be. Where is it going to be located? I mean, all of these things were immediately your questions, your own questions this evening. And where is it going to be visible from? Well, as soon as the gentleman said it's not going to be visible from the Charles River, which means it's not going to be visible from Boston, Memorial Drive or Cambridge riverbanks; is that right?

JEFF LOCKWOOD: Correct.

CAROL O'HARE: It's not. Then those concerns just go away. So, I would ask that -- I wouldn't have had to write most of this if I had known that. So, that was it. I have a -- so I don't have an objection to this sign, except that I think that the concept that a Variance should be given to

help people find a building to have a sign 80 feet up on all four sides in all four directions of a building, a Variance is supposed to be given when there is a hardship for that particular site, as you all know very well, that is resultant from the site topography itself, correct? There is nothing about way finding, especially with GPS. And there's nothing about way finding -- and especially as the gentleman said when we don't look up there to find out what the building is, we look where we are, on the ground. GPS and maps get us to the building if a telephone call get it us there. I mean, you can call up and say, you know, I'm at Main Street and blank, and you're calling up your appointment. So, having a sign at the top of a building illuminated from within seems to me -- I know you've granted them before, but it's not what a Variance is for as this gentleman pointed out in the

earlier case. A Variance is an extraordinary -- and just because you've granted them before for signs, I urge you to consider whether you want to continue this process, especially since some of the signs will affect people outside the immediate Tech Square area. And so especially considering that last year there was a huge outpouring against branding signs. And that's what it is. It's a branding sign on all four sides of the building or a building identification sign. There was an outcry because people don't want to be -- in this city, don't -- in Tech Square it's okay. But they don't want to be branded. They'd rather see trees and sky and beautiful buildings and parks. They don't want corporate names floating all over the skyline really. That's why there was the outpouring of opposition to the Board of Appeal and the Planning Board and the City thinking that corporations will not come here

unless they could have their buildings branded. It's a corporate -- and I'm -- I am -- I've -- I have corporate experience so I'm not anti-corporation, but it is a corporate kind of diet that they're trying to feed us that branding is good. Branding is good on your clothes. Branding is good on your buildings. Branding is good on your, you know, car. Everything has to be corporate branded. I'd rather have some nice public art than a corporate name.

BRENDAN SULLIVAN: You had mentioned that you thought it was okay in Technology Square.

CAROL O'HARE: I do, as long as it's not visible from -- I mean -- it's already, it's already branded by, you know --

BRENDAN SULLIVAN: You're familiar with the existing signs on the building?

CAROL O'HARE: I am. I don't see why they need two more.

BRENDAN SULLIVAN: Do you find those are tastefully done? Not taste fully done?

CAROL O'HARE: They're tasteful.

BRENDAN SULLIVAN: Necessary?

CAROL O'HARE: I don't think they're necessary. I certainly don't think there's an essential hardship that you could -- you know, find without, without causing some, you know, without crossing your fingers when you find it if you know what I mean.

BRENDAN SULLIVAN: Yes, okay. Anyhow, in response to the rest of your letter, the only violation --

CAROL O'HARE: Yes.

BRENDAN SULLIVAN: -- of the Ordinance is the height?

CAROL O'HARE: Well, can I -- I thought about this, you know, I had a PS in my mind afterwards, and I want -- I do want to read you this, which is just this very short thing. If under the City's Zoning Code

sign restrictions, no sign at all would be permitted to be located higher than 20 feet above the ground on Novartis's building. Then in both of the spirit and the letter of the law, doesn't Novartis need a Variance for size and illumination as well as the height of their proposed sign? If not, shouldn't the public notice at least include a description of the proposed size and illumination of the sign that would otherwise not be permitted at all 80 feet above the ground? Indeed when the City presented the proposed, now rescinded building identification sign Zoning Amendment during the summer and fall of last year, to allow such higher than otherwise permitted signs by Special Permit, both the sign size and the illumination were restricted. Internal illumination, which is proposed by Novartis, would not have been permitted at all even under the City's proposed Building

Identification Sign Zoning Amendment.

BRENDAN SULLIVAN: And that --

CAROL O'HARE: And I simply don't see why you need signs on all four sides of the building.

BRENDAN SULLIVAN: All right, thank you.

CONSTANTINE ALEXANDER: Wait a minute. Let me just address the first point you made about the notice or the adequacy of the notice and it wasn't as fulsome as you would like.

CAROL O'HARE: Fulsome?

CONSTANTINE ALEXANDER: Well, that's my word, not yours.

The point is is that from a legal notice point of view, and it's not -- either Zoning or Planning Board or any other boards, notice means notice. It's not a complete description of what's involved. Let me finish, please.

CAROL O'HARE: I will.

CONSTANTINE ALEXANDER: It's notice. And it's the idea to put the community on notice. It's something that's going to happen. And you have an obligation as a citizen, if you're concerned, to come to ISD, to read the files, to read the Zoning Laws and to find out exactly what the issues are. The notion that we should put in our notices every single aspect of what's going to be before us, doesn't work. It creates potential legal problems in terms of if something's left out. It's a notice deficient. It also makes the notices almost unreadable. And I think I have to tell you I think it is incumbent upon you as a citizen, and other citizens, not just you, that if you see something that intrigues you, you have to go in and make some investigation.

CAROL O'HARE: I understand all that and appreciate it, I really do. I just think

that there must -- then put it on your website and describe it. You know, you have a fabulous website in the City. It's fabulous. You could have somebody do -- even the Petitioner, even that Petition could be in the -- on your website. Fine, then people wouldn't have to, you know, people work. People wouldn't have to come to ISD on workdays I'm suggesting. There are, you know, when the Planning Department has a Zoning proposal, they put it online. So put it online. Have the Petition photocopied or, you know, put online. It's simple these days.

BRENDAN SULLIVAN: Well, that's an issue, Carol, it's a legitimate issue --

CAROL O'HARE: That's not this hearing.

BRENDAN SULLIVAN: That's a legitimate issue and I would appear on a Monday night over there and bring that up.

Because that's where it has to come from.  
Not us. You know, we have this, we go by the,  
you know --

CAROL O'HARE: Yes. I'm just  
saying --

BRENDAN SULLIVAN: I endorse that.

CAROL O'HARE: Thank you.

BRENDAN SULLIVAN: But anyhow,  
Monday night.

CAROL O'HARE: I agree. But I say  
that if you're granting a Variance crossing  
your fingers, and I'm not impuning your  
anything -- crossing your fingers about the  
hardship, which everybody recognizes it was  
discussed at length during the proceedings  
about the proposed building identification  
sign amendment. Even Jim Rafferty, whom I  
know you know, has said over and over it's  
impossible. I mean, he said that there is no  
hardship for a sign that is legitimate.

CONSTANTINE ALEXANDER: I don't

think he's told us that when he's been before us.

BRENDAN SULLIVAN: He's selective to who he says that to.

CAROL O'HARE: You understand what I'm saying?

BRENDAN SULLIVAN: I know exactly what you're saying, correct. And we have granted them in the past, and we have also denied them in the past because we felt it was inappropriate.

CAROL O'HARE: Okay. I've said my thing and I appreciate --

CONSTANTINE ALEXANDER: I don't think you can say, I don't want to impune your integrity, and then say talk about with your fingers crossed. You are impuning us when you do that, and I don't appreciate that.

CAROL O'HARE: You read the language in the statute --

CONSTANTINE ALEXANDER: And we

apply the language in a way we think best.

CAROL O'HARE: It says  
topographical conditions, right?

CONSTANTINE ALEXANDER: Shape of  
the building it says also.

CAROL O'HARE: It says all of those  
conditions.

CONSTANTINE ALEXANDER: Yes, and we  
may decide tonight that the shape of the  
building is such that it requires --

CAROL O'HARE: No, it says you have  
to satisfy all of those conditions, not just  
one of them.

CONSTANTINE ALEXANDER: Of course.  
We understand that.

BRENDAN SULLIVAN: Okay, anyhow,  
thank you.

CAROL O'HARE: So, I'm sorry if I  
offended you. I didn't mean to. It was, you  
know, it was sort of at --

BRENDAN SULLIVAN: No, no. None

taken.

Anybody else wish to speak on the matter. Mr. Marquardt.

CHARLES MARQUARDT: Charlie Marquardt, Ten Rogers Street. I just have some questions and not objections, not support of. I actually support your new building. I've written a nice letter I believe in support of your building before. But I have some concerns about really not just this building, but all the buildings. I go back to when Polaroid was in Cambridge, and they had buildings everywhere and yet they didn't have to put signs on them for people to be able to find them. Now we have to put signs on these building to help people find them, which makes me concerned that do we need to put signs on all the other buildings, less the employees won't be able to find those, right? So we run into the risk issue of putting up a sign on this building and having

people end up here looking for Novartis when they should be at 45 Sidney Street, 350 Mass. Ave., any of the other number of buildings that you have. Really the question becomes how many signs do we really need for a single company in the city for it to be meaningful? Do we need one? Do we need two? Do we need 10? This is going to get it to, if I do my math right, at least six, right? Two on Mass. Ave. as they are now. Two that you have here at Tech Square, plus two new ones. And then you have the new building which you'll have a few more I imagine. And then really the question becomes do we need six, eight, 10, 12 Novartis signs right on that corner for people to know that Novartis is there? I know that it's a really great thing to have your sign out there to help people find it. Maybe the question would be if we needed to have people help find their way there for meetings and what not, why do we need it

illuminated? Right? Are the meetings happening after dark that frequently or could we have the signs go off ten or eleven o'clock at night to help the people in the neighborhood not have to look up at an illuminated sign. That would go forward to the goals of the building to obtain their LEED status.

CONSTANTINE ALEXANDER: The Zoning Law allows illumination.

CHARLES MARQUARDT: Oh, I agree wholeheartedly it's allowed.

CONSTANTINE ALEXANDER: They're not asking for relief of illumination.

CHARLES MARQUARDT: I'm asking you, putting the sign up, could you make some sort of give back to the community and say listen, we're going to work with you. We're putting the sign up to help people find their way. We don't need to be lit after dark because no one is looking to find their way. That would

help with the argument that it's not a branding issue. It's really to help people find their way during the day. So that's really my -- one of my big questions.

And last, really I'm just frankly concerned about, not from you guys, but from where we're heading where people are either looking up to find their way or looking down at their GPS, so we're missing all the other fun stuff that's going on in the city. And I really hope we can get people to focus on whether -- that's really a comment on buildings and we'll find our way in particular. And, yes, I'm sure you'll make a great decision no matter what it is.

BRENDAN SULLIVAN: Thank you.

Mr. Jaquith.

MARK JAQUITH: Mark Jaquith, 213 Hurley Street. I'm speaking tonight on my own behalf and on the behalf of the East Cambridge Planning Team and Barbara

Broussard the President of the East Cambridge Planning Team. I was at a forum of the development of Kendall Square last night, and one of the people passed out this great booklet with this list of 40 tech companies in the Kendall Square area, many of whom have had sought branding on their buildings. As Ms. O'Hare said, over the last year this city has looked at building ID signs quite intensely, and the citizens of Cambridge fairly well came out and said no, we don't want this. That is the position of the East Cambridge Planning Team, and of me as a neighbor of this area. These good folks already have two signs on their building. It seems to be quite enough. And as Mr. Rafferty said to the City Council and was quoted in the Cambridge Chronicle, these hardships are generally not extremely credible. If their employees and clients are under the caliber that can find an

address, I don't think they'd be in communication. So, it seems to me that it really is a branding issue far more than any kind of way finding issue. And if we want signs, put them on the street where people can see what's going on when they're driving by and walking by.

And the illuminated signs do bother many citizens, especially in the eastern part of Cambridge which is practically surrounded by zones where these are becoming fairly prominent. And the Ordinance says they're not allowed, and we would appreciate it if they weren't. And I would also like a real delineation of how the hardship in this case meets the statutory requirements.

Thank you.

BRENDAN SULLIVAN: Mark, does the illumination -- well, if they were not illuminated, would that be more palatable?

MARK JAQUITH: It would be less

unpalatable. It would still be unpalatable. It's a commercialization of our skylines issue.

BRENDAN SULLIVAN: Okay.

MARK JAQUITH: The Ordinance clearly says don't do it. And I ask you folks to uphold that.

BRENDAN SULLIVAN: Okay, thank you. Anybody else who wishes to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see none. I will close public comment.

Final words?

JASON PARILLO: I think the only thing I can say is just that with illumination, I think one think people kind of like often forget is that, you know, in the wintertime it starts getting dark at like four o'clock, you know. I'm sure you guys are open passed four o'clock. I think it's

just worth noting.

BRENDAN SULLIVAN: Is shutting them off at -- to proposed at nine o'clock, is that an option or not an option?

JEFF LOCKWOOD: I don't know. I don't even know how that would work. I don't know about the technical timing --

JASON PARILLO: It could be done.

THOMAS SCOTT: Ten clock.

JEFF LOCKWOOD: I will say that these buildings are research buildings, so there is work that does go on at all hours of the evening. It's 24/7 because experiments run at different times. And we have -- again, it's not necessarily our employees who are having way findings situations. It's those that are working with them who are coming from Harvard, MIT, the Broad and these other places that work in the labs and things like that.

BRENDAN SULLIVAN: Yes, but I think

you probably have a difficulty finding it once, maybe possibly a second time or something. After that, you tend to know, I guess, where it is. You know, I'm not saying that there's not, it's not the same people that go there day after day or once a week or whatever it may be, you know, there is obviously a turn over. And I guess from my own point of view, I mean, I think we welcome what is going on down there, the amount of industry that has been brought to the area. I think we are the beneficiaries of it to a large degree --

CONSTANTINE ALEXANDER: We certainly are.

