

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JANUARY 31, 2019

7:30 p.m.

in

Senior Center

806 Massachusetts Avenue

First Floor

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Andrea A. Hickey, Member

Jim Monteverde, Associate Member

Laura Wernick, Associate Member

Sisia Daglia, Assistant Commissioner

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(7:30 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call this

meeting of the Board of Zoning Appeals to order. And before we start to hear the first case I would like to read a statement:

After notifying the chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium subject to reasonable requirements that the chair may impose as to the number, placement, and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the Chair will inform other attendees at that meeting that a recording is being made. And I wish to report that not only one but two recordings -- at least two recordings are being made. A citizen of the city has left his tape recorder right there and our stenographer records the meeting to assist her when she prepares the transcript of the meeting.

Is there anyone else here going to be recording or videotaping this meeting?

(No Response.)

CONSTANTINE ALEXANDER: None. So we have just two.

With that, we can turn to the regular agenda.

* * * * *

(7:30 p.m.)

(Sitting Members Case No. BZA-017051-2018: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: And the first case to call I'm going to call is No. 017051, 257 Charles Street.

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

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair, members of the Board. For the record, my name is James Rafferty. I'm an attorney with offices at 907 Massachusetts Avenue. I'm appearing this evening on behalf of the property owner and the Petitioner Carole Bellew, B-E-L-L-E-W. And Ms. Bellew is seated to my right.

This property is a somewhat unique property containing two structures on the corner of Charles --

CONSTANTINE ALEXANDER: Charles and Sixth.

ATTORNEY JAMES RAFFERTY: Yes, Charles and Sixth Street. And there are two freestanding structures. Both owned by Ms. Bellew. She lives in one of them and rents out the other. She's owned this property now as her principal residence for 30 --

CAROLE BELLEW: 15 years.

ATTORNEY JAMES RAFFERTY: 15 years. Wow. Okay. You've been going to the East Cambridge Planning meetings for years.

So at any rate, I suspect the Board is familiar with the location and the property. What's proposed is as part of, candidly, Ms. Bellew's estate planning, she has two sons. She would like to create separate ownerships for these structures. I'm sure some members of the Board would recognize that that could be achieved through a condominium plan, but there are some cumbersome aspects to that. So given the --

CONSTANTINE ALEXANDER: What are they just out of curiosity?

ATTORNEY JAMES RAFFERTY: Well, you have to have a Master Deed. You have to have a budget. You have to get a 6-D certificate when you convey. And you don't have the same level of ownership that a fee simple does.

CONSTANTINE ALEXANDER: I understand that.

ATTORNEY JAMES RAFFERTY: And that's -- so she has spoken with her neighbors, and really as the Board probably recognizes, what will happen here is strictly a matter of title. Lines will be drawn on paper. The intensity and use of the property will remain unchanged. It will go from being a small lot to two.

CONSTANTINE ALEXANDER: Really small lot.

ATTORNEY JAMES RAFFERTY: Even smaller lots. There is some historical precedence for it, because a neighbor and a capable conveyancer herself who is here in support, found a 1916 plan that showed these as two separate lots. So at one point in the life of Cynthia Wall who is here, provided that to me just within the last few days.

Both lots have the advantage of having driveways, so there are no changes in any of the dimensional issues.

The FAR changes slightly from the current, but there isn't any change in the overall GFA. As I said, the density or intensity of the use is unchanged. So it's for that reason that the Board asks for this relief limited strictly to the fact that we'll be creating two lots that fail to meet the minimum lot size. There are some setback -- non-conforming setbacks, but they are essentially unchanged because the setbacks already exist with the existing property. The separation between properties, it meets the ten foot minimum. The side yard setback will be reduced for the what we're calling Lot 1 on the plan compared to currently that setback in the rear is unchanged but on the side it will be closer. So it's not a complicated case.

The hardship has to do with the unique nature of the two structures. The fact that they're on a corner and present themselves very independent of one another lends themselves, we would respectfully suggest, to this type of separation. Oftentimes subdivision variances seek to put party walls between buildings, you have to change the utilities. This, this -- none of that would be necessary with this subdivision request. And for those reasons we think that what's being proposed here is

consistent with the intent of the Ordinance and would ask the Board to act favorably on the request.

