

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
MAY 26, 2011 7:00 P.M.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Brendan Sullivan, Chairman

Constantine Alexander, Vice Chair

Timothy Hughes, Member

Thomas Scott, Member

Slater Anderson, Member

Douglas Myers, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Thomas Scott, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The acting chair will call this meeting to order. And as is our practice, we're going to start with continued cases from prior hearings. First case I'm going to call is 10047, 64 Dudley Street.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. The Chair states for the record that we are in possession of a letter from Attorney Theodore Regnante, R-e-g-n-a-n-t-e addressed to the Board or to Maria Pacheco regarding this case. "I have recently been engaged as

Zoning counsel in the above matter, and I've had an opportunity to discuss the case with Sean O'Grady. Based upon my discussion with him, we will be redesigning and downsizing the project to incorporate the construction of one, not two, structures, and we are in the process of completing the necessary engineering and architectural work at which time I will review the plans with Sean and then amend the petition now pending before the ZBA. To that end I respectfully request that the matter which has been scheduled for May 26, 2011 be postponed until the September 8, 2011 meeting of the Zoning Board prior to which we will have filed amended petition and plans. I do want to keep the present petition outstanding since a withdrawal will cause us to be placed in a position of a repetitive petition. Please feel free to call me if you have any questions."

September 8th I assume works for us.

SEAN O'GRADY: Yes, it does. It's nice to have somebody go in the other direction?

CONSTANTINE ALEXANDER: I trust you'll inform this fellow it's not a matter of amending the petition, he's got to file a new one.

SEAN O'GRADY: Yes.

TIMOTHY HUGHES: This is a case not heard?

SEAN O'GRADY: That's correct.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case not heard until seven p.m. on September 8th. The Chair noting that there is a waiver for a time for decision already in the file. The continuance will be on the condition that -- two conditions, one that on the Monday before September 8th which is what, Labor Day?

SEAN O'GRADY: I'm not sure.

CONSTANTINE ALEXANDER: Probably
is.

TIMOTHY HUGHES: Yes.

CONSTANTINE ALEXANDER: Tuesday.
So on the Tuesday before September 8th, the
petitioner have in the files any plans he
proposes with regard to this petition.

On the further condition that the sign
on the premises be modified to reflect the new
date and time.

The Chair would note parenthetically,
I don't think there's a sign up there right
now. Every time I drive by I don't think I
see a sign. Be that as it may, that would be
the case for continuing this case. And
revised plans will of course require new
petition and new advertisement.

All those in favor say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Case continued.

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

(7:05 p.m.)

(Sitting Members: Constantine Alexander,
Timothy Hughes, Thomas Scott, Slater
Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair
will now call case No. 10051, 175 Huron
Avenue.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair
notes that no one wishes to be heard. The
Chair will state for the record that I am in
possession of a letter from James J.
Rafferty, Esquire in Cambridge regarding
this case. It's addressed to the Board.
"Please accept this correspondence as a
request to continue the above-captioned case
currently scheduled for Thursday, May 26,

2011 to June 23, 2011."

We have room on June 23rd?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: This is a case not heard as well?

SEAN O'GRADY: This is a case not heard. This case is being replaced --

CONSTANTINE ALEXANDER: Yes, this is just a placeholder case if I understand. There should be a new petition and a new set of plans for this property.

The Chair moves that this case be continued until seven p.m. on June 23, 2011, on the -- this being a case not heard. And we have a waiver in our possession. On the condition that any modified plans with respect to this petition be in the files at the Inspectional Services Department no later than five p.m. on the Monday before.

And on the further condition that the sign advertising the hearing be further

modified to reflect the new date and time.

All those in favor say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor.

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

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Thomas Scott, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10082, 1350 Mass. Avenue. Is there anyone here wishing to be heard on this matter?

FRANCIS KELLEY: We have some extra photo sims. It's the same as you have.

CONSTANTINE ALEXANDER: You might want to pass them around. These are the plans by the way?

FRANCIS KELLEY: That's correct.

CONSTANTINE ALEXANDER: The floor is yours.

ATTORNEY MICHAEL DOLAN: Good evening. My name is Michael Dolan. I'm an attorney here on behalf of New Cingular

Wireless AT&T Mobility. As you'll recall from the last hearing, we were here in connection with the wireless antenna facility modification on Harvard University property. We've made a Special Permit application. There's an existing wireless antenna facility at the property that has eight antennas on the 121-foot, six-inch building. Top height of the antennas is 120 feet, six inches is what we would be proposing. We're swapping out two existing antennas with two new antennas and adding one new net antenna. So we're going from eight to nine, but two of the existing eight are being swapped out for new antennas.

CONSTANTINE ALEXANDER: Are the new ones that are coming in bigger than the old ones going out?

ATTORNEY MICHAEL DOLAN: No longer.

FRANCIS KELLEY: They're slightly wider than the existing ones.

CONSTANTINE ALEXANDER: But not longer?

FRANCIS KELLEY: They're not longer. And actually we're dropping the antennas one foot, every one.

CONSTANTINE ALEXANDER: Right. So they're going to be below the roof line?

FRANCIS KELLEY: Yes, they will be below the roof line by one foot.

CONSTANTINE ALEXANDER: That's true of all the antennas?

FRANCIS KELLEY: Yes.

ATTORNEY MICHAEL DOLAN: All of the AT&T antennas.

CONSTANTINE ALEXANDER: I'm sorry?

FRANCIS KELLEY: All of the AT&T antennas.

CONSTANTINE ALEXANDER: Oh, yes. I know you're not here for anybody else.

MARK VERKENNIS: There are other antennas.

ATTORNEY MICHAEL DOLAN: And the Board will recall that at the last hearing my client was asked to attend to a couple action items at the Board's request. One was to redo the photo simulations.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY MICHAEL DOLAN: Which we have done. We have some new photos in there, too. And those have previously been submitted. If anyone needs a copy, let us know.

One of the other things that the Board wanted was us to add elevation drawings from all directions to the plans. We have done that and submitted revised plans in that regard.

CONSTANTINE ALEXANDER: That's these?

ATTORNEY MICHAEL DOLAN: Yes.

And then lastly there were some concerns about the notice signs, and we have

attended to that as well.

CONSTANTINE ALEXANDER: How? Did you put signs all around the various entrances to the property?

MARK VERKENNIS: Yes, we've had to replace some of them due to the weather.

CONSTANTINE ALEXANDER: This photo sim would suggest that the antennas are going above the roof line. Is that just the angle of the photograph?

FRANCIS KELLEY: It's the angle of the photo. It's looking up on a steep angle. We dropped them down so it had a perception that from further off that they wouldn't be above it, but I think when you get really close to the building, there's a perception there with the vectors taken into.

CONSTANTINE ALEXANDER: And have you gone before the Planning Board?

ATTORNEY MICHAEL DOLAN: Yes.

CONSTANTINE ALEXANDER: And the

Planning Board has said what?

ATTORNEY MICHAEL DOLAN: They gave a favorable recommendation.

CONSTANTINE ALEXANDER: We have a letter in the file which I will read when it's time, but it will confirm that.

And also because you're on Harvard Square under our Zoning By-Law, you're supposed to go the Harvard Advisory Committee. Have you gone to the Harvard Square Advisory Committee? Have you done that?

FRANCIS KELLEY: Yeah.

CONSTANTINE ALEXANDER: And the outcome of that?

FRANCIS KELLEY: Yeah, they're fine with what we're doing there. There should be a file in the folder, but we've got one.

CONSTANTINE ALEXANDER: Well, we've e-mail in the folder which I'll read now which -- it's from Liza Paden P-a-d-e-n. "On

behalf of the Harvard Square Advisory Committee -- it's addressed to us, Board of Zoning Appeal -- I have polled the advisory committee members who support the application as revised and had no further comments." I didn't understand the word further. I assume they made no comments. They say they do support the application.

And now I'll read into the record as well, we have a letter from the Planning Board, dated April 25, 2011. It's addressed to this Board. "The Planning Board reviewed this application and suggests that if the Special Permit is granted, the antennas be installed low enough so that as not to break the roof line of the wall or facade where they are located -- so as to not break the roof line. Also the color and finish of the antennas should be matched to the wall to blend into the background."

FRANCIS KELLEY: There may

be -- there should be an additional letter from the Planning Board, because that was with the original plans and we had submitted revised plans, and they said that it's the opinion that they were in favor of the revised plans.

CONSTANTINE ALEXANDER: I don't think I saw one.

Do you recall seeing a second letter from the Planning Board?

SEAN O'GRADY: On that case?

CONSTANTINE ALEXANDER: Yes. I'll look through the file right now.

SEAN O'GRADY: Well, the one that came in today was just regarding Harvard Square.

CONSTANTINE ALEXANDER: Yes, Harvard Square.

SEAN O'GRADY: There presumably would have been one when the case was fresh.

CONSTANTINE ALEXANDER: That's

April 25th. Mr. Kelley is saying they submitted a second one.

FRANCIS KELLEY: We had gone back to them with the revised plans at a subsequent hearing, and they just signed off that they were in approval.

CONSTANTINE ALEXANDER: Do you have anything in writing? I don't think we have anything in our files.

SEAN O'GRADY: We've been getting -- you know, we've been getting letters from the Planning Board that are basically saying things like, they have a comment on this case and no other cases. We usually, if it's a no other case, throw a copy in there. But, you know, we've had a couple of glitches lately, and I think it may have to do with Maria's being in the hospital for a week.

CONSTANTINE ALEXANDER: It's your representation to us, sir, that you did get

a second letter that was favorable?

FRANCIS KELLEY: I don't have a copy of it, but it was a favorable letter.

ATTORNEY MICHAEL DOLAN: And it's consistent with their first one.

CONSTANTINE ALEXANDER: Sounds like it should be.

ATTORNEY MICHAEL DOLAN: And in fact we moved the antennas even lower and they were fine with the first design. So.

CONSTANTINE ALEXANDER: I also note for the record, that there is a Certificate of Appropriateness from the Historical Commission as well. It's dated April 27th.

Was this on the plans before you revised them for the Planning Board?

FRANCIS KELLEY: Yeah.

CONSTANTINE ALEXANDER: These are the old plans?

FRANCIS KELLEY: With the old plans, and then there was an additional comment from

them that -- with the revised plans.

CONSTANTINE ALEXANDER: I don't think we have that. On the original plan it says, "After a public hearing, the Commission issued a Certificate of Appropriateness for this telecom work. See attachments." There's none attached.

So, you've touched a number of the bases; the Planning Board supports this. The Historical Commission gave a Certificate of Appropriateness. The Harvard Square Advisory Committee supports the application. Anything else you wish to add?

ATTORNEY MICHAEL DOLAN: No.

CONSTANTINE ALEXANDER: Questions from Members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: All right, I'll open it to public testimony beyond the letters I read into the file.

Is there anyone here wishing to be heard

on this matter?

(No Response.)

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

Final -- yes.

DOUGLAS MYERS: How are you going to ensure that the antennas, the new placements match the color of the building?

FRANCIS KELLEY: You know, I think the Inspectional Services is going to have to sign off on that. You know, we're going to paint them and texture them to match. I think in the other decisions you've put in provisions that if they're faded or they need to be maintained, that we would do that. So, we have no problem with putting that in there or some language that if you don't like the way that they're textured, we can go up and try and rectify it.

ATTORNEY MICHAEL DOLAN: And then just generally it is such a state of the art

thing now that everywhere we go, they're asked to match them. They can even put in mortar lines. They can get very creative with this stuff. And things look -- they look really good.

CONSTANTINE ALEXANDER: I wish they would detect a side of creativity to make less obtrusive antennas. That would be better than nice paint jobs. That's been a problem for this Board, and will continue to be a problem as Mr. Kelley knows. We're becoming less and less patient in terms of the visual impact. But I think, I think the indication is that you will paint them the best you can to match the facade, and since these are going to be below the roof line, and only one more antenna, right? One new antenna. One more antenna.

FRANCIS KELLEY: Yeah. And it is, you know, the -- it's mounted to exposed concrete which has extra changed color over

time on it. So we would anticipate that that would continue to happen and if they have to go back and repaint them to match.

CONSTANTINE ALEXANDER: Further questions?

THOMAS SCOTT: Are they mounted as close to the building as they possibly can? Because when I compare these two photo sims, photo location 1, they look like they're very tight to the building than the existing conditions. But in the proposed condition the bracket seems to be deeper and it seems like they're further away from the face of the building. Maybe that's just perspective.

ATTORNEY MICHAEL DOLAN: That just might be something of a perspective. Because the goal is to flush mount them as close as possible, and there shouldn't be a reason why one is any closer or further than the other. They -- I don't know what they -- the typical separation is, but they

can get those pretty close. That may have been just an anomaly due to their perspective.

CONSTANTINE ALEXANDER: Again, further comments or final comments I should say?

ATTORNEY MICHAEL DOLAN: No.

CONSTANTINE ALEXANDER: I will close public testimony.

Comments from Members of the Board at this point? Ready for a vote?

THOMAS SCOTT: Ready.

CONSTANTINE ALEXANDER: The Chair moves that a Special Permit be granted to the Petitioner to alter their existing telephone exchange with the addition of three antennas -- no, I'm sorry, I'm reading the wrong one. You don't want to do that.

To allow you to add one antenna to your existing array of eight antennas mounted below the rooftop on the facade. To swap two

others and lower all antennas one foot below the top of the facade. Painted and textured all antennas to match the background. Then there will be two remote radial head for each new antenna will be installed on the rooftop cable tray to make them invisible from the ground.