BRENDAN SULLIVAN: -- in the community for the amount of funds that are brought into the area. And the amount of funds that are pushed back out through the city, and the life that it brings. But anyhow, I'm also getting a little bit

concerned about the amount of shouting. And it may be quiet shouting, but shouting nonetheless of, you know, words, you know, sort of projecting from buildings. So, there's that balance, there's a balance. Because I think your signs are done very tastefully, and coming across the river, I think it looks, and you know, of course having sat on boards and having approved those signs, I critique myself all the time going around the city, you know, did I do the right thing. And what I approved, is that's what it is? Is that what I thought it was that night? And sometimes I look and I say, yes, that's okay. And sometimes I say, my God, why did I vote for that? I think all of us do that as we ride around the city. And so I think your signs are done tastefully. The problem is, and that was sort of brought up, where do we see, you know, no? When do we say no? And that's the quandary that I'm sort of

at. But anyhow, that's sort of a little editorializing.

This is sort of the assessor -- I just -- if we can sort of get your building on this. I have a smaller version of this.

JEFF LOCKWOOD: So, this would be the building right here. It's -- this is the -- this is 100 Tech Square right here. And then 200 Tech Square's here. It's joined by an atrium.

BRENDAN SULLIVAN: That's the part.

JEFF LOCKWOOD: In this graphic it's the model, correct.

BRENDAN SULLIVAN: So basically it's like this?

JEFF LOCKWOOD: Yes.

BRENDAN SULLIVAN: So, currently you have a sign here?

JEFF LOCKWOOD: Correct.

JASON PARILLO: Facing north.

BRENDAN SULLIVAN: Which goes that

way. And then you also have a sign here?

JEFF LOCKWOOD: On Main Street, correct.

BRENDAN SULLIVAN: On Main Street. And this obviously is Draper.

JEFF LOCKWOOD: Yes. This is the parking garage.

BRENDAN SULLIVAN: And that's the parking garage. And I guess as you come out of the parking garage, is that -- I guess what I'm really trying --

JEFF LOCKWOOD: You can't see it to answer your question.

BRENDAN SULLIVAN: This one here I don't have as much of a problem with, maybe possibly this one here. And I know they're probably necessary, obviously you wouldn't be here asking for both if you didn't think they both were necessary.

TIMOTHY HUGHES: How did you prioritize those? I couldn't see what you

were pointing to on the page. Which one did you say you had less of a problem?

BRENDAN SULLIVAN: Four I can see only because coming out the garage. The other one denoted No. 3. I'm not --

THOMAS SCOTT: I have a question about sign 4. Is there any reason why that one couldn't be lowered? I mean, that isn't -- it looks like it's a significant entrance to the building. So why couldn't that one be lowered so it was more at eye level and brought in more in compliance with our Zoning?

JEFF LOCKWOOD: I think, again, it speaks to the architecture of the building and what we saw in terms of what we think best works from our perspective for the building, makes sense to have it be consistent up on the top. With the windows there and the way that thin piece of metal kind of works, it just in working with our sign company --

THOMAS SCOTT: It seems this is a pedestrian plaza right here. It's an approach to the building. If I were gonna put a sign on this portion of the building, I'd want it down low where I could see it more at eye level and not up at the top of the building. Here it seems like it's more of a gratuitous branding of your company. Whereas down here it would serve a better purpose to signify, hey, this is the entrance. This is how you get into our building. So, I'm just --

BRENDAN SULLIVAN: I guess my thought would have been along here.

THOMAS SCOTT: Exactly. So I mean -- this one could be brought almost to within compliance if you would consider that. And then the only one in question would be, you know, the other one that's No. 3.

JEFF LOCKWOOD: And I don't know what the rules are on that building because

we don't actually own it. So with Alexandria we'd have to --

JASON PARILLO: We'd have to continue.

DOUGLAS MYERS: Last year this Board granted a Variance to Tolex (phonetic) at 545 Tech Square to install two signs on the outside of the building above the 20-foot height limit. What happens if they come back and say that they've been hearing that people are having difficulty finding their building from the direction of Portland Street or Broadway and they would like to add two signs?

JASON PARILLO: The one way -- I actually represented them in that Petition.

DOUGLAS MYERS: I thought so. You seem familiar.

JASON PARILLO: Yeah. I've been here a few times. But I think those two signs actually address every approach that you would have to that building, because one of

them faces Portland Street. It faces Hampshire. The back side kind of faces that, you know, Broadway. And then the other sign is on Main Street. So I think that's why -- I think those two signs address pretty much every possible approach to that particular parcel. Whereas this, this parcel has kind of like three or four different approaches. So that's where I think the two existing signs really don't represent the building on these -- on the other side. If you're coming from the east or, you know, from the west, from, you know, towards this building, you have no idea what it is.

BRENDAN SULLIVAN: Well, I think -- I concur with my fellow Board Member on what you show here is proposed new location No. 2 which actually would be sign No. 4.

JASON PARILLO: Right.

BRENDAN SULLIVAN: Okay. And, again, in reading your pleadings where you

say that it's really -- you need a convenient indicator to visitors who use the Technology Square parking garage, I feel as if to satisfy that need, that a lower sign serves that purpose. And I guess where I'm heading is that you may want to go back and ask MIT I guess owns it.

JEFF LOCKWOOD: No, it's Alexandria.

BRENDAN SULLIVAN: Pardon?

JEFF LOCKWOOD: It's Alexandria.

BRENDAN SULLIVAN: Oh, all right. Whoever. And ask them if that would not be okay. And then obviously the height off of the -- for that particular sign there.

Tom, what is your thought on the location of No. 3 which is proposed location No. 1 which is actually a sign No. 3; is that correct?

JEFF LOCKWOOD: Correct.

THOMAS SCOTT: Well, I'm a little

more accepting of that one only because these signs are kind of on the opposite side of the building. There's nothing on this approach to kind of tell you that this is where Novartis is. So, you know, on this approach that one seems to make sense, but certainly when you get to this point, this intersection, you know, you're going to be turning down here. There's no need to have another one that's 80 feet in the air at this location. So I'm thinking that, you know, the two they have, plus this one and maybe the one that's lower at the entrance makes more sense.

BRENDAN SULLIVAN: Okay. Gus, what are your --

CONSTANTINE ALEXANDER: My thoughts? Okay, I have several thoughts.

One is we've all heard the discussion tonight about branding. Most of which is the in the context it's a bad idea and branding's

not good. My personal view is branding is irrelevant from a Zoning point of view. What's relevant is need. Do you have a need for these signs? And because if you do, then you get into your hardship and the special circumstances. We should be focusing on that. And incidentally if there's a branding affect, so be it. You've identified I think a need. A need for identification. And perhaps some special circumstances, the nature of the architecture of the building. I think in terms of the impact on the derogation from the intent of the Zoning By-Law, we have many signs in this area that are higher than the 20 feet. The 20-foot limitation of height doesn't work in this area for this type of business. So I'm amenable to relief. Whether we should modify it to the extent that the two of you talked about, I'm quite open to. But I'm not sure how we're going to

accomplish relief tonight because they can't deliver to us. You want oppose a condition that one of the signs has to come down. You said you don't know if you can get the landlord to do that. So we have to continue the case.

BRENDAN SULLIVAN: Yes. I think you have to go back and that there's a couple more pieces of information that would be part of that.

CONSTANTINE ALEXANDER: So, if you want to continue the case as a case heard, that's fine. But I am partial to granting relief tonight because I do think they've established enough of a case to justify the granting of the Variance here.

BRENDAN SULLIVAN: Okay.

TIMOTHY HUGHES: I've already gone on record as saying that I don't believe our Sign Ordinance in it's one size fits all thing is really appropriate, especially not

appropriate in an area like this. I agree with Gus and that these, you know, the 20-foot limit just doesn't work here, and it doesn't work on these kinds of buildings. And the only thing I would add to what my other colleagues have said about this location proposed No. 2, is that I think they're going to need relief no matter what. You know, if you go all the way to the top or if you go to the most, the lowest logical place which is underneath that bank of three windows, I think you're still going to need relief. If that person, you know, just looking at this in scale, if that person is only five feet tall, that's still going to be more than 20 feet off the ground. They're still going to need relief. I don't really see the point of continuing this case and doing this all over again and sending them away if they're going to have to come back and relief anyway, I think we should just grant the relief

tonight.

BRENDAN SULLIVAN: Mr. Myers.

DOUGLAS MYERS: I accept the proposition that need is the starting point, but it seems to me that the need that's been shown here tonight is basically a statement: We need this. And the statement is not much different than would be in the mouth of Tolex and hypothetical but for the fact that there was someone present who could make factual reply on that point. No one's mentioned anything about a factual reply. The need is your statement that it would be beneficial, you've experienced some difficulty. When I weigh that against what I've heard from other people and from the public, if that's the grounds, if that's the case for need, I certainly respect the corporation acknowledge the role, the extremely beneficial role you've played in our community, but I just, I just don't find that

statement of the case persuasive, especially when I see consider that you have two signs already. And I'm not aware of other buildings in Tech Square that have more than two. I think certainly I want you to go away with a feeling you've had a fair hearing. But I basically think that two signs are enough. And if the need is acute, then you may want to consider relocating the signs you have so they more efficiently deal with the people with the directions that people come from where they can't find your building. I mean, I don't think need means you have a right to cover your number from all directions. So in terms of -- my inclination is simply to deny the relief.

BRENDAN SULLIVAN: Okay.

I would ask that you explore an alternative location for sign No. 4 at location No. 2 and come back to us if that is possible. You may come back and say to us,

you know, we don't want it there. You may come back and say we can't put it there. I don't know what you're going to come back with. But if you can put it there, then I would want a dimension from the ground to that so that that is established. And so I would make a motion then to continue.

THOMAS SCOTT: I would to.

BRENDAN SULLIVAN: You support that?

THOMAS SCOTT: I support that.

BRENDAN SULLIVAN: And, Gus, would you support that.

CONSTANTINE ALEXANDER: No, I would vote against it. And I'm ready to decide the case tonight.

BRENDAN SULLIVAN: Unless you ask for a continuance.

JEFF LOCKWOOD: I don't think we're going to ask for a continuance. I think we're ready to have a vote tonight.

BRENDAN SULLIVAN: Okay. So, can we --

DOUGLAS MYERS: I've certainly stated my piece.

BRENDAN SULLIVAN: Okay. Well, let me make a motion then.

Let me make a motion to grant the relief requested would be to install two new signs as per the application and the drawing contained therein entitled, "The Bars Building 100 Identification." It is dated 14 April '03 and it's initialed by the Chair.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner.

The Board finds that the hardship is the height of the building. The difficulty to identify the specific occupant of the building because of the height and the location of that building in conjunction with

the other surrounding buildings of Tech Square.

The Board finds that the proposed additional two signs and the location is a convenient indicator to visitors who use the parking garages. That the existing signs have faced east and north limit the markings of the identity and the tenant of the building, and that the additional two signs would provide several other vantage points for visitors and potential business associates.

The Board finds that the amount of relief is consistent with -- finds that the relief being granted is a fair and reasonable request.

The Board finds that there would be no substantial detriment to the public good, and relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

Anything else you wish to add?

CONSTANTINE ALEXANDER: I would add that also included among the special circumstances that justify relief is the nature of the architecture of the building which makes that sign no higher than 20 feet from the ground not feasible.

BRENDAN SULLIVAN: Okay. So that could be incorporated.

All those in favor of granting the relief as per the proposal?

(Show of hands.)

BRENDAN SULLIVAN: Two in favor.

(Alexander, Hughes.)

BRENDAN SULLIVAN: Opposed?

(Show of hands.)

BRENDAN SULLIVAN: Three opposed.

(Sullivan, Scott, Myers.)

BRENDAN SULLIVAN: You didn't receive the necessary votes.

For the record, the Board finds that the

Petition fails to meet the statutory requirement for a hardship in this particular location. That alternative sites could have been explored. And that failure to do that is in this Board Member's find is favorable to the application for sufficient hardship.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: You support that?

THOMAS SCOTT: Yes.

DOUGLAS MYERS: I support that.

BRENDAN SULLIVAN: Okay.

(9:00 p.m.)

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

BRENDAN SULLIVAN: We're going to  
case No. 10082, 1350 Mass. Avenue.  
Mr. Kelley, please introduce yourself for  
the record.

FRANCIS KELLEY: For the record, my  
name's Francis Kelley. I'm an employee for  
SAI Communication. I'm here representing  
AT&T Mobility.

BRENDAN SULLIVAN: Just for the  
record, give us a little bit of background.  
The location 1350 Mass. Avenue is  
(inaudible). And that there are existing  
antenna on the building which relief was  
grand to AT&T at various times. It was  
initially back in 19 --

FRANCIS KELLEY: I think it was 1997.

BRENDAN SULLIVAN: 1997. And the --

FRANCIS KELLEY: It had a condition on the approval that it would lapse after a period of five years. It said the Variance would lapse. So we had -- so we have revised the application and resubmitted it where we're now asking -- the previous application was for a revision of the previous approved stuff, and we didn't ask for the permitted use. So this one has been revised, so now we're asking for the permitted use of a telephone exchange as if it doesn't exist there. The narrative still says exactly what's up there and what we're doing. That's not changing. We're asking for all necessary relief, to leave our antennas up there and to swap two --

BRENDAN SULLIVAN: Existing and

proposed.