CONSTANTINE ALEXANDER: Now, the second structure, what I'm going to call the second structure, which was originally a garage, it became a residence because of action this Board took in -- was it 1994 or 1998?

ATTORNEY JAMES RAFFERTY: 1998.

CONSTANTINE ALEXANDER: 1998. So I thought at that time the die was cast. One day sooner or later there would be a request for a subdivision. Because it is very cumbersome to have two houses on the lot if you want to separate the ownership, either go condominium route, and as of course as you point, Mr. Rafferty, is somewhat complicated or we subdivide. So that's what this is all about.

ANDREA HICKEY: Can I see the paper subdivision plan? I have it on my screen.

CAROLE BELLEW: There was nothing on that property. I built that house. I built the second house.

CONSTANTINE ALEXANDER: There was a garage, wasn't

there?

CAROLE BELLEW: No.

ATTORNEY JAMES RAFFERTY: No, no.

CONSTANTINE ALEXANDER: You just built it?

ATTORNEY JAMES RAFFERTY: They built it and it had
garage parking.

CAROLE BELLEW: It was an empty lot.

CONSTANTINE ALEXANDER: That's right.

But you made a point in your presentation that I want to
reiterate, which is correct. And that the only issue before us tonight is
whether to approve a subdivision. We're not passing upon the -- how you
draw the lot lines. That's a private matter. And if there are abutters or
people who are concerned about your encroaching on their property, that's
for you and them to work out. Not a matter for us. We're not passing on
it one way or another.

ATTORNEY JAMES RAFFERTY: Right. Well, to that
point --

LAURA WERNICK: Might there be a side yard variance

issue if it was not split between the two properties?

ATTORNEY JAMES RAFFERTY: No, because that property line is already in place. The property line -- what we're calling the lot 2, the 99 Sixth Street structure, that property line and that setback is unchanged. The one change occurs between a property line that will be between the two, the two structures on this property, not the abutting structure. It is true that the survey has revealed, at least this surveyor, that it would appear that there may be an encroachment --

CONSTANTINE ALEXANDER: That's why I mention it.

ATTORNEY JAMES RAFFERTY: -- but not from the Petitioner's side. The encroachment, as it's depicted here, suggests that there may be an encroachment onto this lot. And I made it clear that that's not -- that situation, and whatever opportunities exist to resolve it, would not be impacted by the Board's action or this request.

CONSTANTINE ALEXANDER: And I want -- the point I want to make, is we're not endorsing any lot lines with regard to this division. That's to be worked out by you and whoever you have to work it out with, maybe nobody. But we're just approving the subdivision. One lot

becomes two lots and that's the end of -- in my view, that's the end of the story if we should approve it. That's the issue.

ANDREA HICKEY: I think we are being asked to approve the subdivision as shown on this plan.

CONSTANTINE ALEXANDER: I'm not going to approve --

ANDREA HICKEY: Is that what we're being asked to approve this subdivision?

ATTORNEY JAMES RAFFERTY: Yes.

ANDREA HICKEY: Then I think --

CONSTANTINE ALEXANDER: I don't think we have to -- wait, all we need to do is prove a subdivision. We don't have to tie it to that plan.

ATTORNEY JAMES RAFFERTY: Separating the lots doesn't address the issue of the encroachment because the lot --

BRENDAN SULLIVAN: The perimeter boundaries --

ATTORNEY JAMES RAFFERTY: The lot line. Excuse me, I apologize. The lot line where the encroachment is occurring is not

affected by the subdivision.

JIM MONTEVERDE: Right.

BRENDAN SULLIVAN: Correct. The perimeter boundaries have been set.

ATTORNEY JAMES RAFFERTY: That's right.

BRENDAN SULLIVAN: All we're doing is an internal line.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Exactly my point.

ATTORNEY JAMES RAFFERTY: The subdivision goes from the point where the encroachment may be occurring down to Charles Street. We're not -- that lot line remains unchanged. So there's no action by the Board tonight that could be seen as endorsing or affirming anything.