So you're seeking a Special Permit for the entire installation of nine antennas and associated equipment and any and all relief required.

The Chair moves that this Board make the following findings:

That based upon the photo simulations and the plans submitted to us, the visual impact of the various elements of the proposed facility will be minimized. And particularly the Board would make note of the fact that as required or requested by the Planning Board, the new antennas will be below the roof line. And in fact, one foot

lower than the existing antennas.

And that you have represented to us that the texture, the color blend of these new antennas will blend with the facilities to which they're going to be attached to the maximum extent possible.

By the way, I'm sorry, let me interrupt. For the record, you haven't given us the usual presentation. Are you a qualified carrier registered with the FCC?

ATTORNEY MICHAEL DOLAN: Yes.

CONSTANTINE ALEXANDER: We need to have that. We'll make a finding as well if that is the case.

The Special Permit would be granted on the basis that the installation of these antennas and other equipment will not impact traffic or patterns of access or egress to the building which would cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation or development of adjacent uses will not be adversely affected by what you're proposing to do.

That there will be no nuisance or hazard created to the detriment of the health, safety and/or welfare of the occupant or the proposed use or the citizens of the city.

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

On the basis of these findings a Special Permit would be granted to the Petitioner on the following conditions:

That the work proceed in accordance with plans submitted by the Petitioner. They're numbered T1, GN1, C1, A1, A2, A3, G1. The first page of which has been initialed by the Chair. And that the work, in terms of its

appearance, be consistent with the photo simulations submitted by the Petitioner, the first page of which has been initialed by the Chair.

The Special Permit would be granted on the further condition that if you should abandon the use of these antennas or otherwise not use them for a period of six consecutive months as a result of some sort of catastrophe, that the antennas be removed and the building facade be restored to its prior condition to the extent possible.

And on the last condition, that the work proceed -- that you are required to maintain -- not only install these antenna to minimize the visual impact, but you have to maintain them. So that to the extent through natural conditions they -- there is a problem, you have to fix them. If you don't, the Special Permit will be revoked. I think that's it.

On the basis of this, all those in favor of granting the Special Permit subject to the conditions I've indicated say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

ATTORNEY MICHAEL DOLAN: Thank you very much.

FRANCIS KELLEY: Thank you.

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

(7:30 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10098, and 5 and 7-9 Foch Street.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, Members of the Board. For the record, James Rafferty. I'm an attorney with the law firm of Adams and Rafferty located at 130 Bishop Allen Drive. Seated to my left is Carol Kale K-a-l-e, and to Ms. Kale's left is her father Mr. Kale. First name I don't know. I apologize.

So this I hope is the subdivision case.

BRENDAN SULLIVAN: Correct.

ATTORNEY JAMES RAFFERTY: The Board may recall, everyone was here, but when we were here last, Ms. Kale and her sister, they own a two-family house at 5 and 7? Or do you own --

SUSAN KALE: Five.

ATTORNEY JAMES RAFFERTY: You own 5. And they owned it for many years and lived there. And an opportunity came up to buy the house next-door, so Susan Kale signed an agreement and was all set to close on the house, and through a requirement of financing, they wanted Ms. Kale's sister Carol Kale to go on that deed as well. So they did that. And they did that unaware of the fact that in doing so, they had two undersized lots that found their way into common ownership. And there is this theory of merger, which at times I have a hard time explaining to my staff, let alone my clients,

but it's an interpretation that the city has used. And I have my own view whether it's intended for houses that have two-family houses already on them and all that. I think it has more to do with unbuilt lots and whether they can be built upon, but that's a law school exercise for another day. If I retire some day, I might decide to take that up at the legislature. But at any rate, the Kale sisters found themselves unable to proceed here because one of the more alert members of the Board in the context of the hearing around the new home that Ms. Kale had purchased and was looking to put an addition on for her young daughter and herself, it was discovered that the abutting property was owned by the same people. So we had this merger issue.

So, that was an unexpected detour, which we are attempting to remedy this evening with an application seeking a

Variance to subdivide the property. And the subdivision merely looks to make the meets and bounds and legal description of the property exactly what it has always been historically. So, it was easy to draw the map because we didn't create any new lot lines, we didn't create any new setbacks, we didn't create any new really anything. When there's a series of dimensional issues that need to be addressed because we had to run the FAR on a single lot, and then we run the FAR split lot, it's all set forth in the dimensional form.

We prepared the proposed deeds which would allow for the conveyance back to the original owners. So, this is, I would respectfully suggest, largely a title issue because it came about quite unwittingly by the proponent, but was appropriately I give credit -- appropriately uncovered in the context of the prior hearing. So we are here

tonight in this case to seek a Variance to subdivide. And all of this good is only here because at the eleventh hour the grantee in the second property, another name was added which mirrored the grantee on the abutting property. So, that decision at a closing table had this unintended consequence. And this Variance is an attempt to cure that merger and return the lots to their historical, I'm guessing 100 plus year status of two separate lots. This was always intended to be abutters and not two structures on a single lot.

BRENDAN SULLIVAN: It's always been two distinct entities up until the Kales -- one bought the other one, other house basically?

ATTORNEY JAMES RAFFERTY: Right. And I think that conveyance was only this summer; is that correct? When did Carol buy the house.

MR. KALE: Last fall.

ATTORNEY JAMES RAFFERTY:

September.

BRENDAN SULLIVAN: And obviously if you had known the path that you were going down, you would have done different path at that point.

MR. KALE: Absolutely.

SUSAN KALE: That's right.

CONSTANTINE ALEXANDER: And the hardship is if we don't grant you relief, the only time you can convey the property, somebody would have to buy a much bigger lot with two houses on it?

ATTORNEY JAMES RAFFERTY: Right.

Or the burden of creating a condominium. And no civic or land use policy interest would be served, I would suggest, and thank you for pointing that out. Because it is a hardship, and there is a whole hardship associated with this exercise, getting a surveyor, preparing

a new application. But it's true, these houses really, they're separately financed. They have separate mortgages. But the lenders are unaware of this because there's one mortgage on one lot and another mortgage on another lot. So one could make the case if there ever was a foreclosure action, I'm not sure what the foreclosing entity --

BRENDAN SULLIVAN: Anybody in the world except the Zoning Department considers these two separate entities?

ATTORNEY JAMES RAFFERTY: Yes, and on a good day even the Zoning Department does. Every once in a while they just say hey. They worked hard with us to see is there another alternative to this? But I think, I think consistent with practice, it is -- they are undersized lots and they are contiguous, and they found themselves in common ownership.

BRENDAN SULLIVAN: Okay. Any questions by anybody?

CONSTANTINE ALEXANDER: I would just make an observation, you mentioned the merger doctrines, you suggested there's a Cambridge requirement. It's actually a state -- a Commonwealth of Massachusetts. I don't think it's Cambridge.

ATTORNEY JAMES RAFFERTY: No, I didn't mean to suggest that. I think it's interpreted in Cambridge in a way that's not -- that I don't agree with frankly. Because there is no -- by the way, there is no law, there's no statutory.

CONSTANTINE ALEXANDER: No, it's common law. It's a complete judicial.

ATTORNEY JAMES RAFFERTY: Right. If you look at the history of merger, it deals with municipality's ability to change a minimum lot size such as to effect development. So one doesn't get grandfathered. So if you have two, 3800-square foot lots and this was an empty

lot, and the legislative body decided that the minimum lot size should be 5,000 square feet. And then the merger, and most of these merger cases come out of the Cape. If you look at the merger, it's usually because the lot next-door is buildable and it's lost its buildability status. But it's a long thing. No, it's not in particular to Cambridge. In fairness to Cambridge I think they're just following --

CONSTANTINE ALEXANDER: That's me just standing up for the City of Cambridge, that's all.

ATTORNEY JAMES RAFFERTY: And I usually do that myself. And I'm quick to do that. But you are correct. I didn't suggest that. And I don't think, and I talked about this with -- I think it has its genesis and its basis. And when you've got an empty lot, and when the minimum lot size changed, then you don't get to build another

house there. But in this case that's probably an academic discussion.

BRENDAN SULLIVAN: Let me open it up to public comment. Is there anybody here who would like to comment on case 10098, 5 and 7-9 Foch Street?

(No Response.)

BRENDAN SULLIVAN: I see none. And there is no correspondence in the file from the community. So I will close public comment part.

Nothing to rebut? Nothing to add?

ATTORNEY JAMES RAFFERTY: No thank you.

BRENDAN SULLIVAN: Thank you. Anything on the Board?

CONSTANTINE ALEXANDER: I'm good.

TIMOTHY HUGHES: I'm good with it.

BRENDAN SULLIVAN: Let me make a motion to grant the subdivision as proposed and as per the plan entitled, "Subdivision of

land in Cambridge, Mass. dated April 29, 2011 for Lot No. 9, Lot No. 10, No. 7-9 Foch Street and No. 5 Foch Street."

The Board finds that a literal enforcement of provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude future sales of these two properties except -- I mean, except to one owner or some sort of other legal condominium entity, and it drastically reduces its saleability and marketability, a condition that the Ordinance was never intended to allow.

The hardship is owing to the unique nature of these two particular lots that were merged unintentionally when they became in ownership by the same owner.

Desirable relief may be granted without substantial detriment to the public good, and that there would be nullifying or substantially derogating from the intent or

purpose of the Ordinance.

All those in favor of granting this subdivision as per the plans submitted.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

CONSTANTINE ALEXANDER: One down, one to go.

ATTORNEY JAMES RAFFERTY: Should we get up or can we stay here?

BRENDAN SULLIVAN: No, you can stay right there.

ATTORNEY JAMES RAFFERTY: Oh, okay.

(7:40 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10074 which would be the habitable living space on the third floor of the property.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman. This is a case I referred to earlier. This is the home of Susan Kale. Susan Kale is a police officer in the City of Cambridge, and she acquired this home recently having lived next-door with her sister. And she retained the services of Mr. Taylor to come up with a way to use the

second floor. It's a two-family house, traditional two-family. Her proposal here is to create some living space on the attic floor to create some bedrooms upstairs for Ms. Kale and her young daughter. The home is a traditional home. It's rather modest in terms of its size. The apartments are traditional two families. The dimensional relief being sought is related to GFA, and Mr. Taylor can walk you through, but it's approximately an increase of 325 feet if my math is right.

CONSTANTINE ALEXANDER: What does that do because the forms were not as complete when I reviewed the file. What does that do to the FAR?

ATTORNEY JAMES RAFFERTY: It moves it from 0.53 to a 0.62.

CONSTANTINE ALEXANDER: In a 0.5 district?

ATTORNEY JAMES RAFFERTY: In a 0.05

district, yes.

CONSTANTINE ALEXANDER: So it's non-conforming now. It's going to be a little more non-conforming?

ATTORNEY JAMES RAFFERTY: Correct, yes. It's not conforming largely because the lot is undersized at 3800 square feet. But that is a -- if you look at the street grid, it's a rather standard sized lot for the neighborhood. Of course, the neighborhood wasn't originally -- it was a Res C-1. In the eighties most of North Cambridge was made Res B.

So, we were mindful of the fact that it is again a hardship situation, but it is a situation where the house itself has the -- we had talked about egress into this third floor. Maybe Mr. Taylor can just briefly explain the particular layout and what we're trying to achieve here.

CONSTANTINE ALEXANDER: Before he

does. I have a question. We have a correct dimensional form now in the files? Or is the one in the files now correct? There was some confusion between the one that was submitted with regard to this property in the last case, and the numbers here. I just want to be sheer.

ATTORNEY JAMES RAFFERTY: Let's just ask Mr. Taylor. I didn't prepare the application, but I wasn't aware that -- I know this is the second case.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: There's a third. So there was an earlier dormer case which is a case not heard. Is that part of the file? Can you show that to Mr. Alexander?

CONSTANTINE ALEXANDER: It's in the file, but some of the numbers on this, if you compared them to the numbers on your application on the prior case, they were

different. That's why I got a little bit confused.

MR. TAYLOR: I think initially we may have taken some dimensions from the inside of the wall. And we talked to Ranjit, and it was the outside of the wall. I think that may have been the only adjustment that this reflects.

CONSTANTINE ALEXANDER: Okay. For example, total gross floor area, it shows now the existing is 2,053. I think your application had different numbers.

ATTORNEY JAMES RAFFERTY: No.

CONSTANTINE ALEXANDER: No? Okay, I'm not doing the math right.

ATTORNEY JAMES RAFFERTY: I've got both houses, but I've got 2,053.

CONSTANTINE ALEXANDER: You're right. It showed the existing -- yes.

ATTORNEY JAMES RAFFERTY: I had to combine the lots.

CONSTANTINE ALEXANDER: You're right, you're right. I'm all set.

DOUGLAS MYERS: That's the current file?

CONSTANTINE ALEXANDER: Yes. That's the current file.

DOUGLAS MYERS: The latest.

CONSTANTINE ALEXANDER: Yes, the latest.

DOUGLAS MYERS: I'll borrow it.

ATTORNEY JAMES RAFFERTY: It's not a change. I mean, I think this is what it's been from the beginning.

CONSTANTINE ALEXANDER: Yes, I'm all set.

BRENDAN SULLIVAN: So you said about the third floor is --

ATTORNEY JAMES RAFFERTY:
Mr. Taylor, if you can briefly just describe what is being achieved and the egress and the importance of getting the attic relief.