FRANCIS KELLEY: For existing and proposed, right. And we also have resubmitted revised plans. We resubmitted revised photo sims that show the antennas lowering one foot. The antennas being painted and textured to match. We included some additional views in the photo sims. Just we thought they may want to see them after the comments that we had on the --

CONSTANTINE ALEXANDER:

Mr. Kelley, I'm sorry, the photo sims that I saw when I was in on Wednesday were photo sims that were dated in January. I didn't see any newer photo simulations than those in the file. Were they in the file by Monday before?

FRANCIS KELLEY: Yes, they were in the file on Monday.

TAD HEUER: I saw them on Tuesday morning so, yes.

FRANCIS KELLEY: Yes, I filed them Monday.

TAD HEUER: Mr. Kelley, I do have one question before you get into the merits. On the site plans it appears that you have submitted a site plan which is the same site plan which we had in the case that was withdrawn 10070, and I'm looking at one that has seven pages in numbers, only one elevation, A-2. The problem is that in this case, because it's looking at the entire set of the arrays on three facades, I would expect that there should be more than one elevation and there isn't. So it appears what we have is the elevation that would have been valid for 10070, and there was only a swap out of -- or there was only the addition of one new antenna on the east facade, but we don't have our elevations, and I understand that there are elevations of antenna that are on the structure, but even that being said, we

don't have an elevation that's being.

FRANCIS KELLEY: There's no changes.

BRENDAN SULLIVAN: But it doesn't show it.

TAD HEUER: It doesn't show it.

BRENDAN SULLIVAN: Right. So that, if this Petition is to be all encompassed of existing and proposed, then we should have elevations showing the existing.

TAD HEUER: Of course.

BRENDAN SULLIVAN: As well as the proposed as if it were a complete new installation for the entire building.

TAD HEUER: Yes.

BRENDAN SULLIVAN: As opposed to telling us to reference back to the previous relief for the existing antenna.

FRANCIS KELLEY: So the only -- we're showing an east elevation and --

TAD HEUER: And you're asking for north and west.

FRANCIS KELLEY: And we've got north and west that we're swapping antennas out.

TAD HEUER: But this isn't a swap-out case.

FRANCIS KELLEY: I know, no. We're asking for all the antennas.

BRENDAN SULLIVAN: Right. So that I concur. And I think that the application is deficient in that regard.

CONSTANTINE ALEXANDER: I'm also troubled by the fact that -- I agree with that. As I look at some of these, the revised photo simulations, specifically one and two, you know, I can't still see the visual impact of these. They're so dark. How do you -- it shows proposed antenna on existing mount. I don't have a clue what it's going to look like from this picture. It's just probably just me, but I have problems making an informed

decision based upon the photo simulations that I have.

BRENDAN SULLIVAN: I thought I had in a previous case about how I always critique myself on cases that I have approved. And one glaring example is after we approved certain telecommunication facilities to go on sides or roofs of buildings and I always say to myself, didn't seem to be that noticeable in the photo simulations. And yet as I ride around the city, all of a sudden they become very glaring to me. And I've come to the conclusion that the photo simulations are purposely done rather dark to make it very, you know, like it's really not that noticeable type of thing.

CONSTANTINE ALEXANDER: Exactly.

BRENDAN SULLIVAN: It's almost at dusk that all of the photo simulations, that I would think that the people who do the photo sims need to do a lot clearer for us. We

really find that the applications are -- can be quite deficient and not easy to discern exactly what we're approving or asking for.

CONSTANTINE ALEXANDER:

Mr. Kelley, one of the things that we have to do under our Zoning Law, when we consider applications like this, is the visual impact. That's one of the basic things. That's one of the things left to us to do in terms of improving telecommunication equipment on buildings. And so, therefore, it's extremely important that we get the kinds of evidence, usually in the form of photo simulations that show us the visual impact. And something that just -- as Brendan just said, blurs what it is, that we don't have an appreciation of it. I'm at the point personally I'm just not going to vote on these cases. I'm going to abstain. I can't make an informed decision. I don't understand the visual impact of what you're proposing to

do.

FRANCIS KELLEY: We did include some blowups on all of the after pictures where --

THOMAS SCOTT: Yes, but the quality, the quality of that, versus that is just night and day.

FRANCIS KELLEY: You know what --

THOMAS SCOTT: You can't see what's going on in this one. And here you can clearly see it. But here it's impossible.

FRANCIS KELLEY: You know what I think might be one of the issues, is that it might be an issue with you guys reproducing them because I think -- are those the ones that were actually submitted?

TAD HEUER: Yes, these were submitted.

FRANCIS KELLEY: Those are the originals?

CONSTANTINE ALEXANDER: Those are the originals, we don't reproduce them.

BRENDAN SULLIVAN: We don't touch them.

TAD HEUER: We don't have that kind of money.

TIMOTHY HUGHES: I certainly don't reproduce them.

FRANCIS KELLEY: You know, some of them are dark.

CONSTANTINE ALEXANDER: Put that on the record, he admitted they were dark.

BRENDAN SULLIVAN: Anyhow, I think the application is deficient in the fact that we need to have a full set of drawings for both the existing and the proposed on all the pertinent sides of the building in order for us to proceed. On that basis I would ask you when those might be available so that we can reschedule?

FRANCIS KELLEY: I can get them in in the next week.

SEAN O'GRADY: June 9th is your next

opening.

BRENDAN SULLIVAN: All right. So it's June 9th. I would make a motion that we continue this matter until June 9th.

CONSTANTINE ALEXANDER: A case heard? I don't think it is.

BRENDAN SULLIVAN: Case not heard.

TIMOTHY HUGHES: I didn't hear anything.

THOMAS SCOTT: I second that.

BRENDAN SULLIVAN: As a case not heard.

TAD HEUER: And I mean, so I think what's happened here is that your photographer went out at one point in the day and it was south sun but not north sun.

FRANCIS KELLEY: Well, it was --

TAD HEUER: Probably went out in --

FRANCIS KELLEY: It was February.

TAD HEUER: Actually Cambridge Saving Bank says it was 11:48 when you took

this photograph.

TIMOTHY HUGHES: In the morning.

TAD HEUER: It was in the morning, which you went to one side of the building which has no sun. And then he went to the other side of the building that had sun and that's what you got. The problem is he needs to go on to each side of the building when it has sun, which means necessarily he can't show up once and then leave. In other words, he needs to spend sometime on it. AT&T needs to spend some money on it.

TIMOTHY HUGHES: There may not be any sun on the building depends on where it rises and sets.

THOMAS SCOTT: You can change the aperture on the camera.

TAD HEUER: And you can change the aperture.

TIMOTHY HUGHES: You can change the things to do it, but you can't make the sun

go where it's not going to go.

THOMAS SCOTT: But it's daylight so it's obviously going to be visible.

TAD HEUER: There is sun there.

TIMOTHY HUGHES: Well, it's 11:48 in the morning, it's not visible.

TAD HEUER: Unless the sun is directly overhead.

THOMAS SCOTT: I think it has everything to do with the settings of the camera.

CONSTANTINE ALEXANDER: You've got to work with whoever prepares these photo simulations. Go out there with them, explain to them, the people who are taking the pictures what we need and what we find have been lacking in the stuff we've gotten before. Otherwise we're going to be back --

FRANCIS KELLEY: I'm not sure if it's a production stuff on it because these are --

CONSTANTINE ALEXANDER: That's okay. It's the other ones on the brick side you've got problems. That I thought was clear, to me anyway.

TAD HEUER: Yes. Photo location 3 is good. I even have in my notes I like photo location No. 3.

FRANCIS KELLEY: This is too dark.

CONSTANTINE ALEXANDER: Those are useless.

BRENDAN SULLIVAN: So, they don't -- we're taking these very seriously. And we're also taking it -- well, I'll leave out the adjectives and the adverbs. Anyhow, seriously. And we find them lacking.

I will entertain a motion to continue. There is a, on the condition that a waiver -- this is a new case.

FRANCIS KELLEY: It's a new case.

CONSTANTINE ALEXANDER: They need a waiver.

FRANCIS KELLEY: Are you continuing it you didn't even open it, right?

BRENDAN SULLIVAN: We're continuing the matter. I'm sorry, what was the comment?

FRANCIS KELLEY: Oh.

TIMOTHY HUGHES: We didn't open it.

FRANCIS KELLEY: You didn't open it.

CONSTANTINE ALEXANDER: It's a case not heard.

TIMOTHY HUGHES: That's to your advantage.

BRENDAN SULLIVAN: On the condition that a waiver be signed, and a new date of June 9, 2011 at seven p.m. And that the postings signs be changed to reflect the new date and time.

CONSTANTINE ALEXANDER: Is it possible before we take a vote, is there any way possible we can take it earlier than that? That's almost six weeks from now and we have so many of these continued cases. Do you

need the six weeks?

FRANCIS KELLEY: No, I'll tell you. We're getting, on these sites, they're hoping to launch these sites in July which is creating a lot of urgency and trouble if we don't make the launch date. To be honest with you, if we don't make the launch date, some of these sites that we're proposing to do a lot of stealthing on, that might all go away on it.

TAD HEUER: That's not possible because we have to approve them all.

FRANCIS KELLEY: But they won't just do it.

CONSTANTINE ALEXANDER: If we hear this case in June --

FRANCIS KELLEY: Some of them we're improving the site.

BRENDAN SULLIVAN: Legal should have talked to engineering, engineering should have talked to marketing. And

unfortunately I think it's a whole cast of characters not talking to each other.

CONSTANTINE ALEXANDER: But if we have the case in June, you're not going to get a final decision by July.

FRANCIS KELLEY: I know.

CONSTANTINE ALEXANDER: And I am not adverse to making an attempt to hear the case earlier. Because I suspect we've got a number of continued cases going forward that are phoney continued cases, phoney in the sense that we know they're not going to be heard.

BRENDAN SULLIVAN: Well, how backlogged are they?

SEAN O'GRADY: Well, May 12th you have eight regulars and three continuings.

CONSTANTINE ALEXANDER: Do you know what the continuings are by any chance?

SEAN O'GRADY: I don't, no. On the 26th you've got eight regular and four

continued. And then you're into the June 9th.

TAD HEUER: At least two of the continuations for -- do we have one on the 26th?

SEAN O'GRADY: 12th and 26th are the two nights. Three on the first and four on the second.

TAD HEUER: Right. And at least two of those are being heard at least simultaneously with the merger because that's Foch Street.

SEAN O'GRADY: Foch Street is which night?

TAD HEUER: I think the --

CONSTANTINE ALEXANDER: Foch Street, Fox Street (phonetic) however you pronounce it, Foch Street.

TAD HEUER: Is that the 26th?

CONSTANTINE ALEXANDER: I think it's the 26th.

SEAN O'GRADY: I think that's why we

got to four on that night because we said one of them was a doubling.

CONSTANTINE ALEXANDER: Well, two of those we're not going to hear.

TAD HEUER: It's a dormer, it's a raise the roof. It's a merger. The merger presumably will be done first, and then switch to the real substantive case and the other one will disappear.

SEAN O'GRADY: But the merger is counted on the regular agenda.

TAD HEUER: Right. But those two essentially are taking a place that really is one on the regular agenda.

SEAN O'GRADY: Right, and that's why we overdid one.

TAD HEUER: So two cases.

BRENDAN SULLIVAN: Can we do May 26th?

SEAN O'GRADY: You guys can do whatever you like. Just the numbers are

eight and three, and arguably eight and three.

CONSTANTINE ALEXANDER: You're going to be stuck with us that night anyway.

SEAN O'GRADY: That's the other thing, too. You might find in a minute you have more than one case to continue.

BRENDAN SULLIVAN: Right.

TIMOTHY HUGHES: Just let me know so I could do everything in my power to avoid it.

BRENDAN SULLIVAN: Well, you are going to have one, two, three, that are going to be continued. And the question is you may be able to pick May 26th for one of them, but the other two you probably won't. Now obviously you have a very much of an interest on this particular one. So if you want to go on the 26th on this one and the other one's going to go into June. That's sort of the options.

FRANCIS KELLEY: Yeah.

BRENDAN SULLIVAN: So we do May 26th for 1350 Mass. Avenue at seven p.m.

CONSTANTINE ALEXANDER: Can I just make one observation, speaking only for myself?

FRANCIS KELLEY: Yeah.

CONSTANTINE ALEXANDER: If you come in May 26th with inadequate photo simulations I am not, myself, going to support any further motions to continue. I think we're going to hear the case -- I'm going to advocate we hear the case on the merits and turning you down. So I think you better pay attention to getting us good photo simulations by the Monday before, etcetera, etcetera. Okay?

BRENDAN SULLIVAN: On the motion to continue it until May 26, 2011?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of continuing.

(Sullivan, Alexander, Hughes,

Heuer, Scott.)

(9:20 p.m.)

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

BRENDAN SULLIVAN: The next case we'll hear is 10084, which is 141 Portland Street. And, Mr. Kelley, just introduce yourself for the record.

FRANCIS KELLEY: Yes. For the record, my name is Francis Kelley. I work for SAI Communications. I'm here representing AT&T Mobility.

BRENDAN SULLIVAN: And the issue that we have with this is the posting sign which was not present.

FRANCIS KELLEY: That's right.

BRENDAN SULLIVAN: And I guess that was obviously observed.

CONSTANTINE ALEXANDER: By me  
anyway.

BRENDAN SULLIVAN: You observed  
that there was no sign.

CONSTANTINE ALEXANDER: I observed  
that there was no sign.

BRENDAN SULLIVAN: Okay. So  
failure to post.

FRANCIS KELLEY: Well, we did post  
signs there. We posted them.

CONSTANTINE ALEXANDER: Where?