LAURA WERNICK: I think the question is does that location of that new line have any significance precisely and it doesn't appear to have any significance.

ATTORNEY JAMES RAFFERTY: It has significance in terms of creating the separation, but it doesn't have significance in the context of

the possible encroaching. If we were moving that line, I think --

LAURA WERNICK: Oh, yeah.

ATTORNEY JAMES RAFFERTY: -- that that would clearly be the case.

ANDREA HICKEY: How long has the structure on Lot 1 been there as shown on this plan?

ATTORNEY JAMES RAFFERTY: The structure on Lot 1? Is that the smaller structure?

ANDREA HICKEY: Yes.

ATTORNEY JAMES RAFFERTY: Since the issuance of the Variance in 1998 that authorized its construction.

ANDREA HICKEY: Yeah, the fact that that structure appears to be only three feet from the proposed new subdivision lot line for Lot 2 do we have a side yard sort of setback issue there?

ATTORNEY JAMES RAFFERTY: Well, we do. That's why we're seeking the Variance for the subdivision. The subdivision Variance addresses the minimum lot size issue and also the new setback, the new setback between those two properties, between Lot 1. That's a part of

the Variance request.

LAURA WERNICK: So we are approving this.

ANDREA HICKEY: Yeah, we are. That's how I see it.

ATTORNEY JAMES RAFFERTY: I'm sorry, when you say
"We're approving this."

LAURA WERNICK: That precise new line, the division.

ATTORNEY JAMES RAFFERTY: Oh, without question.

Without question. The Variance will allow for the recording of that plan
and the conveyance of deeds that describe those boundaries.

LAURA WERNICK: Yeah.

ATTORNEY JAMES RAFFERTY: But I maintain that none of
that impacts the area where the encroachment is correct.

ANDREA HICKEY: I'm not concerned about the
encroachment at all.

LAURA WERNICK: I'm not concerned about the
encroachment.

ATTORNEY JAMES RAFFERTY: Candidly that setback, we
discussed the possibility of adjusting that property line and then granting

an easement back because it comes down the middle of the driveway and we're short on that setback by three and a half feet.

ANDREA HICKEY: Right.

ATTORNEY JAMES RAFFERTY: It seemed cumbersome and she's owning both properties and it would take away one less form of relief. But functionally because we're talking about an area where there is no structure now, both properties could have compliance side yard if we carved the driveway. But the thinking here really is to create --

ANDREA HICKEY: I get it. It's the three feet from that new line that I'm looking at, but I'm not overly troubled by this. I mean, I don't know about anyone else.

CONSTANTINE ALEXANDER: Any further comments or questions from members of the Board? Or comments?

JIM MONTEVERDE: No.

CONSTANTINE ALEXANDER: None.

I'll open the matter up to public testimony.

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

Ma'am.

CYNTHIA WALL: Good evening. My name is Cynthia Wall. W-A-L-L, and I live at 130 Otis Street in East Cambridge. I would like to support Carole's application. I believe that it meets the criteria necessary that you need to find in order to grant these variances. I also believe it's the minimal relief that she needs. I believe that the criteria of this unique shape of the land as Mr. Rafferty has pointed out, we have a map and Carole and I actually did some research at the Registry of Deeds several years ago. We couldn't find exactly when those two parcels were combined, but for many, many transactions there were actually two parcels, so we're returning it in a sense to that condition.

I also think the relief will not be detrimental to the public for a couple of reasons:

This is a transition area. Across the street is -- the land is zoned for industry and currently it's used by the Broad Institute. It had been the Boston Concessions. So she's got a nonresidential use right across from her. And then she's immediately adjacent to a city park, which I can tell you as a frequent guest is very heavily used in the summer. So it's not a residential area that not everybody would jump to

live in. But I think that having the two small lots is actually more conducive to maintaining the residential area. Who knows in the future. People try to assemble lots in order to do perhaps nonresidential. She's right in this transition area. So I think separating them is a great idea.