MR. TAYLOR: Sure. So, actually what we did is to create the two bedrooms upstairs and to also add a bath. The stairs going up are going to be rebuilt, straightened so that you have a landing at the top, and the bathroom immediately upon arriving. And then it's actually just two bedrooms equally divided between the front and the back.

ATTORNEY JAMES RAFFERTY: Can you just briefly describe -- I know we talked the adequacy of the current stairway to the third floor in terms of the building code requirements?

MR. TAYLOR: Well, it's -- now, it's more narrow than what's currently allowed. But it's also quite difficult to -- there are a number --

ATTORNEY JAMES RAFFERTY: Yes. It has a sloped roof. I mean, Ms. Kale was very descriptive when she was saying it's very

challenging to even access that with the existing stairwell.

MR. TAYLOR: With furniture and things like that.

ATTORNEY JAMES RAFFERTY: Right. And you'll be able to come up with a building code compliant egress to this floor as part of this renovation?

MR. TAYLOR: Yes.

BRENDAN SULLIVAN: So it lacks proper entry to the third floor. It also lacks the proper exit out of the third floor and the headroom is deficient obviously.

MR. TAYLOR: Right.

BRENDAN SULLIVAN: So there's FAR up there which is really quite, not very much usable.

ATTORNEY JAMES RAFFERTY: That's exactly the point, right.

CONSTANTINE ALEXANDER: And you're addressing safety issues as well as

additional (inaudible) which is important.

MR. TAYLOR: That's correct.

BRENDAN SULLIVAN: And the main purpose for the additional space if you would?

ATTORNEY JAMES RAFFERTY: It is to accommodate a growing family that wishes to remain in the city. Ms. Kale has a long-time commitment to the city. She's lived here her entire life. She serves as a member of the police force. Her father, her sister, her family, they're all very Cambridge oriented. It's an attempt to really -- there's an established family network in North Cambridge, and Ms. Kale as a single mother is excited about the opportunity to live next-door to her sister who will be able to provide her with assistance in the raising of her young daughter. So, the hardship also has personal components to it associated with financing and the desire to remain in the

neighborhood that she has grown up in.

BRENDAN SULLIVAN: So you're there for a long-term?

SUSAN KALE: Yes, sir.

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

Let me open it to public comment. Is there anybody here who would like to speak on case No. 10074, No. 7-9 Foch Street?

(No Response.)

BRENDAN SULLIVAN: I see none. There's nothing in the file, I believe, by way of correspondence.

DOUGLAS MYERS: Is that yours?

ATTORNEY JAMES RAFFERTY: Yes, that's mine.

BRENDAN SULLIVAN: Have you spoken to the neighbors at all?

ATTORNEY JAMES RAFFERTY: Well, they're very close to the neighbor next-door. Yes.

SUSAN KALE: Yes, we do have neighborhood support, and they looked at the plans and signed it.

ATTORNEY JAMES RAFFERTY: We did have some letters of support. I think we didn't introduce them at the meeting the last time.

MR. KALE: No negative.

CONSTANTINE ALEXANDER: If you have anything positive, just put them in the file.

SUSAN KALE: Unfortunately Susan's ill.

ATTORNEY JAMES RAFFERTY: They had outreach with abutters. They voiced their support. I know when we were here last, Susan had a couple of letters. And I apologize we don't have them today.

BRENDAN SULLIVAN: Okay, well let me close the presentation part along with the public comment.

I know I think the last time that you

did have some letters of support. Obviously there was no negative feedback otherwise I think there would be receipt of it. Well, that's okay.

SUSAN KALE: Here they are, right here.

ATTORNEY JAMES RAFFERTY: Oh, here they are. More like a Petition with signatures. Oh, there's two pages.

Thank you.

BRENDAN SULLIVAN: The Board is in receipt of a Petition. "I have reviewed the architectural design and understand the scope of the project. My signature indicates support for the renovation project at 7-9 Foch Street since it will allow the Kale family to continue to live in our neighborhood." And it is signed by one, two, three, four, five, six, seven, eight, nine people in the immediate neighborhood; Murray Hill Road, Newman, Foch, Newman, Foch Newman,

and Murray Hill Road. Okay.

Tim, what are your thoughts?

TIMOTHY HUGHES: I'm good with it. I like the idea of raising the roof often times better than adding the addition of dormers.

BRENDAN SULLIVAN: Doug?

DOUGLAS MYERS: Seems fine.

BRENDAN SULLIVAN: Okay. I think that every once in a while, I mean, if you look at the case on their numbers, you know, the numbers somewhat stick out, but then again you get behind the numbers and then you realize that behind the numbers is a very personal future, a life. And I think that what they're trying to do is to provide a decent and reasonable environment for the family.

CONSTANTINE ALEXANDER: And safety factors as well. I think the better means of egress in the event of an emergency.

BRENDAN SULLIVAN: Yes. And I think it encourages stability in the neighborhood which I think that the Kales obviously have.

Let me make a motion to grant the relief.

Request that the Board finds that a literal enforcement of the provisions of this Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from enlarging the house in an area which is greatly undersized; it would allow for a safe entry to and exit from an area of the house, and provide some fair and reasonable relief and habitability to the rooms.

And that the Board finds that the hardship is owing to the existing non-conformity of the house, a relatively small size of the house, and the fact that any improvement which is much needed in this

house would require some relief from the Board.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

On the condition that the Board will allow the Variance that the work is consistent with the plans, in the file Kale Residence 7-9 Foch Street, project No. 2011Kale and initialed by the Chair.

All those in favor of granting the relief?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.
Good luck.

ATTORNEY JAMES RAFFERTY: Thank you very much.

SUSAN KALE: Thank you, all.

CONSTANTINE ALEXANDER: Good luck.

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

(7:50 p.m.)

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

BRENDAN SULLIVAN: The Board will
hear case No. 10068, 7-9 Foch Street.

ATTORNEY JAMES RAFFERTY: Thank
you, Mr. Chairman. James Rafferty on behalf
of the Applicant. We request withdrawal on
that case.

BRENDAN SULLIVAN: On the motion to
withdraw the case No. 10068, all those in
favor of accepting the withdrawal?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor,

and the case is withdrawn.

ATTORNEY JAMES RAFFERTY: Thank you very much.

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

(7:50 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case 10099, No. 100 Hampshire Street. Mr. Hope.

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, Members of the Board. For the record, attorney Sean Hope, 130 Bishop Allen Drive in Cambridge. Tonight I have Mr. Richie Benzan and his wife. We are here seeking a Variance to reconstruct a rear egress off a two-family in Residence C-1 district. Mr. Benzan and his wife, in 2006

they purchased this two-family and they did some major reconstruction to the home. One of the reconstructions that they weren't able to do at the time was the existing rear staircase that goes from the kitchen into the rear yard. There are pictures in the file, but this existing staircase and what primarily is the basis for this Variance is extremely steep. So one of the proposals that the Benzans wanted to do, was they actually wanted to create a rear egress that had a landing that actually jogged to the left. The initial plans that are in the file actually had the rear staircase moving toward the right side setback, which is in violation of the setback as existing. We reformed the plans based on some neighborhood feedback where the existing staircase no longer jogged to the right yard setback, but actually comes straight down. One of the architect's suggestions was to keep the -- excuse me, the

proposed egress to the footprint of the building.

So as existing and under the proposed rear egress, the existing landing coming right out of the kitchen still violates the side yard setback. The side yard setback requirement is 11.4. So half of the existing egress is within -- is violating the side yard setback. So, we think the proposal before the Board is going to cure the safety issue, which is the primary reason for the rear egress. Also part of the relief that's up there is a proposed deck. There's no deck now. We just have a narrow egress coming out the rear kitchen.

The deck itself is not in violating the right or the left side yard setback nor the rear side yard setback. There is an additional GFA that's created by the deck underneath. So right now as existing there's 0.71 FAR. With the proposed deck, we

would be 0.754. So we are right up against what's allowed in --

CONSTANTINE ALEXANDER: Well, you're going to go from conformance to non-conformance.

ATTORNEY SEAN HOPE: Right, by 0.04.

CONSTANTINE ALEXANDER:
Conformance or non-conformance.

ATTORNEY SEAN HOPE: We can narrow the size of the deck. We can make it smaller, but we actually -- when we look at the architect -- what we really wanted to do is have additional space to be able to store recycle bins. Right now they live on the second floor, and their pictures -- their front stairs coming up from the first floor are extremely steep. There's no landing to even to put a coat rack or anything else. So, right now their primary place to store anything in the kitchen, is either in the kitchen or going down the stairs to the

bulkhead down the backyard. So they would want a landing or a deck to be able to store --

CONSTANTINE ALEXANDER: The difference -- I'm sorry, I didn't mean to interrupt. But there's a difference between a landing and a deck. I can understand the landing. But you're proposing to put a deck that's 12 feet by 13 and a half feet. And you've got a neighbor that's -- an abutter, the last I knew, at least there's the letter in the file, was objecting to it because of privacy issues.

ATTORNEY SEAN HOPE: Right. And the neighbor will speak specifically on what her issues were.

The initial proposal actually had us moving closer to, with our stairway moving closer to the right yard side yard setback. So right now the house is 2.2 feet, seven inches, and we were actually moving closer to that side yard setback. We actually

reformed the plans. So the existing and the proposed staircase is exactly the same.

So I think the privacy issue is -- the deck is all the way to the opposite side of the abutting neighbor that has the issue. All the other abutters around support the project. We reformed the proposal based on the fact that we were actually moving to the side yard setback. The deck itself did not create the privacy issue. It was the stairs that came off the kitchen that was moving to the side yard setback. Right now the existing stairway comes directly down, it's supposed to be the file, and the deck is actually to the opposite side of the neighbor. And we actually kept the deck within the footprint of the building.

In theory we can build that deck, we built it narrowly without connecting it to the stairs, but the stairs as the existing are violating that right side yard setback.

Because the middle of the existing stairs and the proposed stairs are within four feet of that setback. So, the deck itself is not violating the setback. It can be done as of right but for the FAR. And we could reduce the size of the deck to bring it within compliance. We actually looked at what the size -- Mr. Benzan has two young boys. They live on the second floor. They need more space. Not necessarily outdoor space because they can actually schlep everything down the stairs, but when they're in the kitchen, this was an idea, to be able to keep certain things on the back porch. Like I said, like recycle bins. Mr. Benzan also owns a bike. Right now he brings the bike out the kitchen or he puts it in the bulkhead to lock it up. This will allow him to actually be able to put that on the back deck.

You know, part of -- we feel like the big solution to the issues from the letter in

the file was really about moving the staircase away from the neighbor so not to increasing the non-conforming that's already existing as well as to cure the major safety issue which is the steep grade of the steps.

BRENDAN SULLIVAN: So, you have viewed and reviewed and adjusted the plan to the neighbor's concern, but then also probably it's the bare minimum which you feel is really what you need for functionality. Obviously it's going to provide some outdoor space which is yes, needed. I mean, the second floor.

Any other questions from Members of the Board at all? Doug, any questions at this time?

DOUGLAS MYERS: I'd rather wait.

BRENDAN SULLIVAN: Yes. Let me open it to public comment. Is there anybody here who would like to speak on the matter at 100 Hampshire Street?

SNEHA HARRELL: Yes, I would.

BRENDAN SULLIVAN: Yes.

SNEHA HARRELL: I'm actually the neighbor in question who has submitted the letter in the file.

BRENDAN SULLIVAN: If you could come forward and --

DOUGLAS MYERS: You can pull up a chair and sit down.

BRENDAN SULLIVAN: If you can introduce yourself. Please spell your last name. She has to be able to hear but you're fine.

SNEHA HARRELL: Thank you. Of course. My name Sneha Harrell Sneha. Harrell is the last name, H-a-r-r-e-l-l. And I'm here on behalf representing myself as well as my husband who has signed the letter, but unfortunately can't be here because we're physically moving into the house today so he's still with the movers. And so, I'm

assuming that everyone here has read the letter.

BRENDAN SULLIVAN: Yes.

SNEHA HARRELL: Okay. Well, I'm here for -- to restate not just these reasons, but also first of all, I'd like to mention that we're very new to the neighborhood. We've -- as I said, we're just moving in, so we really in consultation with our real estate agent and our attorney have been informed that, you know, we'd like to -- we really enjoy -- we're really excited to be in the neighborhood, but we haven't really had any opportunity whatsoever to get to know any of the neighbors, get to know the neighborhood. We haven't had an opportunity to live there to even understand the dynamics or what the space is like. And before we've even had a chance to move in, are being asked to make a decision or asked for input on something that we don't really feel that we

can make a sound decision so early in the process of having moved in.

But more specifically, my understanding was that the deck was in violation of some Zoning Laws when I spoke with Sean O'Grady and previously which I stated in the letter. At least in the letter that I received as the neighbor. It mentioned two articles that were in violation specifically. And I think the proposed changes don't change the issues of privacy, because as you can see in the photos that I've included in the letter, the distance, specifically in the picture on the left you can see that the distance is just a matter of a couple --

BRENDAN SULLIVAN: Have you had a chance to sit down and talk to them really face-to-face?

SNEHA HARRELL: Yes, I've had a chance to speak with, yes, I'm sorry,

Mr. -- not, I haven't had a chance to speak with the attorney. Mr. Benzan? Yes, Mr. Benzan introduced himself. And I informed him actually twice during that conversation that we were new to the neighborhood, and I was not comfortable making such a decision.