FRANCIS KELLEY: I posted it on -- it  
was on the brick. It was on -- one on each  
face of the building. We posted them on the  
13th. And we have confirmation from  
somebody that they had seen it the following  
Wednesday. So we believe that they came down  
on the 21st of April which was last Thursday.  
There were 58 --

CONSTANTINE ALEXANDER: Last  
Thursday?

FRANCIS KELLEY: Yeah. There were 58 mile per hour wind gusts last Thursday night.

CONSTANTINE ALEXANDER: Maybe you should put the sign --

FRANCIS KELLEY: We met with the landlord over there. They didn't want us to put it on the plate glass. You know, they want it on the brick. They want it away from the main entrance there. And, you know, we were limited where we could put it. There weren't, the sidewalk is paved all the way to the building, so there's no place to put a stake in without doing damage to the pavement. You know, we reposted them. We actually found one of the ones that was previously up, and so there's actually three of them up there now. And we have one that's wrapped on a steel pole, and two of them that are up there. But I found out when I was submitting revised stuff on Monday morning,

that from Maria and Sean, that they weren't up there at that point. And at two o'clock -- she was able to redo the signs by two o'clock and I reposted all the signs up there at two o'clock.

BRENDAN SULLIVAN: All right. But I think it's incumbent upon the Petitioner, Petitioner's agent, you, to maintain those signs. And that it would require going to the building owner, the building owner going to the building manager, the building manager telling whomever that those signs have to be up there. I mean, it's critical. The building owner obviously it's beneficiary of the --

CONSTANTINE ALEXANDER: Exactly.

BRENDAN SULLIVAN: -- so it behooves him. He can say he doesn't want this, I don't want that. Well, then he's not going to get his monthly stipend.

CONSTANTINE ALEXANDER: We had the

issue at the Hyatt Regency.

TAD HEUER: I'm also a bit distressed that the owner apparently has said he doesn't want it put near the door. The reason we put signs up is so that people see them, not so they don't see them. I mean, you can technically put them over in the corner that has frontage, but that's not the intent of the Ordinance.

FRANCIS KELLEY: Where they were put has -- the walls, it's right on off the sidewalk. You can see them whether it's right in front of the doors or farther out. They stick out. They're big white signs.

TAD HEUER: Right, if they're not, you know, staying up. And the best place to have a sign not go down, is inside a plate glass window. And if he says we don't really like that, you know, I think you want to say well, you know, if they're going to fall off the building where you like them and they're

not going to fall down but you don't like the fact that it covers your door for 14 days --

FRANCIS KELLEY: And during the appeal period, they're supposed to stay up.

CONSTANTINE ALEXANDER:

Mr. Kelley, we had this issue with the Hyatt Regency. They didn't want to have signs up either. I don't remember what relief they were seeking, but they did. And we sent the Petitioner back more than once to tell the Hyatt Regency you gotta have the signs posted. And if you don't like it, too bad and we're not going to grant relief. So you've got to do it.

BRENDAN SULLIVAN: We're not picking on you by any means.

CONSTANTINE ALEXANDER: We're not picking on you.

FRANCIS KELLEY: Oh, yeah, I know.

BRENDAN SULLIVAN: But anyhow, so I think the message has to, again, you know,

you're the -- you're bearer of the news that it should not go forward because of the posting.

So failure to post the sign as per the Ordinance, I feel is unfavorable to hearing the case tonight. And I would make a motion and you will sign a waiver which I is -- is this a new case?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: All right, so you have to sign a waiver. You might as well get out another one, too, so get out two sheets.

FRANCIS KELLEY: So, just off the record, have you looked at the photo sims on these? Because we did include some other views here.

BRENDAN SULLIVAN: Well, that was my next question.

CONSTANTINE ALEXANDER: I hadn't because I didn't think we were going to hear the case.

FRANCIS KELLEY: I would like to have some feedback on those.

TAD HEUER: Hypothetically I would wonder why the photo sims indicate or match the plans given that they're supposed to be painted to match the plans given that they're supposed to be painted to match and then one suggests that they are flush to the roof line, the other suggestions that they exceed the roof line. Just theoretically and not apropos to anything.

CONSTANTINE ALEXANDER:

Mr. Kelley, just speaking for myself. I think these photo simulations have the same problems. Some of them. That 1350 Mass. Ave. I mean, you have brick. You're putting something on the a brick. You've got to do something to distinguish what the mounts going to look like, what the antenna is going to look like against the brick. You just can't have it blend in the way these do.

So I think you have to revisit those as well personally but other members may feel differently.

BRENDAN SULLIVAN: Again, it's got to go back to them, that whole better photo sims. It's not adequate. And it's not getting the job done and we're just sending it right back.

On the motion to continue the matter to June 9th, and on the condition that the waiver of statutory requirement for time hearing the sign which is now on record and posting signs be changed to reflect the new date of June 9, 2011 at seven p.m.

CONSTANTINE ALEXANDER: And any revised photo simulations, which I suggest you need, must be in our files by -- before the close of business on the Monday before.

BRENDAN SULLIVAN: As it is in any of the resubmittals. By five o'clock on the Monday before the hearing.

CONSTANTINE ALEXANDER: Five? Or do you want to say close of business by eight p.m. on Monday.

TIMOTHY HUGHES: It's not actually close of business. You want to be able to see them after five on Monday. That's the only day they're open late.

CONSTANTINE ALEXANDER: They're open to eight on Monday.

BRENDAN SULLIVAN: So that the general public has a chance to view it.

FRANCIS KELLEY: Right. Off the record, on the Cambridge Park is the plans that that we --

BRENDAN SULLIVAN: Well, let me close this one first.

So on the motion to continue this?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: The matter is continued.

(9:25 p.m.)

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

BRENDAN SULLIVAN: I'm going to call case No. 10086, Five Cambridge Parkway.

Mr. Kelley.

FRANCIS KELLEY: Yeah, for the record, my name is Francis Kelley. I'm an employee with SAI Communications. I'm representing AT&T Mobility.

BRENDAN SULLIVAN: Okay. And, again, for the record, we have a problem that the posting signs were not visible, and the Board finds that failure to maintain the signs for a 14-day period is fatal to

proceeding with the case this evening.

Now, you had asked a question?

FRANCIS KELLEY: Yeah, just if you can look at -- just to go over this, the -- we had revised the plans in the photo sims after we went to the Planning Board on it, on this case, that we're now enclosing all of the antennas that are on-site.

TAD HEUER: All of them including the ones that are not yours?

FRANCIS KELLEY: No, all of ours.

TAD HEUER: Right. I would think about whether you want the building owner to look at that on their own. Maybe have the building owner to come here and represent to make a determination that they can enclose the others.

FRANCIS KELLEY: Sprint is the other carrier on this stuff.

TAD HEUER: Right. But whoever owns Royal Sonesta is the building owner.

They can or cannot presume if it's, they can do what they look like on their building.

BRENDAN SULLIVAN: If we're going to approve, we want to make sure that they're going to approve that it gets done. Is that what you're saying?

TAD HEUER: Yes. But if I'm looking at the photo sim hypothetically correctly, it appears that there is a good stealth type installation being proposed for the AT&T antennas. The antennas that are on the right side of the sign, which are not AT&T antennas are not being stealth. And I think that is where the Planning Board is going. If we were to have someone from the hotel here to be able to request authorized stealthing on both sides.

BRENDAN SULLIVAN: Okay. You understand?

FRANCIS KELLEY: Yeah, I mean, what do you mean? It's beyond, you know, Sprint

would have to approve it as well as the hotel approve it.

TAD HEUER: That's not true.

FRANCIS KELLEY: Sprint has a lease for those areas.

TAD HEUER: They have a lease for the entire --

FRANCIS KELLEY: Where their antennas are.

TIMOTHY HUGHES: Are you asking him to be responsible for Sprint's antennas?

TAD HEUER: No. I'm asking for the building owner, who is the beneficiary of both leases, to be here and tell us why they cannot stealth one half and not stealth the other, because that's really the concern of the Planning Board. The Planning Board doesn't care whose antennas they are. Planning Board just doesn't want it to be open.

CONSTANTINE ALEXANDER: If you

can't produce the building owner, then what.

FRANCIS KELLEY: Yeah.

TIMOTHY HUGHES: I don't know if that's on him. On Mr. Kelley. I mean, we could --

TAD HEUER: Well, it may not be on Mr. Kelley, but it's a -- it's something that I would like to see because I'm looking for what the Planning Board is asking for, and I appreciate the stealthing that's being proposed on, hypothetically, on the AT&T antennas. I think the Planning Board cares about the visualization of that sign, and I would like to know why the building owner wouldn't do that as --

CONSTANTINE ALEXANDER: I just think we should make it clear it's a request.

TAD HEUER: It's a request.

CONSTANTINE ALEXANDER: -- and not a requirement that you bring the building owner.

FRANCIS KELLEY: And you'll have an ability if Sprint -- next time comes to do something.

TAD HEUER: I'm impatient.

FRANCIS KELLEY: To make them do it at that time.

BRENDAN SULLIVAN: Charter House of Cambridge Trust owns of the building. So, anyhow, let me make a motion to continue this matter until June 9, 20011 at seven p.m. on the condition that the Petitioner sign a waiver to the statutory requirement for a hearing and the decision thereof.

And that also for the condition of the posting signs be changed to reflect the new date of June 9th.

CONSTANTINE ALEXANDER: And time. Date and time.

BRENDAN SULLIVAN: And the date of June 9, 2011 and the time at seven p.m.

CONSTANTINE ALEXANDER: And that

revised plans be in the file.

BRENDAN SULLIVAN: And that any revised photo sims be in the file by five p.m. the Monday prior to the hearing of June 9th.

All those in favor of granting the continuation?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

FRANCIS KELLEY: Do you have the same issues with these photo sims?

BRENDAN SULLIVAN: No, there's one there that looks really good and they were all set.

FRANCIS KELLEY: These are the old ones.

BRENDAN SULLIVAN: Yes, but those were up to that type of quality. They're easily discernable.

FRANCIS KELLEY: Yeah, this is the

old ones before we revised them.

BRENDAN SULLIVAN: It's sort of a close up and it's fairly good, is it not?

TAD HEUER: Yes.

BRENDAN SULLIVAN: Okay.

THOMAS SCOTT: I think they're reasonable.

FRANCIS KELLEY: These are reasonable?

BRENDAN SULLIVAN: Okay, good.

FRANCIS KELLEY: All right, thanks.

(9:30 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case 10085, 1154 Mass. Avenue.

ATTORNEY VINCENT PANICO: Good evening, gentlemen.

Identify yourself.

NHON MA: My name is Nhon N-h-o-n T. Ma, M-a.

ATTORNEY VINCENT PANICO: I promise to be brief. This is a request for change of use. There has been a fast food operation on this site for eight years. It was vacant. The previous use was a creperie, and the proposed use is a Belgian waffle, something

that's not common in the United States, but does exist in Europe. It's a very, very special product. There is -- the space is very small, 750 square feet. The space has been dark, it's been empty. The landlord is here to tell you it causes a negative effect on the building and on the abutting business owners. Most of the -- frankly 100 percent of the business is walk in. They would be using biodegradable products. They are going to have containers, waste containers on the outside, and the city already has two, almost immediately adjacent to it.

What is going to be -- it's going to be a small European style cafe. I think some of you may have run into these in Europe. It's going to be upscale. It's -- they presently serve this in a restaurant in Europe which -- could you repeat the name? That served the Belgian waffles?

NHON MA: (Speaking French.)

ATTORNEY VINCENT PANICO: And they received awards not only for this food, but being one of the best restaurants in Europe. And I'll be happy to answer any questions you have.

CONSTANTINE ALEXANDER:

Mr. Paneco, will the establishment comply with all state and local requirements for handicapped and disabled persons, access and egress? You have to make that finding. So it's there.

ATTORNEY VINCENT PANECO: We'll ask the landlord to address that issue.

NHON MA: Can I ask a question?

ATTORNEY VINCENT PANECO: Sure.

NHON MA: The premises is about 150 years old, and the former tenant -- I've read the transcript, you know, of their Special Permit application, and they have received an estimate of \$135,000 in order to be handicap access. And from our point of view and

financially, it wouldn't be possible for us.

CONSTANTINE ALEXANDER: So, you will not be able to comply with that?

SEAN O'GRADY: Just a point of information. They will be required to comply with all laws. In this case that probably won't mean that they have to be accessible though.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Do you have an entrance on Bow Street at all or not?

DEBBIE DEJESUS: You mean Arrow Street?

BRENDAN SULLIVAN: I'm sorry, Arrow Street. Why am I saying Bow Street? Is the other one. The answer is yes; is that right?

DEBBIE DEJESUS: It's a storage.

BRENDAN SULLIVAN: If you'll identify yourself.

DEBBIE DEJESUS: I'm sorry. My name is Debbie DeJesus. I own the building

with my sister.

BRENDAN SULLIVAN: Okay.

DEBBIE DEJESUS: They had an entrance to a storage unit on Arrow Street. But the only entrance to the actual cafe would be on Mass. Avenue.

BRENDAN SULLIVAN: Which is then up six steps, and that's the way it's sort of how it was.

DEBBIE DEJESUS: Yes. And the property line is right on Cambridge -- right on the sidewalk. So I'm not -- you know, it would be very difficult.

CONSTANTINE ALEXANDER: So people won't be walking into the Bow Street -- Arrow Street, I'm sorry. Arrow Street entrance and climbing some stairs?

DEBBIE DEJESUS: No, no, that's a storage area. They have to go around and go into.

BRENDAN SULLIVAN: Which would be

the basement to their --

DEBBIE DEJESUS: Exactly to the building.