And finally, very, very few of us meet the minimum lot area in this neighborhood of 5,000 square feet. I don't, my lot's 4,000. So I think it's very appropriate and I would respectfully request that you grant this for her.

CONSTANTINE ALEXANDER: Thank you. Thank you for taking the time to come down.

For my information how close is Otis Street to this property?

CYNTHIA WALL: Pardon me? What? I'm sorry, sir?

CONSTANTINE ALEXANDER: How close are you to the --

CYNTHIA HALL: Oh, I'm five blocks away.

CONSTANTINE ALEXANDER: Five blocks.

CYNTHIA WALL: Four blocks away. I'm not an immediate abutter.

CONSTANTINE ALEXANDER: You're not an abutter or an

abutter to an abutter.

CYNTHIA WALL: I'm not an immediate abutter. No, I'm not,
no.

CONSTANTINE ALEXANDER: Okay. I just wanted to
know.

NATERCIA AMAYA: Hi.

CONSTANTINE ALEXANDER: Come forward, please.

NATERCIA AMAYA: My name is Natercia Amaya and I live
at 97 Sixth Street.

THE STENOGRAPHER: Can you spell your name for me,
please?

NATERCIA AMAYA: Yes. N-A-T-E-R-C-I-A. Last name
Amaya, A-M-A-Y-A.

And I heard you talking about how it would not affect my
property which was 97 Sixth Street. So that's what I'm here for to hear
what was going on.

CONSTANTINE ALEXANDER: Okay.

NATERCIA AMAYA: Okay? All right.

CONSTANTINE ALEXANDER: You understand the discussion we've been having, the effect should we grant relief is not to any way legitimize any internal lot lines, if you will, between your lot and Petitioner's lot?

NATERCIA AMAYA: Yes. Okay, thank you very much.

CONSTANTINE ALEXANDER: Okay. Thank you.

Anyone else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We do have a number of letters in our file. We have a letter from Margaret Dines, D-I-N-E-S who resides at 96 sixth Street.

(Reading) I have no objections to the two houses at 257 Charles Street being split as separate houses. I understand this division will make them into separate units.

One from a Barbara, would appear to be Rubel, R-U-B-E-L 21 Otis Street. And she's signing a letter that you apparently sent out.

ATTORNEY JAMES RAFFERTY: Yes, that's right. It's more like a petition.

CONSTANTINE ALEXANDER: Exactly. So she's in support by virtue of this.

Similarly, someone who lives from -- I can't read their handwriting at 303 Third Street.

Similarly, someone at 150 Cambridge Street. That's a little bit far away.

One from someone at 146 Third Street.

One Leighton Street. L-E-I-G-H-T-O-N.

Someone at 10 Rogers Street No. 701. I think all of your friends writing letters -- signing the petitions.

303 Third Street.

And lastly, 270 Third Street. No. 509. I didn't see any letters, we have none in our files, any letters of objection to the relief being sought.

With at that, I'll close public testimony. Discussion or are people ready for a vote? What's everyone's pleasure.

JIM MONTEVERDE: I'm ready.

CONSTANTINE ALEXANDER: Everyone okay?

ANDREA HICKEY: I'm ready, sure.

CONSTANTINE ALEXANDER: Okay?

The chair moves that we make the following findings with regard to the relief being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that by virtue of the action taken in 1998, we have two, single-family homes on a single lot that's undersized. And, therefore, whoever owns a property on that -- structure on that lot has got difficulty in terms of just liquidity if they should choose to sell their unit or otherwise manage a situation. With the only alternative, as Mr. Rafferty has pointed out, is to condominiumize the property, but that in turn has its own special problems which again Mr. Rafferty has pointed out.

That the hardship is owing to the shape of the lot. It's an undersized lot on a corner and it is -- these kinds of conditions resulted in our Board granting a Variance in 1998 allowing the construction of a second residence on the property and nothing has changed since then with regard to special conditions.

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

And what we're doing here is basically, although we're having -- the result is an undersized lot or two undersized lots, we are rationalizing the ownership of the two structures and the land, making these properties both more amenable to separate dispositions should one or more of the owners wish to dispose of the property in the future.