BRENDAN SULLIVAN: I'm just wondering, and again I don't mean to cut you off, but maybe I am. I don't mean to. If it wouldn't help, if you just wanted to go maybe into the other room, just have a conversation, maybe come back to us in 15 minutes.

ATTORNEY SEAN HOPE: To the Chair's point, I don't think --

REYNALDO BENZAN: Can I say something?

BRENDAN SULLIVAN: Go ahead.

REYNALDO BENZAN: I offered to give her plans of my deck. I offered to give her

a tour, a physical tour of it. I left my phone number furiously. A week prior to the conversation she never called me. So seen her car in the driveway, I made an effort to knock on the door. And I do that to all the neighbors. That's why you have eight --

BRENDAN SULLIVAN: She's got a lot going on.

REYNALDO BENZAN: I understand. But she didn't make any effort to contact me. So I mean I understand. I'm very neighborly. This is my second time going through Zoning. I like to -- I made an effort twice already.

BRENDAN SULLIVAN: Well, maybe that -- if you just wanted to retire to the back room, maybe just have a round table talk anyhow.

Would that be helpful do you think.

SNEHA HARRELL: Unfortunately I don't. And if there were a time for that, I would prefer I be represented with an

attorney and my husband if that's the case, because I still feel that these, you know, I'm open to some dialogue, but I would want to be represented on equal footing. If what you're saying is out of the ordinary, which is an extension and a separate conversation --

BRENDAN SULLIVAN: Okay. I guess I --

SNEHA HARRELL: But I don't think that any of the reasons in terms of violation, safety, privacy, noise, protecting green space or visual clutter, which I specified and elaborated on each of those points in the letter, would be any different based on conversation.

CONSTANTINE ALEXANDER: I think your idea is a good one, but maybe the answer is not --

BRENDAN SULLIVAN: Here.

CONSTANTINE ALEXANDER: Yes. Not

15 minutes but another night.

BRENDAN SULLIVAN: And because you've got somebody who is -- has legal standing, and obviously Mr. Hope can explain that to you. And so maybe it would behoove all parties to continue the matter.

ATTORNEY SEAN HOPE: Well --

BRENDAN SULLIVAN: Or you can go forward. I mean, I'll let her continue, and then if you want to continue or if you feel it would behoove --

ATTORNEY SEAN HOPE: And I'm just not sure if she's seen the revised plans. Those initial comments seem to be based on an initial set of plans.

CONSTANTINE ALEXANDER: All the more reason to continue the case.

SNEHA HARRELL: Well, I would like to say that the comment earlier that the revised deck, it's still -- the size of it still does not remove the issue of privacy.

Because if you look at the picture specific -- well, both of them, you can see based on the height and whether you shift it by a few feet to the left or the right, doesn't remove the issue of privacy of over viewing into our only outdoor space. It's on the second floor, our ground floor, obviously we can't build a fence to somehow create a privacy. So it doesn't, it doesn't remove that issue at all. And it's in incredible proximity. I believe when I talked to Sean -- I may not recall it exactly, but it was their property line to ours was something like two feet center. But it's incredibly close lines. And there's bedrooms in the back of their house and, you know, it wasn't mentioned here, but when Mr. Benzan and I had a conversation, you know, he did mention that he has a very large family. He likes to have lots of barbecues and things like that. Although it's not coming up here now, and

there's a conversation about well, the recycling bins and the bicycle. But the reality of this issue of noise, point No. 4, which I also elaborated, I think is a realistic issue and a concern as a neighbor.

BRENDAN SULLIVAN: It's a valid point.

CONSTANTINE ALEXANDER: Yes, I think so. Sir, I think you would be well advised -- I'm very sympathetic to what I'm hearing. I think you would be well advised not to pursue this case tonight.

DOUGLAS MYERS: I'd like to offer some observations that may be helpful to the parties come what may, whether the case moves forward tonight or whether people choose to have a continuance and consider it further. I mean, we're talking about a very congested area, and a very congested relationship between these two properties. We're talking about a deck that, by the standards of decks

previously approved by this Board, is on the large size. That's not to say the Board has not approved decks under some circumstances that were somewhat even larger than this, but the size of the dimensions is certainly one that would cause me, I don't know about other Board members, to take note. That it's a large deck. And in terms of what I've heard, I wondered whether or not the family needs that have been mentioned could be met by a porch or deck that's closer to landing size, but nonetheless would accommodate those family needs that have been mentioned thus far tonight. So making those observations, I hope it would be helpful.

ATTORNEY SEAN HOPE: Given the wisdom of the Board, I would just want a second to confer with my client.

BRENDAN SULLIVAN: Absolutely.

ATTORNEY SEAN HOPE: So, we would like to continue. I would just like to put

on the record it does seem from the comments that the new proposal hasn't been seen or digested from the neighbor. I don't -- I agree with her that this may not be an appropriate time to remedy some of this. I do hope that, you know, we can maybe speak briefly not to come back before the Board, but maybe to open a dialogue. We did talk to Mr. Benzan. He hadn't retained counsel at that point. And I think if we look at what was proposed and address some of your concerns about privacy, it sounds like they may be able to create something that maybe alleviates your issues but also meet their family needs. I would like to continue it to the next available hearing.

BRENDAN SULLIVAN: Sean, that meeting is?

SEAN O'GRADY: July 14th.

CONSTANTINE ALEXANDER: As a case heard. July 14th. Can everybody make July

14th?

DOUGLAS MYERS: I don't think I can unfortunately. Sorry.

BRENDAN SULLIVAN: Nothing before then?

SEAN O'GRADY: Not unless you want to double up. June 9th, it just wouldn't be a good idea. You have Executive Session, you have --

BRENDAN SULLIVAN: Okay. And after June 9th is?

SEAN O'GRADY: June 23rd you could probably shoehorn something in there.

BRENDAN SULLIVAN: Okay.

DOUGLAS MYERS: I'm free any time in June.

BRENDAN SULLIVAN: Would you be available June 23rd?

SNEHA HARRELL: No, I'm not.

CONSTANTINE ALEXANDER: Would your husband be available?

SNEHA HARRELL: It's actually because of him, as you noticed, he just joined the faculty at MIT. They have a retreat on those days. So, I'm sorry.

BRENDAN SULLIVAN: So if we're not into July 14th.

SEAN O'GRADY: 14th and then 28th.

BRENDAN SULLIVAN: Mr. Myers is on sabbatical?

DOUGLAS MYERS: Unfortunately I'm away on the 28th. I'm very sorry to be the obstacle. Those are longstanding. I have more flexibility in August. I have complete flexibility in June. And if the 2nd of July is available I can do it then.

SEAN O'GRADY: Your next meeting is June 9th. June 9th you have Executive Session and you're overbooked by one in addition to that.

BRENDAN SULLIVAN: Okay.

TIMOTHY HUGHES: Is this the

Executive Session, one that got postponed?

SEAN O'GRADY: Yes.

TIMOTHY HUGHES: I'm glad I got a notice of that.

SEAN O'GRADY: I was not happy with that.

TIMOTHY HUGHES: I was not happy about that.

BRENDAN SULLIVAN: So, we could squeeze it in June 9th?

SEAN O'GRADY: You could.

BRENDAN SULLIVAN: And you're available June 9th?

SNEHA HARRELL: Am I required to make that decision right now?

DOUGLAS MYERS: Pretty much.

BRENDAN SULLIVAN: Well, we have to set the date.

SNEHA HARRELL: Well, pretty much or yes?

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Yes.

DOUGLAS MYERS: Yes.

SNEHA HARRELL: So there's no opportunity to look at a datebook and consult with my husband and --

TIMOTHY HUGHES: No.

CONSTANTINE ALEXANDER: We have to take a vote tonight to set a new date. This can't loopy goopy, and we've got to get all five of us. June 9th is the only date where all five of us --

SNEHA HARRELL: I understand and I accept June 9th, that's fine.

BRENDAN SULLIVAN: So the matter will be continued until seven p.m. on June 9, 2011, on the condition that the Petitioner sign a waiver of the statutory requirement for a hearing of a decision to be rendered thereof, and change the posting sign to June 9, 2011 at seven p.m.

On the motion to continue this matter

as a case heard?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

And if you have any questions at all --

SNEHA HARRELL: Thank you very much.

BRENDAN SULLIVAN: -- Mr. O'Grady
is the point guy to ask.

SNEHA HARRELL: Thank you very much.
I appreciate your time.

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

(8:10 p.m.)

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

BRENDAN SULLIVAN: The Board will
hear case 10100, 26-28 Valentine Street.
Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank
you. Good evening, Mr. Chairman. For the
record, James Rafferty on behalf of the
Applicants. Three of the four whom are
seated to my left. This is Rosemary Jones
and her husband Paul Ogorman, and Paul isn't
with us tonight. But the other couple here

to my far left is Kevin Sendleski
S-e-n-d-l-e-s-k-i and Amy Devin D-e-v-i-n.

BRENDAN SULLIVAN: So we have a
structure.

ATTORNEY JAMES RAFFERTY: So, we
have a duplex.

BRENDAN SULLIVAN: With two sides
and two separate owners.

ATTORNEY JAMES RAFFERTY: Two
separate owners.

BRENDAN SULLIVAN: Wanting to do the
same thing.

ATTORNEY JAMES RAFFERTY: Yes.
High level coordination thanks to the work of
Mr. Shirley, Frank Shirley S-h-i-r-l-e-y who
is the project architect. And Mr. Shirley
is a Cambridge architect. His office and his
home is within a blocks of this location. So
he brings some local perspective that we
found helpful.

It's an interesting case in some

respects because of the lot itself and the structures. The street itself, Valentine Street, is a medium density street. It has a range of two, three, and multi-family dwellings. It's zoned Residence C-1, but this particular lot is, if you look at the streetscape, this lot is almost 6,000 square feet, which for that neighborhood is an exceptionally large lot. So that size lot you can actually -- the GFA here with an FAR, permitted FAR 0.75, you can have 5,000 square feet. So, the owners find themselves in similar situations. They each have young children and they have enjoyed the house. But if you've had an opportunity to see the photographs, the house -- I won't speak in architect speak, but it's kind of a modified Cape if you will. It's got a second floor, but it has no windows on the second floor. It has a sloping roof. It's rather small. So the requested GFA here is approximately 1,200

square feet, but it's divided between the two units so it's an impact of 600 square feet. And unlike many of the cases that you see here, it is still below the allowable FAR. So it's not a Variance request associated with added density. We're making a bigger house on the lot. The cases before the Board, for two reasons, one is that the house is non-conforming, it's not conforming in relation to the front setback. The Zoning district requires a 10-foot setback. The face of this building is just at nine feet. There is a front porch that extends, but because that porch has a roof over it, it doesn't qualify for the exceptions for porches. But the face of the building is at nine feet from the street, and because of that, the building is non-conforming. And as the Board knows that non-conforming structures have limitations on the amount of GFA. So notwithstanding the fact that you

can be below your FAR, you can face this limitation. But it is a singular non-conformity and it leads to a discussion about hardship, because the potential remedy, and one always advises clients to look at could you proceed as of right, the proponent would have to lift the house up and move it back a foot. And if he did that, and I'm sure the Board has seen cases where that happens and cases where there's bad foundations and all that, things like that happen, then they can proceed as of right. Similarly, if the Applicant chose to take the house down, the land use policy of the city doesn't encourage, then they could come in with a footprint bigger than this and with a higher GFA. So, it's not desired to take the house down. The house works well, but the scheme that Mr. Shirley can walk you through does transform this into a gambrel style home and it does result in an increase in GFA

that's over the 25 percent limitation, but below the permitted FAR. It also presents an issues because the wall in which the increase is occurring is the non-conforming wall. So we are adding height to that front facade.

CONSTANTINE ALEXANDER: You're not changing the footprint of the structure?

ATTORNEY JAMES RAFFERTY: Not changing the footprint at all.

CONSTANTINE ALEXANDER: So, you're just going up, you're increasing the bulk of the structure?

ATTORNEY JAMES RAFFERTY: That's correct, yes. And there's all those bases under Section 6 about one and two-family houses and if you stay in the footprint and the like. This house and this lot exceed all the minimum requirements. They have more open spaces required which is unusual. They have two car garage on this site. So they satisfy the parking requirements. They're

below the FAR. So they've worked hard with Mr. Shirley to come up with a design that conforms with the dimensional limitations of the district, but the house is before the Board because of the manner in which the house is sited on the lot. That one foot closer to the street puts them before the Board to achieve this. And the hardship and the reason they're here is to ask the Board to not impose that consequence on them, that they would have to -- in order to do this, they would have to move the house a foot. And for the reasons I said, and pursue an even more radical scheme around the house, around the property. But with a lot of nearly 6,000 square feet, I think there's a real opportunity here to do two units here. I know sometimes we've had some cases that have been suggested we can take the house down and someone says well, can you really get something back here? This is an

exceptionally wide deep lot. It's 80 feet wide. It's nearly 75 feet deep. It is, it could lend itself to two units. So, at the end of the day the petitioners feel that they have come up with a structure that will be below the FAR when they're done, about four or five hundred square feet below the permitted FAR, and will continue to meet all the open space, setback and other requirements of the district. And Mr. Shirley has did a very impressive array of photos of the street which shows relationship to structures. This house is in good company in terms of its setback from the street. Many of the structures around it have similar, if not closer setbacks. And we thought if that became an issue, attention for the Board, we could provide that, but at this moment I thought maybe we just wait and see if that level of examination was requested.