BRENDAN SULLIVAN: So it's a basement entrance?

DEBBIE DEJESUS: Exactly.

BRENDAN SULLIVAN: All right. Anything else that you wish to add?

ATTORNEY VINCENT PANECO: No, not unless you --

BRENDAN SULLIVAN: Any questions by the Board at all at this particular time?

TAD HEUER: Mr. Alexander, the issue of need, have you been satisfied as to the need for the establishment in Harvard Square?

CONSTANTINE ALEXANDER: Well, I think -- there is a requirement. We're supposed to see that the following requirements are met. And one of them is that the establishment complies with all

state and local requirements applicable to ingress, egress and use of all facilities on the premises for handicapped and disabled persons. I think what I heard from you, though, they will be able to satisfy all the requirements of the state with regard to these issues, right?

SEAN O'GRADY: Yes. Speaking a little bit out of school because that's building code stuff and ADA stuff. But the Board, of course, can't waive any of those requirements.

CONSTANTINE ALEXANDER: Right. That's important.

SEAN O'GRADY: Yes. So there's some tests. There's thresholds. And as long as they don't trip those thresholds on a pre-existing building, it won't necessarily require --

CONSTANTINE ALEXANDER: And I'm satisfied on this issue we can defer to the

state laws and whoever enforces them to make sure that this is satisfied. So I'm okay.

TAD HEUER: Even on the issue of need nor the fast food establishment in Harvard Square?

CONSTANTINE ALEXANDER: This is not Harvard Square to my mind.

TAD HEUER: Really?

CONSTANTINE ALEXANDER: Yeah. It's outside of the Square. I voted -- when they had the creperie here I voted in favor of that eight years ago. The creperie that was here before came before this Board as well.

DEBBIE DEJESUS: Can I speak on that? I've owned the building -- my sister and I have owned the building since '04. And at that time the creperie had moved from Arrow Street to Mass. Avenue and that's probably when he came in front --

CONSTANTINE ALEXANDER: That's

right. He came before us.

DEBBIE DEJESUS: It brought a lot of foot traffic and business to the area. And since it's left in January, it's hurt the business and especially two businesses adjacent to it. My two tenants are just hanging on by a thread. And we need something in this space and Zinnekens has a great product, and it will bring a lot of excitement to the area of Harvard Square which technically it is, but it needs help. It needs, you know, foot traffic and business and excitement. And, you know, we have a few businesses there that are bringing in people, but this Zinnekens has a great product and I think it will bring a lot of excitement to the area.

BRENDAN SULLIVAN: What are the proposed changes to the outside?

ATTORNEY VINCENT PANICO: None.

BRENDAN SULLIVAN: Any signage, any

coloring, colors?

NHON MA: You mean for the outside?

BRENDAN SULLIVAN: Yes.

NHON MA: We've been compliant with the Zoning requirements.

BRENDAN SULLIVAN: So you're not going to have plans to paint the --

NHON MA: Not something fancy. Something in line with the style.

BRENDAN SULLIVAN: There will be some kind of sign on the inside of the large glass window, I guess, to identify your establishment?

NHON MA: We're not going to use lights.

ATTORNEY VINCENT PANECO: Lights.

NHON MA: Yes. In terms of signage we have probably -- I mean, we are discussing about it. We have some --

BRENDAN SULLIVAN: Something consistent with what was there before?

NHON MA: Just to be incorporated, yes.

BRENDAN SULLIVAN: Okay.

Let me open it just to public comment. Is there anybody here who wishes to speak on the matter? And you have already spoken and we acknowledged that.

There is correspondence in the file from the Cambridge Historical Commission. The property is located in the Harvard Square Conservation District where exterior alterations are subject to review and approval of the Cambridge Historic Commission. Changes to land use are not subject to the jurisdiction.

There is correspondence then from the Harvard Square Advisory Committee which has jurisdiction of the locust. And it is formally the pattern on behalf of the Harvard Square Advisory Committee, I have polled the advisory committee members to support the

application and/or have no comments.

So, that is the sum and substance of the correspondence.

Anything else to add, delete, change?

ATTORNEY VINCENT PANECO: No.

BRENDAN SULLIVAN: Okay. Let me close that part of the hearing and take a look at the Board.

Tim, any thoughts on Belgian waffles?

TIMOTHY HUGHES: No, not really. Crepes, waffles, it's all the same to me.

BRENDAN SULLIVAN: Gus?

CONSTANTINE ALEXANDER: I'm good.

TIMOTHY HUGHES: I'm good with it.

THOMAS SCOTT: I'm fine.

TAD HEUER: I enjoy Belgian waffles very much. I'm looking forward to this establishment.

BRENDAN SULLIVAN: There's a need of one, anyhow.

Let me make a motion to grant the

Special Permit for the establishment to change the use occupancy from a fast order French creperie to a fast order Belgian waffle bakery and coffee shop.

As per the application, the Board finds that this particular space lends itself to this type of use, and that it does fulfill a need for this type of service at this location.

That the Board finds that there is a history of retail space being used for food service at this location.

The Board finds that the relief being requested is fair and reasonable. Is warranted in order to support the past uses at this particular site.

The Board finds that there is a hardship that was demonstrated as to the vacancy and the difficulty in renting this particular site. That the operation will not create any traffic problems and will encourage walk-in

trade.

That the physical design will be consistent with the existing pattern that has been established and is sensitive to the visual and physical characteristics of other buildings and spaces in the area.

That the establishment to the greatest extent feasible who use biodegradable materials and food packaging or non-disposable cutlery and plates.

That the establishment will provide convenient and suitably well-marked waste receptacles on the premises or net nearby and properly dispose of all packaging materials and encourage the proper disposable of those packaging materials and encourage proper disposal of those packaging materials.

That access, ingress and egress of the facilities will comply as the best possible any regulations required by the state and local authorities.

That this Special Permit can be limited to this particular owner, being a Belgian waffle bakery and cafe. And that a change of ownership of this establishment will require this relief become null and void.

All those in favor of granting the relief?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(9:45 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case 10087, 52 Brattle and 1 Story Street. Who is the spokesperson?

MACREGOR FREEMAN: My name is MacGregor Freeman. I'm a principle of PTA Architects, Inc. We're in Central Square right here down the street. We are engaged -- we have been engaged by the owner of the building 52 Brattle Street, 52, LLC and that's represented here by Richard Cohen who

is the managing partner of CGI Management. So Richard Cohen is the owner's rep. We have a code and life safety consultant Norton S. Raemer (phonetic). This gentleman here.

BRENDAN SULLIVAN: Before we get into the merits of the case, the issue that was raised, and I possibly concur with, is that you are talking an existing parking space. And as such, I feel, and I think maybe the Department would concur, that additional relief from the parking requirement would be necessary in order to grant the Variance or the request. So basically we feel as if you do have a parking space, you're abandoning that parking space in order to put in the elevator, and that you would have to get relief for giving up that parking space.

CONSTANTINE ALEXANDER: And the need for that relief was not advertised for this hearing tonight.

MACGREGOR FREEMAN: That's correct.

Therefore, we didn't believe there was a need for relief.

NORTON RAEMER: Yeah, our understanding is that the parking space was never a legal parking space as such. And the -- I spoke with Sean, at one point we spoke with Ranjit when we first started this process, reviewing this, and the question then was, you know, was the space ever part of the building approval process? And it wasn't because it didn't need parking when the building was constructed.

BRENDAN SULLIVAN: Well, going through the archives and going back to the case No. 7731 of September 12, 1996, there was a Special Permit. The Petitioner was the Cambridge Center for Adult Education which I think occupies the third floor?

MACGREGOR FREEMAN: They did at that time.

RICHARD COHEN: They did.

MACGREGOR FREEMAN: They're not there now.

BRENDAN SULLIVAN: Okay. And at that time it was to reduce the amount of required parking. There was a parking requirement for them at that time. And that as part of that application form, where on the existing conditions and number of parking spaces, it says one. And requested conditions, no change. The Ordinance required at that time 36 additional because of the use as an educational facility. So, to me that solidifies the fact that there was an existing space. At the time no relief was requested to eliminate that space. Hence, I think that legalizes it. And now to abandon that is going to require relief to take it away.

NORTON RAEMER: And I appreciate that. At this point is it possible to go ahead with anything else or should we --

BRENDAN SULLIVAN: It has to be done in toto to be honest with you. And the ownership form was signed by Mr. Cohen at the time, so that sort of ties, you know, that dimensional which acknowledges the one space. It's part of a two part thing. No. 1, the Variance for the elevator and also the abandoning of that. We can't really grant one without the other or consider one without the other.

MACGREGOR FREEMAN: Is it a Special Permit for the space?

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: You can't have one without the other.

CONSTANTINE ALEXANDER:

Mr. Chairman, do we have any advice from the Harvard Square Advisory Committee? There wasn't one before. If not, we should make sure they understand they get that as well.

If we have it, then fine.

BRENDAN SULLIVAN: The building falls within the Harvard Square.

MACGREGOR FREEMAN: The square footage though is 440 square feet.

BRENDAN SULLIVAN: We appreciate that.

CONSTANTINE ALEXANDER: Any request for a Variance in the Harvard Square Overlay District requires that we receive an opinion from the Harvard Square Advisory Committee as to what their views are on it. And I'm just asking whether we have that.

RICHARD COHEN: Didn't we get that?

BRENDAN SULLIVAN: No.

MACGREGOR FREEMAN: No.

SEAN O'GRADY: We may not require it because I think this building was built via Planning Board Special Permit, which would exempt it. I'm not 100 percent certain of that. But if you guys will contact me, we can

resolve that next week and you'll be prepared whatever.

CONSTANTINE ALEXANDER: I want to be sure the next time you come before us again that all bases are covered, that's all.

TAD HEUER: Isn't the provision -- am I correct, Sean, that it is a -- the Harvard Square Advisory Committee recommendation or review is required for any Special Permit?

SEAN O'GRADY: Or a Variance.

TAD HEUER: Or a Variance. Why would that be grandfathered by a Planning Board?

SEAN O'GRADY: This is anecdotal because I was told in a conversation that I'm not rock solid on, that that may be the case. It was last minute. I had no way to -- well, I had a way, I didn't have the time to verify that. So I don't want to tell the Board that that's the case, but, you know, if I had --

BRENDAN SULLIVAN: Well, that could be flushed out. And it's a relatively easy process just to -- Community Development can obtain that particular -- whether or not it's required or not. But then they can easily obtain that letter, advisory letter from the Harvard Square Advisory Committee.

The issue before us now is that we would probably continue this particular case, but that a new case is going to have to be filed to incorporate this and relief from the parking. That's correct?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: So we will continue this matter just to leave it open. But then pronto to file for a new case.

SEAN O'GRADY: Would you object to their taking this case and a stand-alone parking case and doing both of those together?

BRENDAN SULLIVAN: Whichever.

SEAN O'GRADY: It will save them time and some money.

BRENDAN SULLIVAN: Yes, whatever.

SEAN O'GRADY: If you're happy with that, we're happy with that.

BRENDAN SULLIVAN: We can do both. We'll do the parking one first.

TAD HEUER: Which gives you the space to put the elevator.

BRENDAN SULLIVAN: Right. One has to happen first. So, that's fine.

SEAN O'GRADY: Okay.

BRENDAN SULLIVAN: That's fine. Whichever gets it done quicker.

SEAN O'GRADY: I'm thinking June 23rd because I'm not sure that June 9th is still open and if it is still open --

BRENDAN SULLIVAN: Maybe you can leave a slot.

SEAN O'GRADY: You'll need an

application.

NORTON RAEMER: Sure.

BRENDAN SULLIVAN: I mean there are so many calendar days that you have to happen, too.

SEAN O'GRADY: We have two openings in June. If we were to continue this case to June 9th, but that would require -- I'm guessing here, but I think we still have an opening or two there, but literally you would have to have a new filing to us, you know, immediately. Whatever that means. But sitting down tomorrow wouldn't be a bad idea.

MACGREGOR FREEMAN: For just the parking?

SEAN O'GRADY: For just the parking.

MACGREGOR FREEMAN: And that doesn't require going back to Planning -- the Planning Board?

SEAN O'GRADY: Well, the case is going to go up there, yes.

BRENDAN SULLIVAN: It would go up there anyhow.

MACGREGOR FREEMAN: But not as a hearing. It would just be a --

BRENDAN SULLIVAN: It may be. I would double check with them. I will not speak for them, but it may have to be on their docket. It may be that they would review it. I don't know that. I don't know that. But let us continue this until the 9th and we will try to pencil you in for the 9th providing the requirement for the notice and the newspaper and all that other stuff is collaborated with.

Let me make a motion to continue this to June 9, 2011, at seven people on the condition that posting sign be changed to reflect the new date and time of seven p.m. And a waiver of statutory time for a decision be signed.

Anything else?

CONSTANTINE ALEXANDER: Well, that to the extent that you're going to modify any plans that are the in the file now, you need to get them in by five p.m. on the Monday before.

MACGREGOR FREEMAN: I think we stand pact with the plans.

TAD HEUER: Can I clarify that I presume our practice is that these windows are being changed around because that's part of the Variance, those are being accepted as sub to the Variance and there's no additional Special Permit needed for the windows? Relocation windows in the setback.

BRENDAN SULLIVAN: I'm sorry, Sean.

TAD HEUER: That's been our practice. They're adding, by looking at the --

CONSTANTINE ALEXANDER: A new window in the setback.

TAD HEUER: Well, they're building

their new -- they're proposing to build their new structure --

BRENDAN SULLIVAN: It faces the street.