So on the basis of all of these findings, the Chair moves we grant the Variance requested, again, pointing out it's based on the subdivision plan that was submitted by the petitioner and which has been initialled by the Chair. But with the caveat that in doing so, we're in no way passing on the internal demarcation lines of the lots, that's if there's an issue, that's to be resolved by private parties. It's not a zoning issue.

ATTORNEY JAMES RAFFERTY: I think you mean external, don't you?

CONSTANTINE ALEXANDER: External, right. Thank you.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, Variance granted.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

* * * * *

(7:55 p.m.)

(Sitting Members Case No. BZA-017052-2018: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 017052, 840 Memorial Drive.

Is there anyone here wishing to be heard?

ATTORNEY GEORGE HALL: Yes, Mr. Chairman. My name is George Hall. I'm an attorney with Anderson and Krieger. My colleague from Centerline Communications is running a little late. I just

called him --

CONSTANTINE ALEXANDER: No problem because we're not going to hear the case tonight.

ATTORNEY GEORGE HALL: Okay.

CONSTANTINE ALEXANDER: Sit down, please.

ATTORNEY GEORGE HALL: Okay, thank you.

CONSTANTINE ALEXANDER: The Board is in receipt of a letter from the Planning Board. Have you seen it?

ATTORNEY GEORGE HALL: I saw it this afternoon, yes.

CONSTANTINE ALEXANDER: We saw it this afternoon.

And if you know, and for the benefit of the members of the Board, the memo says -- among other things: The Planning Board voted to support at one of their member's request to seek information from the Law Department regarding the city's regulatory purview over the new cellular antenna installations and to seek information from the Public Health Department regarding any concerns about continuous exposure of residents to the type of electromagnetic radiation that would be generated.

So the Planning Board or through this member has requested

that we not hear the case tonight. And we should get or they should get and we should have the benefit of input from the Legal Department and from the Public Health Department. And I think as a matter of comity with a fellow Board, we should honor that request.

I'm going to move that we continue this case. I was going to suggest a month from now. It would be a case not heard. Yeah, four weeks roughly from now. The second meeting after this meeting.

Do you have any problems? I mean, do you have a problem --

ATTORNEY GEORGE HALL: You know, I think that the concerns raised by that member had to do with health effects, concerns, concerning RF radiation which is clearly not --

CONSTANTINE ALEXANDER: That's one of the concerns. The other one is the extent at which our Board can regulate these --

ATTORNEY GEORGE HALL: And another issue that we've addressed at some length in our memorandum. So I mean, I don't have authority from my client to consent to that extension. You can --

CONSTANTINE ALEXANDER: Well, we don't need a

consent unless you don't want to sign a waiver for a decision.

ATTORNEY GEORGE HALL: Right.

CONSTANTINE ALEXANDER: We would decide the case.

I would move that we would deny relief. Now, we may get overturned by a court. It will take a lot longer for you to get a court resolution than to wait a month. I suspect you're right. I suspect at the end of the day the Legal Department, the Public Health Department are going to come back and say it is what it is. But I think we owe it to, as I said, as a matter of comity to our fellow Board --

ATTORNEY GEORGE HALL: I understand that.

CONSTANTINE ALEXANDER: -- to pursue this.

So when is the -- not the next session but the one after that?

SISIA DAGLIAN: The 28th of February.

CONSTANTINE ALEXANDER: 28th of February. This is a case not heard so we don't need all the same members here.

Does that work for you?

BRENDAN SULLIVAN: So the scenario of events, you're going to address the issues that are -- well, you're not going to --

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: -- they're going to health and they're going to go to legal. Legal is then going to have to come back, write an opinion. I don't know if it goes to Planning. We obviously get a copy of it, which seems that intervening this month, Planning is going to have to rehear this.

CONSTANTINE ALEXANDER: Exactly. I would think that's right.

BRENDAN SULLIVAN: And they would have two more hearings; is that right, John?

JOHN HAWKINSON: Their schedule?

BRENDAN SULLIVAN: Planning, yeah.

JOHN HAWKINSON: They're almost every week.