BRENDAN SULLIVAN: So basically it's the siting of the existing house on the lot?

ATTORNEY JAMES RAFFERTY: Correct.

BRENDAN SULLIVAN: Which predates the current zoning?

ATTORNEY JAMES RAFFERTY: Correct. I wish I thought to say that.

BRENDAN SULLIVAN: In so many words.

ATTORNEY JAMES RAFFERTY: When you get paid by the word --

BRENDAN SULLIVAN: We've come to realize that. That's why we're willing to cut you off.

Any other questions by Members of the Board at all? We understand there is a need to --

CONSTANTINE ALEXANDER: I have a question. Did you talk to your neighbors?

ATTORNEY JAMES RAFFERTY: Yes. In fact, we have some correspondence.

CONSTANTINE ALEXANDER: Are there letters in the file?

BRENDAN SULLIVAN: There are some in the file.

CONSTANTINE ALEXANDER: There are some in the file? I'm sorry.

BRENDAN SULLIVAN: Doug, any questions?

DOUGLAS MYERS: Increase in height, would you just refresh me from what to what in terms of increase you spoke of?

ATTORNEY JAMES RAFFERTY: The current, it's just below 35 feet, the permitted height. I think the current height is at, is just at 29 feet.

FRANK SHIRLEY: Yep.

ATTORNEY JAMES RAFFERTY: Yes, 29 to 35.

FRANK SHIRLEY: We actually intend to be about six inches below that. Six inches is our target height for the ridge just

to give a little bit of space.

BRENDAN SULLIVAN: Let me open it up to public comment. Is there anybody here who wishes to speak on the matter 26-28 Valentine Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance. There is correspondence in the file from -- Our names Michelle and Cam Hicks that reside at 165 Brookline Street. They have seen the drawings. They are writing to voice their strong support of the application that is filed with the Board of Zoning Appeal and hope that the Board gives this application its well and respectful consideration.

There is correspondence from Christina MacCarthy who resides at No. 8 Valentine Street, and she also has seen the drawings and she voices her strong support for the application. And feels that the plan would

be a benefit to all the neighbors and the abutters. And that is the sum and substance of the correspondence.

Okay. Anything else, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: Yes, I was just noting, because Mr. Shirley is very thoughtful, and in the design of the roof he chose the gambrel, the roof at the street edge, the heart of the roof is two feet, six lower. So in response to Mr. Myers's point, so it's 30 --

DOUGLAS MYERS: Two feet lower than the --

ATTORNEY JAMES RAFFERTY: Than 35. Yes, while the dimensional form says 35, the nature of the gambrel is that's at the peak. But where the wall is in the setback area it's two and a half feet lower. So two and a half off 35, I bet you could do that calculation.

FRANK SHIRLEY: It's 32 and a half feet.

ATTORNEY JAMES RAFFERTY: Harvard graduated today. Did you go to Harvard?

FRANK SHIRLEY: No. They wouldn't let me in.

BRENDAN SULLIVAN: It softens the presence on the street.

ATTORNEY JAMES RAFFERTY: On the street, exactly. And that was Mr. Shirley's design goal was to give it some mass, but he -- Mr. Shirley, I don't know if you know this. I'll tell you this. He is an author of -- the title of the book is Small Houses?

FRANK SHIRLEY: New Rooms for Old Houses.

ATTORNEY JAMES RAFFERTY: But he's an advocate of small houses. Is that a fair characterization of your practice?

FRANK SHIRLEY: Fair.

ATTORNEY JAMES RAFFERTY: He lives in a large house himself. He has an old house down there on Henry Street. But he's a

believer in small houses. Is that not true?

THOMAS SCOTT: I have two questions. One, there's no dimensions on the plan especially for the kind of these pop outs in the back. There's just nothing to say, you know, how big any of these elements are.

FRANK SHIRLEY: I have my scale with me. Tell me what you need to know and I will give you dimensions.

THOMAS SCOTT: And also the drawings laid out for construction. I assume if we approve the Petition, that these will be the plans for construction.

FRANK SHIRLEY: Right. That's not meant for you. That's meant to appease my liability insurance where, you know, the drawings are not for construction drawings.

THOMAS SCOTT: What does that mean to us?

FRANK SHIRLEY: It means --

TIMOTHY HUGHES: Design-wise it

means that's what he's going to do, but the blueprints that go to the contractor are not going to look like this. They're going to look like a more sophisticated set and a or more detailed set of the prints.

FRANK SHIRLEY: Precisely.

THOMAS SCOTT: The ruling is tied to this.

TIMOTHY HUGHES: But a contractor can't work from that.

THOMAS SCOTT: I understand that.

TIMOTHY HUGHES: That's what the little kick line is about, liability kick line.

ATTORNEY JAMES RAFFERTY: It tells the clients don't think you're done with me and you can get a building permit with these drawings, I have to draw big construction drawings. That's true.

FRANK SHIRLEY: Right.

CONSTANTINE ALEXANDER: Your first

question answered, Tom?

TIMOTHY HUGHES: I do have a scale if you want a scale.

THOMAS SCOTT: Basically they're dormers on the back of the house, we don't know how wide they are? Do they meet the guidelines?

FRANK SHIRLEY: The dormers on the back are approximately 14 feet, six inches wide, the two in the back elevation.

THOMAS SCOTT: Yes.

FRANK SHIRLEY: The two in the front, I forget what they are. Let me get it for you.

ATTORNEY JAMES RAFFERTY: But done with the understanding that the guidelines and the preferred mention, although, the guidelines speak more to gabled roofs. Mr. Shirley was saying to me and that the gambrel is a bit of a hybrid. So there needs to be a little adjustment to the guidelines.

FRANK SHIRLEY: The dormers on the front elevation, the street elevation are approximately seven feet wide.

BRENDAN SULLIVAN: Yes, I guess, when I saw the drawings, my initial thought was is lacking in dimensions which makes it somewhat difficult once a set of drawings comes in for approval because we are tying other relief to these. And there really can't be much, if any, deviation from these.

FRANK SHIRLEY: Understood.

BRENDAN SULLIVAN: So that if it gets into a misunderstanding or a dispute or a misinterpretation somewhere along the line, it may very well get kicked back to us. That's all.

FRANK SHIRLEY: I fully understand that.

BRENDAN SULLIVAN: And obviously these are not -- there is a scale on there. You would not scale these, but to scale on the

caveat would be that lacking some dimensions. Hopefully there's no push backs from the building inspector who give it to the Zoning Specialist, that's all.

Any other questions by the Board? Gus, what are your thoughts?

CONSTANTINE ALEXANDER: I'm okay with it.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: Yes, I like the gambrel design. I think it's appropriate. It helps reduce the scale of the house a little bit. They're adding a whole front. I think it looks good.

BRENDAN SULLIVAN: It softens it.

THOMAS SCOTT: It looks good.

BRENDAN SULLIVAN: Doug?

DOUGLAS MYERS: I'm fine. You know, I'm more not concerned, but my attention has gone to the plans. I want to make sure that adequate by our standards and

enforceable and they're not going to be the source of future problems.

BRENDAN SULLIVAN: There is a little element --

DOUGLAS MYERS: It's alright on the merits.

FRANK SHIRLEY: I can put dimensions on the drawing that will stay with you, and I'm assuming also on record here, so I'm happy to stay on record that the dormer in the back elevation is 14 foot, six inches wide. The dormer on the front elevation is --

BRENDAN SULLIVAN: It's a little bit unusual for us to accept them after, however, I think what I would strongly suggest is that you provide that before the decision is signed and filed.

FRANK SHIRLEY: Sure. Is it a PDF?

ATTORNEY JAMES RAFFERTY: You can give it to me and we'll give it to Sean.

FRANK SHIRLEY: I'll have a PDF to

Mr. Rafferty tomorrow with all the dimensions.

ATTORNEY JAMES RAFFERTY:

Mr. O'Grady.

SEAN O'GRADY: Send us a hard copy and it's got to be scaleable.

ATTORNEY JAMES RAFFERTY: We'll work on the logistics.

BRENDAN SULLIVAN: We'll give you a little bit of a liberty to get them in before I sign the decision.

FRANK SHIRLEY: Thank you.

BRENDAN SULLIVAN: Okay.

TIMOTHY HUGHES: I'm good with it.

BRENDAN SULLIVAN: Before I sign the affirmative decision.

ATTORNEY JAMES RAFFERTY: Yes. If they don't vote in favor of it, we're not sending them anything.

BRENDAN SULLIVAN: Let me make a motion to grant the relief in question.

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 requested relief is a fair and reasonable request. That the request before us could be done as of right if the building were relocated on the lot which would be a considerable hardship to the Petitioner and not one that the Ordinance encourages and requires. And that the fact that the existing building is non-conforming to the front yard setback, and any addition, modification, improvement to the structure would require some relief from this Board.

The Board finds that the plan before us is aesthetically pleasing and is sensitive to the streetscape.

The hardship is directly owing to the location of the structure on the rather large lot which predates the existing Ordinance.

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

The condition that the work conform to the drawing initialed by the Chair.

All those in favor of granting the relief?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

ATTORNEY JAMES RAFFERTY: Thank you very much.

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

(8:30 p.m.)

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

BRENDAN SULLIVAN: Okay, Mr. Kelley, the Board will hear case No. 10101, Mr. Kelley.

FRANCIS KELLEY: Yes. Mike Dolan here, too.

ATTORNEY MICHAEL DOLAN: Good evening. Once again my name is Mike Dolan from the law firm of Brown Rudnick here on behalf of AT&T New Cingular Wireless. The subject application relates to a building at MIT. As I'm sure Mr. Kelley has mentioned previously, my client operates a wireless

network throughout the country, including in Massachusetts. We have a series of antenna facility sites in all those jurisdictions so that we can provide the coverage we need to. One such antenna facility location that we have now is at the subject building on the MIT campus, 77 Mass. Ave. The existing antenna facility was pursuant -- was installed pursuant to a Special Permit approval from this Board on January 15, 2010. That was for an installation involving six antennas and related equipment. The antennas were facade-mounted to the penthouse. Antennas of 120-foot center line height. The antennas are painted to match the background material and color. Once again, as Mr. Kelley has been here previously, AT&T is in the process of building out its long-term evolution enhancements to its network which requires additional antennas at their sites. And at this location we are proposing to add

three new antennas. They would be at the same height as the existing antennas, some related equipment, the remote radio heads would be attached to a cable tray on the roof and out of site along with some surge arresters and related equipment. We're pleased that we can locate these antennas at the existing facility and don't need to come before you for some introduction of a new facility at a new location. We believe that the installation here will have a minimal visual impact. We submitted photo simulations with our application. The subject lot on which this property is located is 42 acres. You know, the antennas are anywhere from 500 to 800 feet away in most locations from a public way. Further, you know, emphasizing the fact that you really can't see these antennas materially from the public ways. The property is in the Residence C-3B zone wherein these types of

facilities are permitted by Special Permit. Non-residential use predominate the subject property. It's the MIT campus, and it's institutional uses. The Planning Board gave us a favorable recommendation on Tuesday night. And for the reasons set forth in our application we would respectfully ask that you issue us a Special Permit for the addition of these three new antennas.

BRENDAN SULLIVAN: Because it is located in residential zone, which I find is a little bit unique, but the residences in the particular area are really institutional affiliated.

ATTORNEY MICHAEL DOLAN: Yes.

BRENDAN SULLIVAN: Are they not? They're really housing for students.

ATTORNEY MICHAEL DOLAN: Correct.

BRENDAN SULLIVAN: And not your typical, say, community residential structure.

FRANCIS KELLEY: Correct.

BRENDAN SULLIVAN: And that the purpose of increasing the facilities, the equipment is new technology?

ATTORNEY MICHAEL DOLAN: Yes.

BRENDAN SULLIVAN: Is it the 4G?

ATTORNEY MICHAEL DOLAN: Yes.

BRENDAN SULLIVAN: Okay. The existing equipment is for voice and data; is that correct?

ATTORNEY MICHAEL DOLAN: Correct.

BRENDAN SULLIVAN: And that the 4G is obviously for?

ATTORNEY MICHAEL DOLAN: Just data. More capacity, faster speed.

BRENDAN SULLIVAN: And the location that has been chosen, obviously you've done a study, and it is the only location in order to maintain the -- I think at the last hearing one of the issues was penetration of the buildings or that buildings were -- because

of their location, were sort of running interference at certain localities so that it was somewhat crucial for the initial location of the equipment, and hence this location is really the only location that will serve to satisfy the coverage and also provide the 4G?

ATTORNEY MICHAEL DOLAN: That's correct.

BRENDAN SULLIVAN: Which, it's almost that I'm presenting your case. But just so that I understand it. And that the 4G is much needed, much sought after and crucial to the institutional --

ATTORNEY MICHAEL DOLAN: Yes, there's huge demand from AT&T's customers. With me tonight is a representative from MIT. And I think you would agree that there's a desire, demand from the faculty, the students, others who use AT&T to have this facility upgraded.

JOAN CYR: Yes. Joan Cyr C-y-r

representing MIT. Definitely a desire for the institute, customers as well as the general public who come into our public buildings for these faster data speed.

BRENDAN SULLIVAN: Back a couple years ago up at the Harvard Radcliff Quad there was an incident and Harvard needed to roll out some equipment. I don't know if AT&T was doing that.

CONSTANTINE ALEXANDER: It was AT&T I think.