TAD HEUER: It doesn't. There are no windows on this facade, but three windows there. The new structure will have different window placement. Isn't the fact that this is a new structure, are those subsumed in the Variance grant or do they need additional Special Permits where the windows are in the setback?

SEAN O'GRADY: Yes, we say that the windows are part of the addition. So that if -- yes.

TAD HEUER: Okay, that's fine.

BRENDAN SULLIVAN: Okay.

All those in favor of continuing the matter?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(9:55 p.m.)

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

BRENDAN SULLIVAN: The Board will  
hear case No. 10088, 900 Mass. Avenue and 56  
Hancock Street. Please introduce  
yourselves for the record and please spell  
your last name and give us your address.

KYLE GALE: I'm Kyle Gale, K-y-l-e  
G-a-l-e, 136 Huron Avenue, Cambridge 02138.

SCOTT KENTON: Scott Kenton, 152  
Vassal Lane, Cambridge. Scott Kenton,  
designer.

BRENDAN SULLIVAN: Mr. Gale, would  
you tell us --

THOMAS CLEMENS: I'm Tom Clemens,  
Seven Goodwin Place in Boston.

BRENDAN SULLIVAN: Okay, who will  
speak?

KYLE GALE: I will I guess. My  
uncle John Gale owns these two buildings  
which you've seen the plan, 900 Mass. Avenue  
and 56 Hancock Street, which the back of 56  
Hancock Street abuts the side of 900 Mass.  
Ave. They've always had separate tax bills,  
but I understand that now they're treated as  
merged because they're adjacent and owned by  
the same owner. He is in pretty bad health  
and he had hoped to be able to sell Hancock  
Street to provide for himself so he could  
remain at 900.

So a little history of him and the  
property. He bought them in '77, I believe.  
They were in such bad shape that they couldn't  
even collect the rent control rents which  
were like 83 bucks in one of the apartments

at the time. But he was a handy man and he would take them, so he got them. And over the years fixed them up. When I lived at Hancock Street in the early eighties it was sort of like the Honeymooners, everything metal. You slam the cabinet, boom. But, you know, he fixed them and steadily made them better. And he's, you know, really invested himself in the building. I wish I brought a picture of the building. If you all knew this guy, if you ever walk down Mass. Ave., I have people seen me talking to him and say who is that guy? I'd say oh, he's my uncle. And they'd say oh, is he homeless?

CONSTANTINE ALEXANDER: Did he buy the two properties at the same time?

KYLE GALE: He bought them from a trust that had owned them that had bought them --

CONSTANTINE ALEXANDER: He brought the two properties at the same time, but

someone who owned the same property, a single seller?

KYLE GALE: Right. They had bought them at separate times, but he bought them from them.

CONSTANTINE ALEXANDER: So the merger occurred long before your uncle bought the property.

KYLE GALE: My recollection is in the late sixties, maybe one in '67 and one in '69. He bought them I think in '77. In the seventies. Certainly after.

And so, what else to say? He's, you know, we were surprised to find out about this, and it was only by good fortune that we didn't transfer them thinking that he could because they had separate tax bills. And I called Scott and he said, you know, you should look into this. And fortunately we averted a much worse situation where he had already sold it, and I don't know, you guys give an

injunction or whatever.

CONSTANTINE ALEXANDER: The buyer would have had a problem, not your uncle.

KYLE GALE: Yeah, well, my uncle would have had a problem, too.

TAD HEUER: You could have sold them faster. You could have been bona fide as seller and you'd be not in front of us. It would be their problem.

SCOTT KENTON: A lawsuit.

KYLE GALE: Well, you know, that was a risk he was not anxious to take especially in his present condition. But, you know, it's his life's work to --

BRENDAN SULLIVAN: So, he just needs to separate them to give them their own identity?

KYLE GALE: Right. And I think the property as used up, they're non-conforming now. They're both, it's not as though by separating them someone can build something

in the backyard or go to a, you know, make more get anything out of it financially. So, I don't know, I mean ask me whatever. I don't want to rave on all night. But I think -- I spent a lot of time with him this week because he's been so sick. I always thought he objected to all this. He was kind of irritated when he heard about it, pissed even. And that he was objecting to he can't take this guy objecting to, you know, bureaucracy. But what I found the other night was he said, all my life I've worked so I didn't have to ask anyone for anything. He was more upset to having to be asking to do this. Because they grew up. He and my dad and their sister were starving, and the only food they ate people gave them. They got thrown out of every place that they lived. The father was in jail as far as I know. The mom was not there. And so I was thinking you know somebody, and then the other night when

I'm sitting with him, "I just don't want to have to ask." So I'm glad I he's not here to ask because he couldn't do it.

BRENDAN SULLIVAN: Okay, that's fine. All right, so that's it basically.

Any questions by anybody on the Board? Let me open it to public comments. Is there anybody here who wishes to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: Nobody. There is correspondence from Mr. John Gale who asks to accept his apologies for not being present. He is in declining health, and he has asked to allow nephew Kyle and his friend Tom Clemens to represent me at the hearing.

Okay. That's it as far as any questions, problems?

TAD HEUER: No, I think that every -- we had two pre-existing properties that are clearly -- I mean, this isn't even

the normal merger case where we have properties that are abutting each other on a street frontage lot line. They're abutting each other on different streets. Through happenstance, I guess the way the blocks were cut up, I think every building should have its own lot for ease a taxation and other legal niceties, as well as the fact that now you don't want to have to condo two buildings that are entirely different from each other. And I think this is the perfect typical case for why a Variance should be granted to de-merge the lots which were taken into ownership without the intention of being merged.

BRENDAN SULLIVAN: I will accept that as a motion.

Let me make a further motion to grant the Variance to subdivide the properties at 900 Mass. Avenue and 56 Hancock Street as per the subdivision plans submitted.

The Board finds that literal

enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner as it would preclude him from separating the buildings to allow for proper identification, separate identification of the buildings, and their possible and eventual estate planning and transfer.

The hardship is owing to the citing of the two lots which are contiguous, and the law, is it law ordinance? Sean, what is it? Is it a law or ordinance?

TAD HEUER: Common law document merger?

BRENDAN SULLIVAN: Calling the merger comes into effect to where these two properties under common ownership are considered merged for Zoning purposes even though they have their own separate identities, and separate water, sewer bills and the like.

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

All those in favor of the granting the relief?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(10:05 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10089, 36 William Street.

CHRIS ROYER: I'm Chris Royer the architect, I'll be the spokesperson.

BRENDAN SULLIVAN: How do you spell your last name?

CHRIS ROYER: Royer, R-o-y-e-r.  
Royer Architects.

BRENDAN SULLIVAN: Spelled the same way as it sounds?

CHRIS ROYER: Yes. 100 Garden Street, Cambridge. And these are the owners.

AL-KARIM DHANJI: My name is

Al-Karim Dhanji. Last name is D-h-a-n-j-i and I'm one the owners at 36 William Street.

VANESSA AZZONE: And I'm Vanessa Azzone A-z-z-o-n-e.

CHRIS ROYER: We're here to seek relief for some renovations, proposed renovations. It might be easiest if I just quickly walk you through the exterior elevations that were submitted, drawings three, four, five and six.

Just to summarize, the areas where we're seeking relief, on drawing No. 3 the egress window is within this front setback. Egress window M. The other window there that has the dashed line around it, is set back farther from the street so that's not an issue.

TAD HEUER: They're both in the front facade; is that correct?

CHRIS ROYER: What's that?

TAD HEUER: They're both in the

front facade of the building?

CHRIS ROYER: Yes.

TAD HEUER: Then neither of them needs relief.

CHRIS ROYER: Okay.

On drawing No. 4 you see an acrylic roof over a new set of steps and a landing. Because that landing, that proposed landing is covered, it's included in the FAR calculation which we're slightly increasing. Also to the left there you can see the new basement area way or bulkhead structure which is encroaching a bit more into the rear setback, and is slightly increasing the FAR calculation.

Drawing No. 5 shows a better view of the back with the bulkhead egress structure, and several windows which are in the rear wall that is also within the rear setback.

TAD HEUER: Have you added the FAR for the bay window, for the garden window?

CHRIS ROYER: I think not. So any projection? I think it's only about a foot.

TAD HEUER: It would be a bay. So yes, it wouldn't be very much.

TIMOTHY HUGHES: FAR for a bay if it doesn't have a foundation on it?

SEAN O'GRADY: Everything counts.

BRENDAN SULLIVAN: You're adding 104 square feet; is that correct?

CHRIS ROYER: Yeah, and that's the covered porch and this bulkhead structure.

And then the drawing No. 6 --

CONSTANTINE ALEXANDER: The purpose of all this work is to do what, create a basement apartment?

CHRIS ROYER: The primary issue is the bulkhead structure, and that's to create a -- Al and Vanessa would like to renovate the basement and first floor for their living unit.

CONSTANTINE ALEXANDER: So the

basement would be part of the first floor?

CHRIS ROYER: Part, yes.

CONSTANTINE ALEXANDER: It wouldn't be a separate apartment?

CHRIS ROYER: That's correct. It is a three-family. It would remain a three-family. They own the whole building, currently they live upstairs and would like to live downstairs into a new two-floor unit. Currently the basement is unfinished, but it is, because of the ceiling height, included in the gross floor area calculation, but it's unfinished pretty much unusable space. So it's a, you know, a financial hardship if they are not able to develop it as and use it as finished living space.

TAD HEUER: Why is that true?

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: And I admit I have significant difficulty with that.

CHRIS ROYER: Okay.

TAD HEUER: Because -- and I'd like you to just walk me through that. It seems to me that you're at 1.75 in a 0.6 area. You want to go up to 1.78, which is a small increase, but you're going to nearly three times what's allowed in that area.

CONSTANTINE ALEXANDER: That's exactly right.

TAD HEUER: And you already have the benefit of a three-family. You have unfinished space in the basement. It doesn't necessarily seem to me to be a hardship that you can't access additional space when even if you took that floor out, you're still well over 0.6. You still have a lot more space to use than the Zoning Code allows you to. Not being able to get even more space to use than the Zoning Code allows you to, doesn't seem to be a hardship. You're already getting the benefit of a pre-existing non-conforming use as it is.

CHRIS ROYER: Okay. I guess I saw it as being counted as gross floor area, yet it's not really usable living space.

TAD HEUER: So take it out. So what's the floor plan of the building right now?

CHRIS ROYER: Let's see. I'm not sure.

TAD HEUER: Roughly.

CHRIS ROYER: It's about 1200 square feet.

VANESSA AZZONE: Yeah, between each floor from the outside is 1200.

TAD HEUER: Right. So you've got 1200 square feet. That gives you 3600 square feet in the upper three floors on a lot area of 2946. So, you're at one-point something or other in a 0.6 area. So you're still nearly double -- even if you took out the basement and said, you know, it's not there, who cares, you're still almost double what's

allowed by the Zoning Code. I don't see why the hardship of not being able to use even more space that's not allowed by the Zoning Code is a hardship that's consummate with the Variance provisions that we have the authority to grant.

BRENDAN SULLIVAN: I would comment that we're being asked to grant relief to put a roof over a deck for weather protection.

TAD HEUER: That's fine.

BRENDAN SULLIVAN: And whatever that dimension is. And we are asked to -- there is an existing shed entryway into the basement now, and we're being asked to enlarge that shed enclosure to a more workable shed enclosure to the basement. And that whatever they can do in the basement, they're doing as of right. If they were to come and say, but we would like to increase, we would like a Variance to be able to use space in the basement which is not as of

right, then maybe you could throw a line and say well, wait a minute, you've already got, you're already way over. So what they're being asked for from 104 square feet of enclosure --

TAD HEUER: Yes.

BRENDAN SULLIVAN: In other words, looking at it in very narrow or maybe even broad terms and that narrow terms, that's what they're being asked, that's what they're asking for is 104 square feet of --

TAD HEUER: They're asking for a thousand square feet.

BRENDAN SULLIVAN: -- of roof to allow them.

TIM HUGHES: No, they're not.

BRENDAN SULLIVAN: To allow them to have a better entrance exit from the basement.

TAD HEUER: Correct. So essentially what's being asked is a thousand

square feet, which they could not use otherwise, unless we grant some 50 square feet, 75 square feet. I guess I'm having difficulty seeing the difference between that being the key to a thousand square feet and just being a thousand square feet.

TIMOTHY HUGHES: Where did you come to the conclusion that that they can't use that thousand square feet without getting the 75 from us?

TAD HEUER: We're being told that they can't because the -- I mean, is that right, you couldn't use it?

CHRIS ROYER: You can't use it as finished living space that requires the second means of egress.

BRENDAN SULLIVAN: A second means of egress and a certain amount of fenestration. Like fenestration is required to.

CHRIS ROYER: Right.

TAD HEUER: Can you do something

less grand with your exit to get there? I mean, I'm not even sure I can even get there. But could you use something less grand with your exit way that would get you into -- given your second means of egress out the basement, I mean, partly what I'm concerned on is that you have flag lot behind you, right? So usually when we're looking at something like this, and we say don't worry, it's hidden in the back. That's generally true because you're abutting the backyard of somebody else. And you've got a 25-foot setback on both sides. At least 50 feet from the building. Here that's not the case because you've got a flag line lot. And there's a structure behind you, a residential three-family?

CHRIS ROYER: Yes.

TAD HEUER: Right. Behind you that essentially you're building in their front yard a new supper structure that allows

access into the basement.

CHRIS ROYER: Which is why we tried to make it -- minimize the size while doing it in an aesthetically appealing way with glass block.

TAD HEUER: Right.

CHRIS ROYER: Rather than just, you know, putting a shed back there.