BRENDAN SULLIVAN: Oh, all right. So they have -- they can get it on their agenda so that you can come back in a month. I just want to make sure 30 days --

CONSTANTINE ALEXANDER: And same thing with Public Health. Public Health will get back to --

BRENDAN SULLIVAN: To Planning.

CONSTANTINE ALEXANDER: -- the Planning Board. We'll be kept in the loop and we'll have the benefit of all of this and the Planning Board's recommendation on the basis of this on February 28th.

BRENDAN SULLIVAN: All right.

LAURA WERNICK: So he can't -- because his client is not here he can't really determine whether that's the appropriate date or --

ATTORNEY GEORGE HALL: Well, I mean I'm sure that somebody can be here for that meeting. What I can't say is that the company consents to the extension.

CONSTANTINE ALEXANDER: Well, somebody has to sign a waiver for a time of decision. If you don't, we're going to turn you down. That's going to be my motion to turn you down for failure to comply with I think a reasonable request. Just getting more information for this Board. We don't have -- we got this from the Planning Board as you did this afternoon.

ATTORNEY GEORGE HALL: Yeah.

CONSTANTINE ALEXANDER: So we haven't had an

opportunity to pursue it.

LAURA WERNICK: So will someone --

ATTORNEY GEORGE HALL: Well, my

colleague --

ALEX MURSHTYN: Hi, I am Alex.

LAURA WERNICK: Okay.

CONSTANTINE ALEXANDER: You want to just give your

name.

ALEX MURSHTYN: Alex Murshtyn, M-U-R-S-H-T-Y-N.

CONSTANTINE ALEXANDER: I don't know if you were here

for the whole discussion or you came --

ALEX MURSHTYN: I was there for the Planning Board two

days ago so I'm --

CONSTANTINE ALEXANDER: So you're familiar.

ALEX MURSHTYN: -- familiar with the recommendations

and I reviewed their objections. I believe that we've actually mitigated the

objections in the design that we have now with respect to the Law

Department and the Health Department right before the counsel.

ATTORNEY GEORGE HALL: The Board's request is to allow the Planning Board to get responses from those entities and make a further --

CONSTANTINE ALEXANDER: And make a further decision on the application until February 28th.

ATTORNEY GEORGE HALL: This will be continued until February 28th.

CONSTANTINE ALEXANDER: At the earliest, the 28th.

ATTORNEY GEORGE HALL: This will be continued until February 28th.

ALEX MURSHTYN: So, is it not possible to do -- conditionally approve pursuant to --

CONSTANTINE ALEXANDER: No, no. That doesn't work. We want to hear, and the Planning Board would want to hear what the comments, recommendations, whatever, from the these two departments; Legal and Public Health. And we'd have the benefit of that. I think quite frankly, this is off the record and just myself, they're going to come back and say it is what it is, and we'll take action on February 28th. But I don't

want to do that. I don't know what could happen. So I'm just asking you to wait a month for you to come back. The world's not going to come to an end.

If you didn't put your sign up, which a lot of times happens in these cases, we wouldn't hear the cases tonight. So continuances are not unusual unfortunately with these telecom cases.

ALEX MURSHTYN: The sign was up.

CONSTANTINE ALEXANDER: Say again? Oh, yeah, yeah. No, no, that was by way of illustration. I did -- the sign was up, absolutely. No suggestion that there was no sign up.

You'll have to modify the sign if we continue until February 28th, and keep it up for the two weeks before the hearing.

ALEX MURSHTYN: Understood.

ATTORNEY GEORGE HALL: Are we accepted for February 28th?

ALEX MURSHTYN: I'm around. I can be here on February 28th.

CONSTANTINE ALEXANDER: That date works for you?

Again, we'll pick a date that works for you.

ATTORNEY GEORGE HALL: Well, that's the next meeting.

ALEX MURSHTYN: That's the next meeting, so, yeah.

CONSTANTINE ALEXANDER: It works?

ALEX MURSHTYN: It will have to, yeah. Yep, works for me.

CONSTANTINE ALEXANDER: Okay.