BRENDAN SULLIVAN: Okay. As an early warning system or just instant communication.

JOAN CYR: Emergency notification?

BRENDAN SULLIVAN: Yes.

JOAN CYR: Yes.

BRENDAN SULLIVAN: Does this facility, facilities provide somewhat the same -- does MIT have a program like that?

JOAN CYR: Yes, we do. MIT has a

program called MIT Alert. It's an emergency notification system where we can send text messages, make phone calls, send e-mail.

BRENDAN SULLIVAN: And the carrier to are that is?

JOAN CYR: It's all carriers. We own the system and we send out messages to whoever signs up for MIT Alert. It could be any carrier. But AT&T is one of the carriers.

FRANCIS KELLEY: And it's mostly -- residents can opt in for it. So it could be residents, also.

JOAN CYR: The student residents can opt into it. The City of Cambridge residents can opt into it. Anyone can opt into it.

BRENDAN SULLIVAN: So it's more than just downloading games and all this other stuff?

JOAN CYR: Oh, yes.

BRENDAN SULLIVAN: It is a very

crucial safety issue also.

JOAN CYR: Correct. And to your point about the building penetration, when the carrier facility went on-line last year, the in-building penetration greatly improved.

FRANCIS KELLEY: And with the new LTE antennas we're also -- AT&T is also licensed at the 700 megahertz range which has deeper penetration in the buildings, and that will be added for those new antennas. So this will increase the penetration in the buildings and alleviate any dropped calls that would be -- if it was just the data only existing system, but that would result of overloads in the system.

BRENDAN SULLIVAN: Until some MIT scientist finds that it's hazardous to your health.

ATTORNEY MICHAEL DOLAN: Put us all out of business.

BRENDAN SULLIVAN: Yes, I know.
They'll come up with a plan B.

TIMOTHY HUGHES: No, there will be a scientist right behind him that will come up with a cure for it.

BRENDAN SULLIVAN: That's right.

TIMOTHY HUGHES: You know, in spite of the dates on this overhead shot it's seriously out of date. Probably three years. There's no building 76 in there.

JOAN CYR: I know.

BRENDAN SULLIVAN: All right, any questions by Members of the Board at all? Doug, any?

DOUGLAS MYERS: Yes. On your photo location No. 3, the building that's in the foreground, is that Stata Center?

JOAN CYR: Yes, it is.

FRANCIS KELLEY: Yes, it is.

Now, this photo is not from a public way. Those are private roads that are part

of the MIT campus. So the photo is not even from a public way. That's part of MIT's campus from which it's taken from. So that's not really -- what you're seeing there is not an impact to abutting residential -- abutting properties. It's part of the MIT campus.

JOAN CYR: This photo was taken from behind the new Koch Building on the corner of Ames Street and --

DOUGLAS MYERS: How is that center pronounced locally at MIT?

JOAN CYR: Coke (phonetic).

DOUGLAS MYERS: No, no.

JOAN CYR: It depends on who you talk to. Stata. Mr. Stata calls himself Stata.

DOUGLAS MYERS: Okay. How many antennas are visible on the building in the background?

JOAN CYR: In this shot, only two.

DOUGLAS MYERS: Only two.

JOAN CYR: There's three sectors.

FRANCIS KELLEY: There will be three. After the installation there will be three.

DOUGLAS MYERS: Okay, I see.

BRENDAN SULLIVAN: If you turn to --

DOUGLAS MYERS: And that would be part of the permanent landscape then from this particular view of the Stata Center.

BRENDAN SULLIVAN: Turn to -- I'm sorry, are you done?

DOUGLAS MYERS: Yes, I'm done.

BRENDAN SULLIVAN: Drawing No. A4. One of our telecom esteemed members is not here this evening, so in his place, his words ring true to me. The antenna are pipe mounted. And I guess one of the issues is why is the height taller than or protruding above and below the antenna? And one of the conditions would be that the height be of the same dimension as the antenna.

FRANCIS KELLEY: Yes. You noticed

we revised the plans for the other site that cut them even with the antenna.

BRENDAN SULLIVAN: So I'm going to change this proposed antenna detail to say that the pipe not be longer than the antenna. Is that acceptable?

ATTORNEY MICHAEL DOLAN: Yes.

FRANCIS KELLEY: Sure.

BRENDAN SULLIVAN: And that's going to be true I think going forward. Mr. Heuer is not here tonight. He's got us well coached and educated on that. And we don't really feel any need for it. We're trying to minimize any equipment.

Is there anybody here who wishes to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see none. The Board is in receipt of correspondence from the Planning Board dated May 25th. "The Planning Board reviewed this application and

found that it is not a big change from the existing installation. There will not be a foreseeable difference to the building appearance with foliage. The installation probably will not be visible from the public way. The Planning Board recommends granting the request as an appropriate location." And that is the sum and substance of any correspondence.

Anything to rebut, to add?

ATTORNEY MICHAEL DOLAN: No.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: I'm fine.

THOMAS SCOTT: I'm fine.

TIMOTHY HUGHES: Sure.

DOUGLAS MYERS: I'm in favor.

BRENDAN SULLIVAN: I'll make a motion to grant the Special Permit.

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

The Board finds that the there would not

be any traffic generated or patterns of access or egress to cause congestion, hazard or substantial change in the established neighborhood character.

The Board finds that continued operation of or development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use. In fact, the Board finds that the presentation enhances the fact that it would enhance the safety and the availability of communications within the buildings and the general surrounding area which is much needed.

The Board finds that there will be no nuisance or hazard created to the detriment of the health, safety, welfare of the occupant of the proposed use or to the citizens of the city. And that the proposed use would impair the integrity or the district or adjoining districts, otherwise

derogate from the intent and purpose of the Ordinance.

The Special Permit granted with conditions that the work be in compliance with the drawings as submitted entitled, "Site No. MA 2267, Job No. 2267-01," initialed by the Chair.

The Board notes a change on sheet A4 where the pipe mount shall not be any longer than the antenna on any of the proposed installations. Also, that if the equipment is abandoned or not used for a period of more than six months?

CONSTANTINE ALEXANDER: That's what we usually say, yes.

BRENDAN SULLIVAN: That it be immediately removed from the premise, and that the facade of the building be restored to its original condition. And that the proposed new equipment and adjoining existing equipment by this carrier be

maintained in a good and reasonable manner.

CONSTANTINE ALEXANDER: Do we make the finding that the residential use doesn't predominate in the district?

BRENDAN SULLIVAN: It was part of the presentation, yes.

CONSTANTINE ALEXANDER: I think the Ordinance requires to make a specific finding.

BRENDAN SULLIVAN: The Board does find that even though it is in a residential district that non-residential uses predominate the area, and that any residential use is institutional in nature.

All those in favor of granting the relief requested?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

ATTORNEY MICHAEL DOLAN: Thank you all very much.

(Sullivan, Alexander, Hughes,

Scott, Myers.)

(8:45 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10102, 163 Hampshire Street. Is there anybody here interested in that matter?

(No Response.)

BRENDAN SULLIVAN: I see none. The Board is in receipt of correspondence by Frantz Brizard B-r-i-z-a-r-d. "Would like my case to continue. Variance to use 163 Hampshire Street as a coffee house, case No. 10102."

The Board notes that there was a failure to post the required posting sign.

The Board is also in receipt of a waiver form.

The Board continues this matter on the condition that the Petitioner change the posting -- first of all, display the posting sign and change it to reflect the proper date of?

SEAN O'GRADY: July 14th.

BRENDAN SULLIVAN: July 14, 2011 at seven p.m.

All those in favor of granting the relief?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.
The matter is continued.

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

(8:45 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10103, Seven Montgomery Street.

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

PAUL ZBRUZ: My name is Paul Zbruz Z-b-r-u-z.

STEVEN ALIANO: I'm Steven Aliano A-l-i-a-n-o.

BRENDAN SULLIVAN: Whoever is going to speak first.

PAUL ZBRUZ: Okay. What we're trying to propose is to widen the existing structure as well as raise the roof on the

two -- second floor and adequate ceiling height that's currently at the house. I only have seven foot, eight on the first floor and six foot, nine on the second floor. So we'll bring it up to seven foot, 376 on the second floor.

CONSTANTINE ALEXANDER: Excuse me, sir, the description of the work you want to do seems substantial. But I don't think your dimensional form -- and it shows you're going to increase the FAR to 0.89 to 0.90, five points. With all this work, how is it it's only such a very slight increase in FAR? What else is going on here?

PAUL ZBRUZ: Because we're not enlarging the footprint. We're only taking the existing house with an existing porch which has a bathroom below it on the basement floor. And we're just taking that porch, enclosing it and raising it to the height of the house. So we're only probably extending

the house by six feet, widening the house by six feet.

CONSTANTINE ALEXANDER: It's a two-story addition. Aren't you adding more FAR from that, too.

PAUL ZBRUZ: Right. Because the existing height in that second floor is at six foot, nine. So we're only bringing it up to seven foot, six. So, we're only raising it a little bit. So we were going from the total height of the house from 20 foot, eight to about 25 feet.

CONSTANTINE ALEXANDER: If you're going from -- Sean, if they're going from 6.9 which means it's not inhabitable to 7.6, aren't they putting a lot of FAR?

SEAN O'GRADY: Are you talking about the third floor or the top floor?

PAUL ZBRUZ: Yes, the second floor.

TIMOTHY HUGHES: Second floor.

SEAN O'GRADY: Okay, so it's the

knee wall that matters, or the hypothetical five-foot knee wall that matters.

STEVEN ALIANO: If you look at the plans right here, this is actually an existing deck right here. And underneath this deck there's a bathroom that's in the basement that has been there ever since my father Mike has owned the house. So, this piece right here, the porch, is actually just going all the way up to here. And the roof will be expanded and raised to five feet. So just this little section. And it's -- I'd say it's about five feet.

PAUL ZBRUZ: About six feet.

STEVEN ALIANO: Six feet, I'm sorry.

BRENDAN SULLIVAN: And that's the driveway side?

STEVEN ALIANO: That's the driveway side.

TIMOTHY HUGHES: Six by what?

PAUL ZBRUZ: Six by whatever the

length of the house is, which is 24 foot.

TIMOTHY HUGHES: So we're talking about 120, 130 square feet. How's that only one point increase in your FAR?

CONSTANTINE ALEXANDER: That's my question.

TIMOTHY HUGHES: And if we're going from six nine which is uninhabitable, not counted to FAR to seven six which is counted, how can we jump only the point?

SEAN O'GRADY: We only test the wall in the side wall. So, it's three or four foot side wall now?

STEVEN ALIANO: Yes.

SEAN O'GRADY: So it's only the tear between three feet and five feet. So, you know, two feet on each side.

TIMOTHY HUGHES: But still that's the length of the house. That's still if it's two feet by 24, it's still 48 square feet there and 48 square feet on the other side

presumably.

SEAN O'GRADY: Are you manipulating the basement ceiling height?

PAUL ZBRUZ: No.

SEAN O'GRADY: No? Okay, that's fine.

THOMAS SCOTT: Did you count the area under the deck? Is that included in the FAR?

STEVEN ALIANO: Yes, it is.

THOMAS SCOTT: It is?

STEVEN ALIANO: Yes, the downstairs deck is included, yep. And I'm sorry, too, the contractor is supposed to be here, guys. I don't know where he is.

CONSTANTINE ALEXANDER: The only reason I'm asking this question or I'm asking this question, is we're going to give a Variance, how much are you departing from our Zoning By-Law and your current structure? You're showing on the dimensional form a very

slight modification, but the plans you're presenting show a lot more of a modification and that's where the concern is.

STEVEN ALIANO: The basement ceiling is actually too short. So, I mean that's not liveable space. So.

TIMOTHY HUGHES: None of that counts.

CONSTANTINE ALEXANDER: And the calculation either way, the suggestion was maybe you were changing the height of the basement to take away FAR. But you're saying you're not. You're not changing the height of the basement.

STEVEN ALIANO: The height the basement is going to change because I was planning on pouring --

CONSTANTINE ALEXANDER: From what to what?

STEVEN ALIANO: -- pouring the floor.

Right now it's seven foot two, so with the floor maybe lose another inch or two.

TIMOTHY HUGHES: That's still -- that's still FAR countable space.

SEAN O'GRADY: Article 7.

BRENDAN SULLIVAN: Let me back up to line one. The total gross floor area, the existing is 1122.

TIMOTHY HUGHES: Right.

BRENDAN SULLIVAN: The requested is 1131.

TIMOTHY HUGHES: Assuming only nine square feet increase and that doesn't seem possible from the plans.

BRENDAN SULLIVAN: Yes, I think maybe what we need to do is to halt and get this dimensional form where it should be. Now, that's the rear of the house; is that correct?

STEVEN ALIANO: Yes, this is the rear of the house.

BRENDAN SULLIVAN: All right. And what is the proposed -- I mean, I'm familiar with the size of the house and driveway but --

TIMOTHY HUGHES: Can I interrupt, Brendan?

BRENDAN SULLIVAN: Yes.

TIMOTHY HUGHES: If we jump in now and just ask him to just redo the dimensional form, can we call this a case not heard and continue it as a case not heard so we don't have to receive the same five people and not go any further into this drawing in front of us now?

BRENDAN SULLIVAN: Yes, I think that's more than fair. That's correct.

TIMOTHY HUGHES: So we can continue it. They need to get in a corrected dimensional form and then they come in -- that would make it easier for you because you don't have see the same panel again. If we continue to talk about the

merits of this case, you're going to have to see the same five people and it could be August.