BRENDAN SULLIVAN: I think to answer your question, and the answer is yes. By not putting a cover over the entryway into the basement.

TAD HEUER: Yes.

BRENDAN SULLIVAN: That's what triggers part of the relief. So could they access and could they everything in the basement without such a grand entry/exit way? And the answer is yes. They can excavate. They can put stairs down, and put a cover over it, and then have a code compliant second means of egress. And then they could also

not put a cover over the deck off to the side, which again to me is protection from the weather.

TAD HEUER: I have no problem with that.

BRENDAN SULLIVAN: And then they could not be here I believe.

TAD HEUER: They still need to be here for the deck.

BRENDAN SULLIVAN: Except for the relocation of some of the windows.

TAD HEUER: No, they're at 1.75 in a 0.6. Any time you add something --

CHRIS ROYER: The deck I didn't think -- if they didn't have the roof over it.

TAD HEUER: Right. If you took the roof off, you would have....

BRENDAN SULLIVAN: That's what I mean floor area, is the area below that roof.

CHRIS ROYER: Yes, that's right.

BRENDAN SULLIVAN: That, and the

combination of the new entryway exit out of the basement is what triggers the relief that you need.

CHRIS ROYER: Yes.

TAD HEUER: Right.

AL-KARIM DHANJI: May I speak for a second?

BRENDAN SULLIVAN: Sure.

AL-KARIM DHANJI: Just to clarify for myself. So we have currently a shed that is an entryway, and is the issue that because we're asking to expand that shed or the fact that we're not allowed to now use a shed that's existing.

BRENDAN SULLIVAN: You're expanding it basically.

AL-KARIM DHANJI: If the shed stayed the same size?

TAD HEUER: You wouldn't be.

CHRIS ROYER: But it's not a code compliant egress because the stairs -- we

would have trouble when we go for the building permit.

AL KARIM DHANJI: So that's why we're asking for it.

VANESSA AZZONE: And is it -- would it be easier if we get support from our neighbors?

TAD HEUER: I'm kind of surprised that it's not here. It would help. It wouldn't be dispositive, but it would help. It would help me. I won't speak for anyone else.

AL KARIM DHANJI: Does it matter that we're going to be putting be a fence behind our property?

BRENDAN SULLIVAN: That might be part of getting their approval. I mean, they're -- obviously they were notified --

AL KARIM DHANJI: Yeah.

BRENDAN SULLIVAN: -- and expressed no opinion. But I think, what Mr. Heuer is

saying that it's nice to rather than our assumption that there was no problem is to get definitive statements in support, that is helpful.

TAD HEUER: And I guess my overall sense is I would like to see -- if there are any way for me to grant this, it would be on the condition that this would be the absolute minimum necessary to meet code to get you into that basement, get you out of that basement. And I think the amount of structure that's on this lot, compounded by the fact that you have a flag lot behind, you and you're in somebody else's front yard essentially, means that the kind of structure that you've proposed that gives you access to something, I'm still finding difficult to accept. That combination of this isn't a winner for me. And even if you came back with something smaller, I'm not sure I would be thrilled with granting square feet. But I think other

Board Members might be able to.

TIMOTHY HUGHES: I'm not considering it as a thousand square feet. I'm looking at this as 104 additional square feet for a -- to make a code-compliant egress. That's what I'm looking at here.

CONSTANTINE ALEXANDER: My views are very much among along the lines as Tad's. I had the same problem coming in. He better expressed it as I could, the problems. And we have a building that's really over, overly occupied. It's too densely occupied.

1.76. Even a small amount of additional FAR is something we need to pay a lot of attention to. And I, I'm not prepared to support this Petition tonight based on what I've seen. I think simply that. I understand that you can look at it -- the glass half empty and glass half full. I see the glass as half empty. I just don't think relief is warranted here.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: They can do that that's a second means of egress. You can do that with an areaway and no roof over it.

CHRIS ROYER: They would like to have the roof over it otherwise it's going to be a swimming pool.

THOMAS SCOTT: And that complicates --

CHRIS ROYER: Yeah, I didn't expect the opposition. But we would have to discuss that. I mean, and certainly you can see the benefit of having a roof over it to make it so it's not filled with snow and ice when you have to get out.

CONSTANTINE ALEXANDER: That's usually when you have it your primary entrance. People come before us and say we need a little roof so that when we walk into our abode, we're not bringing the elements in. This is a secondary.

CHRIS ROYER: But you can see in an

emergency, and you have to get out that way, and you've got two feet of snow and ice, you know.

TAD HEUER: You have plenty of egress. Aren't you going out that side porch?

CHRIS ROYER: The first floor. But if you're in the basement.

TAD HEUER: I need two means of egress from every floor?

BRENDAN SULLIVAN: Yes. Any habitable space.

TIMOTHY HUGHES: Not necessarily, but you need at least one from the basement.

THOMAS SCOTT: You need one.

BRENDAN SULLIVAN: You have an interior entry down, but you also need an exit.

TAD HEUER: This is your only means of egress from the basement.

CHRIS ROYER: No, there is an

interior stair in the basement.

TIMOTHY HUGHES: You can get out of the basement, but you can't get out of the building directly from the basement.

SEAN O'GRADY: And that's why you need the other one?

BRENDAN SULLIVAN: Right. Any habitable --

SEAN O'GRADY: If it was just a family room, there wouldn't be a need for it.

TIMOTHY HUGHES: Are there going to be bedrooms?

AL KARIM DHANJI: Yes. We're trying to expand our family so we're preparing for that.

SEAN O'GRADY: I'm confused too.

TIMOTHY HUGHES: You're confused, too?

SEAN O'GRADY: Yes, can you imagine that?

BRENDAN SULLIVAN: There's a means

of egress out of the space.

SEAN O'GRADY: Out of the unit.

THOMAS SCOTT: For a unit.

TIMOTHY HUGHES: But not necessarily out of the basement?

SEAN O'GRADY: Right.

THOMAS SCOTT: You would just need an egress window.

SEAN O'GRADY: That's right, you can get by from an egress window, that's right.

BRENDAN SULLIVAN: And a three-family home if you're going to access the basement, you would have an entrance from the unit down into the basement, and you would then have a typical back stairs in a three-family or a two-family that you go up and out that way.

TAD HEUER: Right.

BRENDAN SULLIVAN: It doesn't have to be an immediate exit to the outside.

TAD HEUER: As evidenced by the fact

that we have buildings that are three-stories in the City of Cambridge.

BRENDAN SULLIVAN: So anyhow. Well, anyhow, your thought, I think we have two.

THOMAS SCOTT: I guess I'm of the same mind that, you know, we're adding -- we're adding to the FAR in a building that's grossly over what's allowed. And although the basement is calculated in FAR, even though it's not usable, assuming you're going to go in and renovate it obviously.

CHRIS ROYER: But with less -- it makes it less feasible to renovate it without that desirable second means of egress out the back.

TAD HEUER: Why? What?

CHRIS ROYER: Well --

TIMOTHY HUGHES: Not buying it.

CHRIS ROYER: It would --

TAD HEUER: You can't get it bigger in there, what?

CHRIS ROYER: We would like the second means of egress, you know, through that back stairway.

TAD HEUER: Right.

CHRIS ROYER: So they can go out some stairs, you know, they're code compliant, to get out of the back of the building.

TAD HEUER: I understand that.

BRENDAN SULLIVAN: The interior stairway which this gets you down into this. Obviously gets you up to the other. And this staircase here gets you -- this is --

CHRIS ROYER: That gets you up to the second and third floor units.

BRENDAN SULLIVAN: Second and third floor from the --

CHRIS ROYER: From that side deck.

BRENDAN SULLIVAN: Right. And this is the upper means of egress.

CHRIS ROYER: In the basement, yeah.  
There you go.

BRENDAN SULLIVAN: Right. Is that storage for unit 1 or is that common storage?

CHRIS ROYER: That's for unit 1.  
There's no common space in the basement.

THOMAS SCOTT: Sean, if you have an egress window for each bedroom, do you need the stairway? You have an internal means.

SEAN O'GRADY: We're talking building code now, so I'm going anecdotal. Think of a single-family house, you have no means of egress.

THOMAS SCOTT: Only one stairway up.

SEAN O'GRADY: The second and third floor you don't have fire escapes. So, if I'm not mistaken, the rule is two per unit but not two per floor. I believe.

THOMAS SCOTT: But you need an egress window.

SEAN O'GRADY: You do need an egress

window in every bedroom.

THOMAS SCOTT: Right. Which I think you have that.

BRENDAN SULLIVAN: You need two per unit but not two per floor.

SEAN O'GRADY: I believe that. But again, I'm the zoning guy.

BRENDAN SULLIVAN: Where do we go from here? You are not prepared tonight.

CONSTANTINE ALEXANDER: I'm very skeptical. I'm not in favor of granting relief. I'd like to come up with an as-of-right solution. I think, I don't think we should be allowing further additional space on this, additional FAR in a building that's so over FAR already. So I would be opposed to granting any relief.

BRENDAN SULLIVAN: To this plan?

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Okay. Well, if they come up with an as-of-right solution,

then they wouldn't be back.

CONSTANTINE ALEXANDER: Don't need us.

TIMOTHY HUGHES: They still need a Special Permit for the windows.

CONSTANTINE ALEXANDER: I would be amenable to Special Permit for windows unless they have neighbors that object for the privacy issue.

BRENDAN SULLIVAN: Okay.

THOMAS SCOTT: I'm close, I mean, it seems so minimal to me, you know, and it's not increasing it substantially so I would be on the fence, but close to saying okay.

BRENDAN SULLIVAN: Okay. And you're?

TAD HEUER: I could support the covered landing. I could support the garden window. I don't think I can support the entryway in. And on the Special Permit there's no Special Permit in the front faces

the street. The Special Permit on the right side for the placement of the window in the rear, I'm not thrilled with because I think it's ugly.

THOMAS SCOTT: If the area -- if that were an areaway with no cover, would that sway you at all on the rear egress?

TAD HEUER: It wouldn't have to sway me, would it?

THOMAS SCOTT: No.

BRENDAN SULLIVAN: The covered landing. The covering above the landing is --

TAD HEUER: It doesn't bother me as much because it is what it is. It's 50 feet and it is 50 feet. My concern is that by creating this entryway down in there, we're not only bulking out the back of the house into the rear flag lot that's a front yard, but we're also, you know, accessing a thousand square feet that a Zoning Code never

intended to access. If they can do it by right then I have nothing to say. If they can't do it by right, that puts the bulking into the yard.

BRENDAN SULLIVAN: So that's what's there now.

TAD HEUER: I understand there's an entry there now. I got it.

BRENDAN SULLIVAN: Okay. And there's going to be a covering over a relocated door on the side or something.

Tim, what is your --

TIMOTHY HUGHES: I see it as minimal request in terms of square footage. I know that there's a lot of bulk on this lot, but it's not like they built this on this lot. The Zoning Code which you know set a 5,000 square foot lot for everybody in the city, just overlaid over everything. So it's not the fault of theirs, it's not the fault of this property that they don't have 5,000

square feet. If you divide this into -- this three-family into 5100 square feet, you're really only talking about living space of 1700 square feet for each of the units. That's is not exorbitant. Yes, it's overbuilt on the lot, but they're not asking to, you know, to add a lot to it. They're only asking for 100 square feet so that they could get an covered entranceway to the basement. I don't have a big problem with that.

BRENDAN SULLIVAN: Well, it appears that the proposal as before us is not going to receive the necessary four votes.

Now, the question is did you want to go back and rework it or did you want to then -- or proceed? And if I'm reading it right, it would eliminate the roof over the areaway along the rear. It may include the covered landing on the side, and it would include the window wells and any relocation

of the windows.

CONSTANTINE ALEXANDER: Let me be a little clearer. If they took care of the roof over the entryway, that would go a long way to satisfy my objections. If they eliminated the roof.

BRENDAN SULLIVAN: Eliminated, that's right.

CHRIS ROYER: And the alternative, if they would like to keep the roofed areaway is?

BRENDAN SULLIVAN: That appears not to be seen.

VANESSA AZZONE: If we get approval from our neighbors?

BRENDAN SULLIVAN: I don't know.

VANESSA AZZONE: I mean, I didn't know we needed letters from them. I would have asked them.

AL KARIM DHANJI: They're our friends. We didn't know we were supposed to

get support. We just thought that --

TIMOTHY HUGHES: You don't necessarily have to get support.

AL KARIM DHANJI: But I mean that sounds to be kind of the tenor of the meeting.

TIMOTHY HUGHES: See, I don't agree with that either. I mean, we give out legal notices to these meetings. If people have an objection, they can show up. And if they don't show up, then I have take that as a task as understanding that if they're not in support, they at least have no objections. There's nobody in the room. I'm not going to start creating problems where none exist.

CONSTANTINE ALEXANDER: I agree with you. I agree with that.

BRENDAN SULLIVAN: How long have you owned the house or have you lived there?

VANESSA AZZONE: I've lived there since 2001.

BRENDAN SULLIVAN: Okay. And so

you know the person in the back?

VANESSA AZZONE: Yes, very well.

BRENDAN SULLIVAN: Have you discussed this plan with them at all or any conversation?

VANESSA AZZONE: Well, I told her that we were doing work, and they know that we are trying to expand our family and we needed more space because we cannot fit on a thousand square foot. They have done work on their property in the past, and we usually agree on each other plans.

AL KARIM DHANJI: And we have an existing shed, so we're just trying to make it a working shed, you know, so it's not like, you know, as I said, we're trying to expand.