All right. The Chair moves that we continue this case until seven p.m. on February 28th as a case not heard subject to the following conditions:

That the Petitioner sign a waiver of time for decision. Failure to do that in the next 48 hours will mean your petition has been denied tonight. In which case you can go to court if you'd like, but it would be a lot longer than February 28th I suspect. That's your first condition, a waiver of time for decision.

Second, that you have to -- the posting sign that you correctly pointed out is up, you have to modify it, do it with a magic marker, to change the new date, February 28th. New time, seven p.m. Make sure

the time as well, otherwise you'll be stuck to later. And you maintain it for the 14 days as required by our Ordinance.

And lastly to the extent you want to modify the drawings, photo sims, the plans you have before us now, those modifications must be in our file no later than five p.m. on the Monday before February 28th.

ALEX MURSHTYN: Is that something that we are -- I came in late on the discussion, but did you discuss the concerns about modifying the facility at all? Or was it just the Law Department and the Public Health --

CONSTANTINE ALEXANDER: I read the Planning Board's memo, the relevant part.

ATTORNEY GEORGE HALL: They're waiting for the Planning Board.

CONSTANTINE ALEXANDER: Yeah.

As I said, it's the Planning Board that's driving this, then we have an -- not an obligation, but we should be respecting their views. Just, they want more time and they want more expertise. I think we should give it to them as our Board.

All those in favor of continuing the case on this basis, say

"Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. We'll see you
on February 28th.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

BRENDAN SULLIVAN: Are they going to sign the waiver or
not? Or do they need to?

CONSTANTINE ALEXANDER: Sir? Someone's got to sign
the waiver.

Thank you.

Did you give them the waiver?

SISIA DAGLIA: It's up here. They have to come and sign it.

* * * * *

(8:00 p.m.)

(Sitting Members Case No. BZA-017053-2018: Constantine Alexander,
Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No.

017053, 263 Monsignor O'Brien Highway.

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

Mr. Rafferty, I want to confirm that's the one for -- because the files got mixed up. This is tonight's. This is what you're looking for now?

ATTORNEY JAMES RAFFERTY: Yes, would they be dated December 11, 2018?

CONSTANTINE ALEXANDER: Okay, yes.

ATTORNEY JAMES RAFFERTY: We fortunately have our architect here and our civil engineer. So I'm going to rely upon them.

For the record, James Rafferty, 907 Massachusetts Avenue. Counsel for the Petitioner. Seated to my right is Ms. Christine Thomas. Ms. Thomas is a principal of Somerbridge Hotel, LLC, and she is an experienced hotelier and operates a number of hotels through her Northern Sites Company and Colwen Hotels. In fact, Ms. Thomas's company operates a hotel that the Board approved several years ago just up O'Brien Highway from this location, the Fairfield Inn -- Fairfield Suites?

CHRISTINE THOMAS: Yes. And also the AC Hotel by Marriott --

ATTORNEY JAMES RAFFERTY: Oh, on Route 2.

CHRISTINE THOMAS: -- at Alewife Discovery Park.

ATTORNEY JAMES RAFFERTY: On Route 2 next to the Old Bowladrome, that hotel as well.

So in this district hotels are a permitted use upon the issuance of a Special Permit.

Also did I introduce the architect? I don't think I did. And you're very important this evening. Would you give your name and spelling to the stenographer.

JASON DIORIO: Jason Diorio, D-I-O-R-I-O. I'm with JAL Hospitality.

CONSTANTINE ALEXANDER: Now, the major change just so I'm sure I'm correct. I wasn't here for the original petition. I didn't sit that night. In my view the major change is to increase the height of the building to add another story and more rooms. Am I correct there are no height restrictions in this district?

ATTORNEY JAMES RAFFERTY: Oh, no, there are height restrictions.

CONSTANTINE ALEXANDER: What are they? Are you going to exceed them?

ATTORNEY JAMES RAFFERTY: No, no. We're not seeking a Variance. This is dimensionally conforming height.

CONSTANTINE ALEXANDER: Oh, okay. That's my question. I just want to make sure.

ATTORNEY JAMES RAFFERTY: Oh, yeah, there's no variances involved here.