CONSTANTINE ALEXANDER: It could be months before you get the five of us together again.

TIMOTHY HUGHES: Because of this man.

BRENDAN SULLIVAN: He goes away on sabbatical and retreat. So anyhow, there's a problem with the dimensional form. So that needs to be brought up to snuff. And I think what you need to do is probably sit down with Mr. O'Grady at some point and go through everything.

CONSTANTINE ALEXANDER:
Mr. Chairman, a question for you and other Members of the Board. On the issue of changing or improving the dimensional form, I had a lot of problems with those drawings. To me they weren't sufficient. If it's

sufficient to other Members of the Board, that's fine. They didn't have the particular detail in particular to elevations that I would like to see. Again, I would defer to everybody else. This is the time to alert them if we want them if we want --

STEVEN ALIANO: Would you like to pass them around or look through them?

CONSTANTINE ALEXANDER: No, we've seen them. They're in the file.

BRENDAN SULLIVAN: I think let's continue the matter, No. 1. There are some problems with the dimensional form, No. 1. And maybe the level of detail on the drawings, No. 2.

CONSTANTINE ALEXANDER: To me. Again if you and others are --

PAUL ZBRUZ: These are lacking the structural drawings. These are just the architectural. We also have a structural

engineer on board which has more detail on how to construct this.

CONSTANTINE ALEXANDER:

Particularly on the elevations. You only have one or two elevations here. I'd like to see a little bit more detail of the before and after if we grant you relief. To me I didn't see on there.

BRENDAN SULLIVAN: That's where I was leading. That's the proposed and what is --

PAUL ZBRUZ: I just did a section of the existing.

BRENDAN SULLIVAN: Right. What we need is a -- right.

PAUL ZBRUZ: Do you want all four sides of the elevation?

CONSTANTINE ALEXANDER: Yes.

THOMAS SCOTT: Before and after.

TIMOTHY HUGHES: We're good with pictures.

BRENDAN SULLIVAN: On the motion to continue this, Sean, until?

SEAN O'GRADY: July 14th.

BRENDAN SULLIVAN: July 14, 2011 on the condition that the Petitioner sign a waiver for statutory requirement for a hearing, and a decision to be rendered thereof. And that you change the posting sign, the blue sign, to reflect the new date of July 14, 2011 at seven p.m.

CONSTANTINE ALEXANDER: And then remind them of when they have to get the new dimensional form --

BRENDAN SULLIVAN: And that any new drawings, dimensional forms have to be in by Monday prior to July 14th.

CONSTANTINE ALEXANDER: Five p.m. Monday.

BRENDAN SULLIVAN: Five p.m. on prior to July 14th. Which is the 11th? Something like that. Five p.m.

All those in favor of granting the continuance?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of continuance? Yes, five in favor.

CONSTANTINE ALEXANDER: Excuse me, it's very important. If you don't get those in by Monday, we're not going to hear the case next time.

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

(9:00 p.m.)

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

BRENDAN SULLIVAN: The Board will
hear case 10104. 146-148 Magazine Street.

SHIPPEN PAGE: Good evening. My
name is Shippen Page. I represent the
Petitioner Emer Grall and with me is the
contractor Maurice Keane.

MAURICE KEANE: Maurice
M-a-u-r-i-c-e Keane K-e-a-n-e.

BRENDAN SULLIVAN: Okay.

SHIPPEN PAGE: Thank you,
Mr. Chairman. Would you like me to proceed?

BRENDAN SULLIVAN: Yes. Are we

proceeding with the case or is there still some information that we need to have filed? I guess my thought was that the sections that you're citing, which would be 5.31, that this is really an up conversion from a three to a four, so 5.26 should be cited which obviously entails FAR, open space, lot size, controlling unit, and parking.

Now, 5.31 is really dimensional relief, but probably 5.26 should have been cited. That would be No. 1.

The other thing is the absence of a dimensioned parking plan which I think is somewhat crucial and critical to any consideration proposed to possible relief. I didn't see one in the file.

SHIPPEN PAGE: I believe, Mr. Chairman, that we had submitted a proposed, two proposed parking plans, one showing the rear and one showing the side parking. And let me see if I've got that in

the file here.

BRENDAN SULLIVAN: There was a scheme, A Exhibit 2 and Exhibit 3.

SHIPPEN PAGE: Yes.

BRENDAN SULLIVAN: One of the requirements of a parking scheme requesting relief is that it be dimensioned which is not is lacking.

We do have certified plot plan, which obviously is helpful. And we do have interior floor plan which is also helpful, but those two things I think are somewhat critical. Is that correct, Sean? Would be the proper advertising under --

SEAN O'GRADY: Yes. And any other relief that may be required under Article 6.

BRENDAN SULLIVAN: Correct. I think you're aware of those, are you?

SHIPPEN PAGE: I am.

BRENDAN SULLIVAN: Somewhat?

SHIPPEN PAGE: Yes.

BRENDAN SULLIVAN: So I think what's before us is to continue this matter. There may be a re-filing which may be necessary; is that correct?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: But we will continue this matter, leave this open and what would be --

SEAN O'GRADY: I'm just trying to think, if they got a file in where they would be -- I think Maria just closed -- I think she just closed the 23rd.

BRENDAN SULLIVAN: Do you concur with what I'm saying?

SHIPPEN PAGE: I'm not entirely sure, Mr. Chairman. I understand the absence of citing particularly 5.26. The narrative of the application does clearly reference the requirements of 5.26. It's my inadvertence for failing to not specify that particular section. I am wondering whether

that is in fact a fatal omission with respect to the public integrity of the publishing process, and whether or not there is some way -- here's the situation in a nutshell. Mr. Keane is going to Ireland on the 12th of July. This has been something which I filed on the 12th of April. I've re-filed because there was some information on the 25th of April, and these oversights were brought to my attention this morning. Nobody's fault by my own. I would respect greatly the staff of the Building Department and the BZA. This came as an unwelcome surprise. I'm embarrassed quite frankly for being in this position, but never mind, that's where we are. And it would be my hope that I could avoid a substantial delay if this would require Mr. Keane as far as proceeding with this project. And I heard Mr. O'Grady say that the next available date was the 14th of July. He's going to Ireland.

CONSTANTINE ALEXANDER: No more. I think we've lost that.

If he re-advertised. If you got a new application in tomorrow with the proper -- how quickly can we have the case?

SEAN O'GRADY: I don't know for sure, but I believe Maria closed out June 23rd today.

CONSTANTINE ALEXANDER: For the regular agenda?

SEAN O'GRADY: Yes. I'm fairly comfortable that if an application came in tomorrow, it would be put on July 14th.

BRENDAN SULLIVAN: You're way until when?

MAURICE KEANE: I leave on July 12th.

CONSTANTINE ALEXANDER: Another possibility, Mr. Chairman, is that we could take just one more regular case than we usually do on the 23rd, right? Or is that

impossible?

SEAN O'GRADY: No, actually the 23rd closed today because we were rushing to get everything done.

CONSTANTINE ALEXANDER: When you say closed, I'm not sure what you mean.

SEAN O'GRADY: For advertising and here and there.

CONSTANTINE ALEXANDER: Oh, time frame, got it.

SEAN O'GRADY: Ring all our bells.

BRENDAN SULLIVAN: I open this up to all the Board Members, I mean starting down here by working this way, are we correct in that because of a non-conversion that a 5.26 is necessary even though in the narrative I think the issues are addressed? I mean, I sort of struggled with it, too, that, yes, you addressed it, the issues, but that the proper section was not cited.

CONSTANTINE ALEXANDER: My view, I

think the better view was that you should have cited 5.26. On the other hand, we could hear the case and then you run the risk that someone could challenge the relief on the grounds that it was improperly advertised. I mean, if we heard the case, if we said all right, we can live with the way it's been done, because indirectly you bring in 5.26 which is your point, your risk, though, is that if there's an abutter or someone who wants to challenge it, you're going to have potentially a flaw in your decision. I'm okay with hearing the case if they're okay.

BRENDAN SULLIVAN: I think that would be total fatal if the issues were not addressed.

CONSTANTINE ALEXANDER: I absolutely agree with you.

BRENDAN SULLIVAN: And I think that if anybody had any interest in the case and it came down and said well, okay 5.31, what

does that mean? I think that's usually what the general public says, "What does that mean?" Well, it's dimensional. Well, what do you mean by dimensional? And then well FAR, and so on and so forth, and I think then all of that sort of gets thrown into the stew, in the mix, if you will. And so those issues get addressed. I think you may be a hundred percent correct, and again, yes, you do run the risk that somebody could say that it was an improper hearing.

CONSTANTINE ALEXANDER: I think the ball's back in your court, sure. Do you really want to run?

SHIPPEN PAGE: I think that's a fair assessment, sir. And I think that given the widespread support for this project amongst the neighbors and abutters, and the fact that it's my understanding, that should this run the 20-day appeal period following the issuance of any decision and then it would

become final and can be recorded, I don't think somebody at that point somebody was concerned with the technical advertising requirement would have necessary understanding to overturn that.

CONSTANTINE ALEXANDER: I think you're wrong on that. I think there's law to the effect that if a case has been improperly advertised, that the 20-day period doesn't cut-off a challenge based on improper advertisement. I think. That's my belief.

SHIPPEN PAGE: I'm unfamiliar with that, so I would have to plead ignorance on that. I think under the circumstances, I'd have to confer with my client. But it seems to me that the risk of somebody challenging that, unless it's a risk that runs in perpetuity, and I frankly would have to adjourn, research that, come back. I think weighing that against the -- it's been advertised, it's been posted.

CONSTANTINE ALEXANDER: It's your call. You won't disappoint me.

SHIPPEN PAGE: I think the procedure but for this, and I don't mean to diminish the flaw, and I think but for that we are pretty well set to proceed on the substance. My only concern is if a member of the Board feels that at this stage it's so fatal that they couldn't support the substance, and therefore we should withdraw, because having proceeded and then Mr. Chairman brings it to a vote, that I find myself dealing in a situation where one of the Board felt that they couldn't in good conscience --

CONSTANTINE ALEXANDER: We can't give you that comfort tonight.

SHIPPEN PAGE: No. I mean, so that's if you are denied tonight after a vote, then it's a two-year period where you are prejudiced.

MAURICE KEANE: I'm not waiting for

a vote in that case.

BRENDAN SULLIVAN: Doug, do you understand the issue?

DOUGLAS MYERS: I really have no clearcut opinion. I mean, I really have no clearcut opinion. I'm really listening at this point.

BRENDAN SULLIVAN: Okay. Tim?

TIMOTHY HUGHES: The only omission is it's citing that particular section.

CONSTANTINE ALEXANDER: I also thought there was some material that was not in the file.

TIMOTHY HUGHES: You started to say something else about the file that you thought might be --

BRENDAN SULLIVAN: Well, is citing that, then the other issue is we're being asked to give relief on the parking plan, tandem parking, and also parking plan. And it's -- I think a prerequisite that we have

that parking plan be dimensioned.

CONSTANTINE ALEXANDER: Yes, but that's a reason to continue the case. That's not a requirement -- that's not a problem that requires re-advertisement.

BRENDAN SULLIVAN: Right, it's two headed. Dragon hearing in a sense.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: The first head I'm not as insistent upon a re-advertising. I'm -- I think that you've addressed the issues under 5.26. If you were absent addressing those issues, it would be fatal. It is not. In my mind. So that I think it's a mere technicality. Yes, that you could be challenged on it, but that's, you roll the dice on that.

The other issue, though, is the dimensioned parking plan which we haven't requested any time that we've been here. And frankly, we've requested it on Cambridge

Street just recently that they come in and so it's part of our motus operandi. So I would think that is a necessary in order to get the case is my understanding. But that would be a continuance.

Tom, do you understand what we're talking about here?

THOMAS SCOTT: Yes.

BRENDAN SULLIVAN: Do you have any feelings chiming in or views?

THOMAS SCOTT: Now, I think on 5.26 he identifies the issues so I'm okay with that.

BRENDAN SULLIVAN: Okay.

TIMOTHY HUGHES: Are you okay with that?

SEAN O'GRADY: Well --

TIMOTHY HUGHES: Would the Department be okay with that?

SEAN O'GRADY: Frankly, if you were to grant relief on this tonight, I'm not sure

that I would consider it there to be sufficient information to grant. There's still in my mind this issue of the parking and the side setback.

CONSTANTINE ALEXANDER: Put that aside for a moment. Suppose when we continue the case until June 23rd and they bring in the parking plans and all the information we need.

BRENDAN SULLIVAN: As a case not heard.

CONSTANTINE ALEXANDER: As a case not heard. We still have the flaw arguably of the fact that there's no citation of 5.26. So I think the risk is entirely yours. I think as a Board we can hear the case, but you know, you've got to understand that maybe a neighbor emerges from somewhere and challenges the relief, assuming we grant you relief, on the basis that you improperly advertised. So that's your call not our

call.

SHIPPEN PAGE: And then the option is that we can then, case not heard, hear it in August, September, October, at some point in the future, re-advertise, cite --

CONSTANTINE ALEXANDER: Absolutely safe to re-advertise.

SHIPPEN PAGE: So this is both a business and a legal decision.

MAURICE KEANE: Okay.

BRENDAN SULLIVAN: If we were, let me just -- if we were to continue it, can we get on to June?

SEAN O'GRADY: No, they would be heard faster with a re-advertisement than with a continuance at this point.