VANESSA AZZONE: And actually I even mentioned there are two owners, June Young I think is her last name and Stephano Casaday (phonetic). He's an old friend of mine from Italy. And I was asking him because he has

some doors from the other property. So I asking him could you give me some doors, and he said, of course, no problem. So I haven't had, you know, we didn't call asking them.

BRENDAN SULLIVAN: Okay. Well, that's sort of where we're at is that even a letter of support regarding the rear, is that going to or not?

TAD HEUER: No.

BRENDAN SULLIVAN: In other words, is it worth their while to go back and redo something and then come back or we ready to proceed tonight with a vote on the entryway over the roof over the side and the windows? And that would be the relief being granted.

TAD HEUER: I'm happy to --

CHRIS ROYER: Would the letter --

CONSTANTINE ALEXANDER: It wouldn't really make a difference to me. I look at the letters from neighbors when I see a direct impact on them. The issue here is not the

impact of the abutter. It's on the City itself and the overuse of the property and what could happen to the property if we allowed this covered landing on the side.

CHRIS ROYER: Even though the use would still happen without the covered areaway? I mean you could just --

CONSTANTINE ALEXANDER: I'm not convinced of the need of the covered entryway. The second one. And, therefore, I'm a little, because I don't know the need I'm a little bit charity of wanting to approve it. You can do what you want to do, expand to the basement without the covered entryway.

BRENDAN SULLIVAN: Well, it appears that we can approve tonight the roof over the side deck entrance, side entrance, the relocation or addition of windows, but no covering over the rear. And we can proceed on that basis.

CHRIS ROYER: Sounds like we don't

have an alternative.

AL KARIM DHANJI: Yeah, I mean so the existing shed is something that we can't even keep in any form or way?

BRENDAN SULLIVAN: You can keep it, yes. You can keep it whether or not --

AL KARIM DHANJI: We can't modify it in any way?

BRENDAN SULLIVAN: You can not enlarge upon it.

VANESSA AZZONE: If we just change it and make it glass, for example, can we keep it?

BRENDAN SULLIVAN: If you keep the same footprint, the same area of it.

AL KARIM DHANJI: Are you talking about this footprint? Are we talking about the --

CHRIS ROYER: Yeah, this footprint on the ground.

AL KARIM DHANJI: So we can create a

door that comes up that's an almost size door instead of like a door --

SEAN O'GRADY: Maybe.

BRENDAN SULLIVAN: Yes. Again, I think you'd have to run that by -- you're touching now into a building code.

CHRIS ROYER: Yeah, the code, that would be a separate thing.

SEAN O'GRADY: Aren't they enlarging a cut in a setback?

CHRIS ROYER: That structure, existing structure is in the setback, yes.

SEAN O'GRADY: But you were going to enlarge a door in it?

VANESSA AZZONE: Yeah, the door.

CHRIS ROYER: That would involve raising the roof on the back of that bulkhead.

CONSTANTINE ALEXANDER: I don't think we should put you on the spot. It's a late night and we don't have all the facts.

BRENDAN SULLIVAN: It would be below

ground.

THOMAS SCOTT: What they're saying is the current door is not large enough for people to walk through.

CHRIS ROYER: It's four feet tall.

AL KARIM DHANJI: The stair you have to squat to get out.

BRENDAN SULLIVAN: It's like a dog house.

AL KARIM DHANJI: Right, like a dog house. If we stay within the same footprint to raise --

BRENDAN SULLIVAN: No, because you're adding volume.

AL KARIM DHANJI: Oh, okay. Is it because we're adding height or adding volume?

TIMOTHY HUGHES: They don't have the FAR.

SEAN O'GRADY: It's massing in a setback, not an FAR issue.

AL KARIM DHANJI: Is that a Variance

issue or just code issue?

BRENDAN SULLIVAN: Variance.

AL KARIM DHANJI: And is it the issue of volume or height? Because we can reduce volume in another part of that shed and increase volume in another part of the shed so we can have a height --

SEAN O'GRADY: You can't trade.

AL KARIM DHANJI: We can't trade?

SEAN O'GRADY: No. You're stuck in the volume print that you're in.

AL KARIM DHANJI: Okay.

BRENDAN SULLIVAN: Yes.

CHRIS ROYER: So you should be able to finish the basement.

BRENDAN SULLIVAN: Well, I can to make a motion for which I believe you can get relief for.

Let me make a motion to grant relief to enclose, to create a roof over the side entryway as shown on south elevation No. 4

entitled, "36 William Street," and initialed by the Chair.

Also make a motion to grant the addition of windows as shown in elevation No. 3 is as of right. The relocation or addition of windows as shown on elevation 4 initialed by the Chair and on the southwest elevation No. 5, the relocation of remove and in-fill and existing window denoted and also the addition of the window well also denoted as in new windows.

CHRIS ROYER: Question, on that elevation. Vanessa had just told me that she was interested in maybe eliminating the small --

VANESSA AZZONE: The small window.

CHRIS ROYER: And window. Well, that's just indicating new. And maybe making that greenhouse window a little wider. Is that after you initialed that, would that change not be permitted?

BRENDAN SULLIVAN: We should add, I mean that needs to be shown. You know, whatever we're giving you relief for is what has to happen. If you change that, then you know, in other words, when the building inspector --

CHRIS ROYER: Can't change that now with a note? No? Okay.

CONSTANTINE ALEXANDER: If we don't do it now --

CHRIS ROYER: Right, that's why I'm asking now. She would like to X out that.

VANESSA AZZONE: Do you have a pen?

CHRIS ROYER: Yes, I do.

BRENDAN SULLIVAN: The building inspector is going to prepare what is being done against that.

VANESSA AZZONE: I can cross the one that I don't need. Okay.

BRENDAN SULLIVAN: Let me make a motion. I'm going to have to X out a lot of

what we said.

Let me make a motion to grant a Variance to build a new translucent acrylic roof as shown on southeast elevation No. 4. That is the only Variance that is required; is that right?

TAD HEUER: No. With the space -- FAR being created by the bay window on the next page.

BRENDAN SULLIVAN: All right. And also for -- this one here?

TAD HEUER: Yes.

BRENDAN SULLIVAN: I see what you're saying. You want to enlarge it upon what is shown there?

VANESSA AZZONE: Yes. But eliminate the other one.

BRENDAN SULLIVAN: And eliminate the other one.

VANESSA AZZONE: Yes.

BRENDAN SULLIVAN: And also to

enlarge the --

CHRIS ROYER: Garden window -- the bay window.

BRENDAN SULLIVAN: To allow for the bay window as shown on southwest elevation No. 5, denoted by N, initialed by the Chair and showing an enlargement. That's what we need for the Variance.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude them from having some protection over the side entrance into the building, and also preclude them from installing this bay window at the rear of the building.

The Board finds that the hardship is owing to the non-conforming nature of the existing building, its placement on the lot that predates existing Ordinance, and that any alteration, modification, addition would

require some relief from this Board. The Board finds that the relief being requested is a fair and reasonable one.

The Board finds that the desirable relief may be granted without substantial detriment to the public good, and relief may be granted without nullifying or substantially derogating from the intent or purpose of the Ordinance.

All those in favor of granting of that relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: Now on the Special Permit.

AL KARIM DHANJI: Sir, may I just you a question going back to the shed. Are we allowed to ask for relief to at least enlarge the shed so we can have, not increasing the

size of the shed but increasing the volume or do we have to come back and appeal that separately for a door?

BRENDAN SULLIVAN: We would need a drawing.

AL-KARIM DHANJI: Just to put a normal sized door?

BRENDAN SULLIVAN: Correct, correct.

CONSTANTINE ALEXANDER: Do we have an issue -- I guess we didn't vote it down. Forget about it.

AL KARIM DHANJI: I mean, is that an issue for this Board to put a normal size door if we're not expanding the footprint of that shed?

BRENDAN SULLIVAN: I would run that by the Building Department first to be honest with you, and get a determination from of that -- from the building inspector, and then it may trigger some relief from us. But

that's something we're probably not going to be able to address tonight.

CONSTANTINE ALEXANDER: We just can't give you advise or relief.

TAD HEUER: I have a question before you get to the windows.

BRENDAN SULLIVAN: Yes.

TAD HEUER: Your windows, I think I'm looking at this right. The windows you're requesting are the windows on your rear and on your right side; is that correct?

CHRIS ROYER: Yes.

TAD HEUER: Can you explain the thought about putting in the two, 90-minute pyritic glass blocks and taking out the window on the right side?

CHRIS ROYER: That's to be the new kitchen, and they would like to get some light on that wall, but it's where we had the counter and wall cabinets. So the idea is to introduce some light between the counter and

below the wall cabinets, flanking the range. So it's the only place, you know, available for light, daylight.

TAD HEUER: So, you're putting a cabinet in above that window that when I'm looking at the northwest elevations on the left?

CHRIS ROYER: Yes, yes.

TAD HEUER: It looks terrible.

AL KARIM DHANJI: Well, we're forced because of the fire separation distance.

CHRIS ROYER: The 90-minutes, yeah.

VANESSA AZZONE: If we can put a normal window, it would be better but we can't.

AL KARIM DHANJI: There's this fire separation distance rule. Even though there's a building across that's 60 feet away --

BRENDAN SULLIVAN: Motion to grant the Special Permit to install new windows as

per the plan as shown.

The new windows as shown would be on elevation No. 4, designated as M and N and initialed by the Chair.

On elevation 5, and again the window well. And again initialed by the Chair.

CHRIS ROYER: On 5 now. If that -- the roof over the areaway is removed from the design and we submit for a building permit with the stair and the open areaway there, there are two doors down in that areaway, which are openings, new openings within the setback. Are those by -- are those implicitly approved as part of the Special Permit? The doors that are down in that areaway? So that if we do resubmit with the areaway without the roof over it, that it will be approved by the --

TAD HEUER: How do you get into the basement now?

VANESSA AZZONE: There's a door.

CHRIS ROYER: There's a single door down there now that's small.

TAD HEUER: So you would replace it with a bigger door?

CHRIS ROYER: Two doors.

BRENDAN SULLIVAN: See, I'm not sure if it's below....

SEAN O'GRADY: The rule is that if you, if you make a new cut, that's any part of which is above grade, then you've created a Special Permit issue.

CHRIS ROYER: And the, I think the heads of those doors will be above grade.

SEAN O'GRADY: That would be my guess, yes.

CHRIS ROYER: And they are in the design now. You cannot see them in this exterior elevation because the roof is over the areaway, and so I'm guessing that Al and Vanessa may want to go for a building permit with a roof over the areaway, maintaining

that means of egress and access. The doors that are shown in the basement plan now --

VANESSA AZZONE: On the ground floor plan No. 1.

BRENDAN SULLIVAN: But the question is how high or would the existing shed basically block those views, block those doors from view?

CHRIS ROYER: I'm quite certain that at least a little bit of the upper portion of those doors will be above grade. It may only be six inches.

VANESSA AZZONE: Well, no, it's not. It's not because --

CHRIS ROYER: Well, the ceiling in the basement is seven feet. The doors are six, eight.

VANESSA AZZONE: Oh, yeah.

CHRIS ROYER: And the --

VANESSA AZZONE: I thought it was a normal door, but maybe it's not.

BRENDAN SULLIVAN: I suspect it's going to go up to the sill line.

CHRIS ROYER: Yeah, I do too.

BRENDAN SULLIVAN: What is the feeling of the Board?

TIMOTHY HUGHES: Can't you roll that into the Special Permit?

CHRIS ROYER: That's what I'm requesting, yeah.

BRENDAN SULLIVAN: So that on south elevation No. 5, it is the addition of the window well as shown in the drawing and also the addition of two doors at which would be in the location as shown on ground floor plan No. 1 and also initialed by the Chair.

On elevation No. 6 the Board is approving the relocation -- are any of those being relocated -- the addition of two fire-rated glass block sections; is that correct?

CHRIS ROYER: Yes.

BRENDAN SULLIVAN: Is that the only -- is that correct?

CHRIS ROYER: That's the only one.

BRENDAN SULLIVAN: Is there a new window going in?

CHRIS ROYER: Yes, that's seven and a half feet from the property line.

BRENDAN SULLIVAN: Sorry?

CHRIS ROYER: That wall is setback seven and a half feet from the property line.

BRENDAN SULLIVAN: You don't need any relief from that?

CHRIS ROYER: Correct.

BRENDAN SULLIVAN: All right. I think we're covered.

On the Special Permit all those in favor of granting the relief because it appears that the requirements of the Ordinance can be met.

That traffic generated or patterns of access or egress would not cause congestion,

continued operation or development of adjacent uses as permitted.

And the Zoning Ordinance would not be adversely affected.

There would be no nuisance or hazard created to the detriment of the health, safety or welfare of the occupants of the proposed use or to the citizens of the city.

And for other good and proper reasons the proposed use would not impair the integrity of the district.

All those of in favor of granting the relief?

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes, Scott.)

BRENDAN SULLIVAN: One dissenting.  
Comments at all?

TAD HEUER: I think the windows on the right side derogate from the intent and

purpose of the Ordinance as they face a large open space visible on the William Street and that side of the facade. And I think there's easier ways to realign the interior to enable that window not to be replaced, removed from the interior and derogate from that (inaudible).

BRENDAN SULLIVAN: Okay. Anyhow, you received a partial Variance and you've received a Special Permit for the relocation of the windows -- in addition to the windows as per the plan. And for the installation of two doors in the basement.

CHRIS ROYER: Okay, thank you.

BRENDAN SULLIVAN: Okay.

(Whereupon, at 10:50 p.m., the

Zoning Board of Appeals 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 9th day of May 2011.

---

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

My Commission Expires:  
April 23, 2015

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