BRENDAN SULLIVAN: So July 14th to the end of July? Are you out for two weeks or two months?

MAURICE KEANE: Two weeks.

BRENDAN SULLIVAN: So you're into

August?

MAURICE KEANE: Yeah, how it really impacts me --

SEAN O'GRADY: When do you come back?

MAURICE KEANE: I can't really do anything for two months, and then I can't do anything for two to three months after that with the house. So basically, it's a four-family house -- it's a three-family house. I've renovated one side of it. The lady I bought the house from, I moved her into one side with my wife. I moved her into the one side, and I moved her back in because she didn't want to leave the neighborhood. I don't want to rent the top side of the two-family until I renovate the left side because nobody will live through the noise. If I can't do anything with the house for five months and it takes me five months to renovate it, then I have the house sitting empty for

another ten months, which is a financial hardship to say the least. You know, based on my two month waiting for a hearing, 60 day waiting for an objection and what is it, a several days after that before you can start. So it would be five months away before I can lift a hammer again. And I'm just kind of surprised that since this application did go in two months ago, how if it's incomplete, how we don't know about it until now.

SEAN O'GRADY: I can answer that, but I don't think you're going to like the answer.

SHIPPEN PAGE: I can predict how Mr. O'Grady is going to answer the question. I should have cited that particular condition. It's not up to the Zoning Board to point out what I'm doing.

MAURICE KEANE: Okay.

SHIPPEN PAGE: Okay?

BRENDAN SULLIVAN: Well, the

dimension parking plan is I think paramount to me to continue with the consideration of the application.

SHIPPEN PAGE: Is there any provision, Mr. Chairman, for hearing this on the stipulation that we would provide the parking or is that putting the cart before the horse?

TIMOTHY HUGHES: Do we have anything in the file that could be marked up as a dimensional plan?

MAURICE KEANE: There's a plot plan that actually shows the width of the driveway that was submitted. So it's nine foot, three inches or nine foot, two inches, and the plot plan and proposed parking plan were taken off the same drawing. So it actually shows the driveway width on the plot plan.

SHIPPEN PAGE: This is a house built in 1894. I don't want to go too much into substance because we're going to bias or

prejudice the hearing.

CONSTANTINE ALEXANDER: I understand your dilemma. Speaking only for myself, I understand your dilemma but we have our rules.

MAURICE KEANE: No, I understand.

CONSTANTINE ALEXANDER: And you want to run a business risk on the 5.26, that's your call. But you don't comply with our rules with regard to the parking plan, I'm not prepared to hear this tonight.

MAURICE KEANE: And I don't want to come back and be a problem --

BRENDAN SULLIVAN: And absent of this and not doing this, if they were to park in the back, and then that triggers the open space dimension which, you know, on the dimensional form also -- I think you may want to readdress the dimensional form because it has ratio views for open space, existing is 48 percent, request is 48 percent, ordinance

requirement is 15 percent. Actually, the requirement is 30 percent on C-1.

SHIPPEN PAGE: And the height, Mr. Chairman, is 30 instead of 45. They're at 35.

BRENDAN SULLIVAN: Yes. So it's just some little cleaning up of that. But I think what we would need if you were to proceed with any of those, is how that impacts the open space which again is still the dimensional form has to be really cleaned up a little better.

SHIPPEN PAGE: Mr. Chairman, if I might. I'm holding what I believe was submitted with the application which was a dimensional form. It lacks particular specific feet and so forth, but it does clearly indicate what the parking arrangement that is suggested will consist of.

CONSTANTINE ALEXANDER: What you

just handed, is that in our files?

SHIPPEN PAGE: It's part of the application.

BRENDAN SULLIVAN: Yes.

SHIPPEN PAGE: And this is the way that the parking configuration has been presumably since this house was constructed in 1894. Although there weren't automobiles back then, but presumably somebody put a buggy. I don't know.

MAURICE KEANE: It's always had two cars on the right-hand side, and on the left-hand side was the accountant and always had his car. And so it was always used as, you know, four spaces.

SHIPPEN PAGE: I just raise that for clarification.

BRENDAN SULLIVAN: I know. And I can say last month we had a case on Cambridge Street where they -- and we made them, you know, same thing go back and dimension it.

You know, setback.

TIMOTHY HUGHES: That's not considered a tandem parking?

BRENDAN SULLIVAN: That's an alternative scheme.

TIMOTHY HUGHES: But that scheme would be as a matter of right?

BRENDAN SULLIVAN: Well, possibly not because there are turning radiuses. There are a whole other considerations for that scheme, too.

TIMOTHY HUGHES: The question of one car not having to move for another?

BRENDAN SULLIVAN: Right. It's turning radiuses, backing up, turning around dimension, it's a whole bunch of stuff. It comes under Section 6.

TIMOTHY HUGHES: And then that does trigger a re-evaluation of the open space more so than the first plan?

DOUGLAS MYERS: It seems to me,

Mr. Chair, we have a series of jury-rigged issues. To me anyway, we've reached a cumulative point where this case really should be continued. It's a great pity -- I'm not looking at you. It's a great pity that there's no sooner date. It's a great pity we've had some June dates, but they're gone by the time we've reached you and that's unfortunate.

CONSTANTINE ALEXANDER: I second what Doug said.

TIMOTHY HUGHES: Is there somebody who can be here for you on the 14th?

SHIPPEN PAGE: I mean, the architect can show.

MAURICE KEANE: I would rather be here myself.

SHIPPEN PAGE: Just by way of inquiry, if there is a cancellation or anything on the 23rd, somebody pulls, is there some means for doing that? Is there

ever a waiting list?

BRENDAN SULLIVAN: No. Because once we set the date, we set the date before we leave and that's it.

SHIPPEN PAGE: Okay.

BRENDAN SULLIVAN: So we are into?

SEAN O'GRADY: The 28th then. The July 28th, it's not the 14th.

MAURICE KEANE: I am back that day, yes.

SHIPPEN PAGE: What time?

MAURICE KEANE: Five o'clock. Three o'clock. I'm be sleeping here.

SHIPPEN PAGE: I'll wake you up for the critical points.

BRENDAN SULLIVAN: Motion to continue this until July 28, 2011 at seven p.m. on the condition that the Petitioner sign a waiver to the statutory requirement for the hearing on the decision to be rendered thereof. And that you change the posting

sign on the property to reflect the new date of July 28, 2011 and time of seven p.m.

DOUGLAS MYERS: Case not heard?

BRENDAN SULLIVAN: And any revisions, changes, clarifications be in the file by five p.m. the Monday prior to July 28th.

All those in favor of continuing the matter?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

THOMAS SCOTT: Is that in lieu of re-filing? Why wouldn't he re-file? He could have the same date? And you could take care of the --

BRENDAN SULLIVAN: We'll continue this matter.

TIMOTHY HUGHES: This is not necessarily in lieu of that. They could still have the option of re-filing.

MAURICE KEANE: I say we re-file

just to get the paperwork.

DOUGLAS MYERS: Clean-up the section 5.26.

THOMAS SCOTT: Then you have everything correct.

TIMOTHY HUGHES: It doesn't hurt to have this date open.

BRENDAN SULLIVAN: It will keep this alive anyhow.

SHIPPEN PAGE: Thank you, Mr. Chairman. Thank you, Members of the Board.

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

(9:25 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case 10105, 76 Fayerweather Street. Introduce yourself for the record.

RICK SIMONSEN: I'm Rick Simonsen and my wife Kimberly.

BRENDAN SULLIVAN: The issue is before us of whether or not -- it was observed that the posting sign was not present when one of the members went by. And can you explain that fact, I guess, what it was.

RICK SIMONSEN: I think Kimberly can explain that.

KIMBERLY SIMONSEN: The sign had

been posted on the interior of one of our windows, and on Sunday they started prepping our first floor to paint, and the painters took it off. And I went and I put it back up. And they came and they took it off again. We put on the front porch, on the inside. And with the weather that we had this week, I guess it fell off again. So we posted it again with tape around it. But it's definitely been there.

BRENDAN SULLIVAN: Okay.

KIMBERLY SIMONSEN: But the windows were completely taken out. Every window on the first floor, and that's where it was posted.

BRENDAN SULLIVAN: Okay.

I mean, I did see the sign there last week. I'm not sure what day, but from the Tuesday, Wednesday of the previous week. I did also observe it there Monday evening in the window facing the house on the right,

there had been a window I guess is where it was. And then I observed it there today, that's actually on the face of the house.

KIMBERLY SIMONSEN: Right.

BRENDAN SULLIVAN: So I felt -- I guess my feeling is that there was an attempt to at least display it I guess.

CONSTANTINE ALEXANDER: And it's my view that -- I accept the fact that -- your representation there was an attempt to display it. But we've had cases like this before, and we've consistently, in my judgment, required people to continue the case and post it for the 14 days. The fact that the contractor took it down is not sufficient to allow us to go forward with the case when the sign hasn't been up. You know, the rules are the rules. And you have the responsibility of making sure that the people who work on your premises, obey the sign requirements. So from my perspective, I'm

not prepared to hear the case tonight. If the case goes forward, I'm going to abstain because I think it's insufficient notice, and you'll have to get other four members of this Board to vote in favor because you need four votes. You won't get my vote. Not because I have any animus against you. I think the rules are the rules and we've got to be consistent. And we've treated other people this way with the requirement to continue the case, and I don't want to make a different exception in your case.

BRENDAN SULLIVAN: Tom, what's your opinion?

THOMAS SCOTT: I'm in agreement with Gus. I have an issue with going forward.

BRENDAN SULLIVAN: Doug?

DOUGLAS MYERS: I've stated it before you came but I should state it in your presence. I feel the same way. Our notice requirements here are entirely dependent on

the public posting, and the public posting, because who knows, the basis behind it is the member of the public who has an objection or lives in the neighborhood walking by might just walk by during the notice period at a time when the sign is down. And I think for the public notice to be meaningful, it has to be continuous. And that's all we have. We don't advertise in the newspaper. We're dependent on public notice on your property. So, again, I accept the truth, the veracity of what you say. I accept 100 percent. The fact that it was inadvertent is unfortunate. But nonetheless cumulative there were two or three gaps in the public posting and I don't see how I can overlook that.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: Well, my opinion is kind of irrelevant at this point.

BRENDAN SULLIVAN: What are your --

TIMOTHY HUGHES: I agree. I mean, I

don't think two weeks is an onerous burden on the petitioner to make sure they have consistent posting. And I know, I agree with Doug, too. I'm sure there were problems with the painters. Can't always be trusted. But I think it's a bare minimum requirement to post it for two weeks.

Now, the good news is that if you put it up tonight, we can get you back in here in two weeks and get it taken care of I think.

RICK SIMONSEN: It's up.

TIMOTHY HUGHES: And make sure it stays up for the next two weeks.

DOUGLAS MYERS: Talk to your painters.

KIMBERLY SIMONSEN: Well, now we have a new front porch. It can be put on the new front porch. That was also new last week.

TIMOTHY HUGHES: I think we do have to continue it. But I would be willing to

squeeze it in on the 9th.

DOUGLAS MYERS: Case not heard?

BRENDAN SULLIVAN: I make a motion to continue the matter until June 9, 2011 at seven p.m. on the condition that -- well, I don't think we have a time constraint here, Sean, do we?

SEAN O'GRADY: As far as?

BRENDAN SULLIVAN: A hearing required by June 11th. So we'll be okay on the 9th.

SEAN O'GRADY: You want to go without a waiver?

TIMOTHY HUGHES: They don't have to sign a waiver.

BRENDAN SULLIVAN: They don't have to sign a waiver. But it has to go forward on the 9th.

So it will be continued until June 9th 2011 at seven p.m. And on the condition that the Petitioner change the posting date on the

sign to reflect the new date and time.

All those in favor of the continuing the matter until June 9th.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

CONSTANTINE ALEXANDER: Take the sign and cross out the date and time and put June 9th, seven p.m. And you have to monitor the premises to be sure that sign stays up.

KIMBERLY SIMONSEN: I will staple it with 100 staples.

DOUGLAS MYERS: Everyday. If you can possibly, you should really go by everyday.

KIMBERLY SIMONSEN: And to be honest with you I go in the morning and I go in the evening. And yesterday, it had footprints on the back of it. It was laying on the front porch. So it went up again.

TIMOTHY HUGHES: Do you still have

workmen in the house?

RICK SIMONSEN: Yes.

TIMOTHY HUGHES: Tell them you're not going to pay them their last payment if that sign comes down for even five minutes.

KIMBERLY SIMONSEN: The painters don't care. I'm not paying them.

TIMOTHY HUGHES: Their boss will care.

KIMBERLY SIMONSEN: I'm not paying the painters, the contractor is.

RICK SIMONSEN: I would like to apologize to everybody here in this room that we were late. We were under the impression that we were the last to be heard tonight and that we were going to be around eleven o'clock. So, we brought books. We brought books to read.

DOUGLAS MYERS: We accept your apology, but there is a time indicated just for your guide in the future.

TIMOTHY HUGHES: This is first time we've been on schedule for like, what five years?

RICK SIMONSEN: We prefer to be prompt and we thought we were. So I apologize.

CONSTANTINE ALEXANDER: That's okay.

BRENDAN SULLIVAN: We're adjourned.
(Whereupon, at 9:40 p.m., the
Zoning Board of Appeal 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 7th day of June 2011.

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

My Commission Expires:
April 23, 2015

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