The principal change to the hotel, and there is a -- the height has changed from 61 feet to 69.11. The permitted height here I believe is 80 feet.

CHRISTINE THOMAS: Yes.

ATTORNEY JAMES RAFFERTY: So one of the real changes and what drove this is this hotel has a distinction and it's identified in the earlier Special Permit that was granted, that the municipal boundary goes literally not just through the lot but through the building as well. And I commented at the time that there are actually, there will be some rooms in this hotel that you could go to bed in Somerville and wake

up in Cambridge if you roll over. So it's -- the municipal boundary in that area follows the path of the old Miller's River.

But there's shared jurisdiction. The City of Somerville had also granted zoning approval for this. But through the course of the process, and our architect can explain it to you, soil conditions resulted in the need to build up the first floor a few feet. So the principal change that's happening here is at the front entry. It is correct that the height is higher, but the GFA in Cambridge is actually lower. The number of rooms in Cambridge is actually reduced by one. There was a point in time where we discussed with Mr. Singanayagam whether or not this wasn't -- since it was a Use Special Permit, the changes that were occurring didn't trigger any dimensional changes, was it not the case that what's proposed here could be constructed under the Special Permit that was authorized? He reached a conclusion, which I understood, which was that one of the conditions, customary conditions as the Board knows in your decisions, makes reference to a set of plans and these plans are different. So we are here because the plans are different, and we can quickly show you the difference, but they are as the Chair noted, they do

reflect a change in height. And there's an increase in the front setback from three feet to five feet. And a reduction in the rear setback from 113 feet to 111 feet. There's also a significant site improvement. Board members who sat on the prior case in 2017 might recall there was some correspondence that arrived late in the process from advocates of the community path in Somerville who urged the Board not to take action on the case until an access was explored. This site on O'Brien Highway abuts the community path in the rear. Ms. Thomas's commitment at that time was that she was willing to explore that, but didn't -- wasn't able to make a commitment that night. Well, if you've had an opportunity to review the site plan and, again, the civil engineer is here, time and the change here has allowed for discussion on that topic and a redesign of the rear parking lot such that now the site will contain, there's very critical access to the Somerville path and it's seen as the point at which when the Grand Junction Pathway, which has been in much discussion in the last few months in Cambridge, is designed to come into the Twin City Plaza, across O'Brien Highway, which is a signalized intersection in front of this hotel, and then this would be a very effective link to the community path.

In fact, we have correspondence from the advocates this evening. So those are the changes.

As I said, we're happy to bring the architect through. I only state it is a Use Special Permit. The use -- the findings about the appropriateness of the use that were made in the 2017 case, I would suggest that the Board should have little trouble adopting the same findings because of their applicability is equally relevant in this case as it was in the prior case.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

JIM MONTEVERDE: Just one.

You mentioned a soil condition that caused you to raise the ground floor? Could you describe that a bit? Or what's the issue?

CHRISTINE THOMAS: What it was is that there's a lot of non-load bearing land. There's a lot of remediation coming off of this site, and in order to maximize, maximize the amount of solid fill to support GOP in this site leaving soil on was a good idea.

ATTORNEY JAMES RAFFERTY: So it resulted in

lifting -- the height of the ground floor's been raised -- you want to give us some technical numbers there?

JIM MONTEVERDE: No, that's okay.

ATTORNEY JAMES RAFFERTY: No? Okay. Great job.

JASON DIORIO: I was ready.

ATTORNEY JAMES RAFFERTY: You were ready.

LAURA WERNICK: Was the parking lot shifted at all or just the building? The pavement shifted?

>The entire parking lot --

ATTORNEY JAMES RAFFERTY: Why don't you come forward and give your name.

CONSTANTINE ALEXANDER: Name and address, too, please.

ATTORNEY JAMES RAFFERTY: This is our civil engineer.

MICHAEL MALYNOWSKI: Michael Malynowski,
M-A-L-Y-N-O-W-S-K-I, Allen and Major Associates.

What we did is we maintained the driveway access at Monsignor O'Brien Highway, and as we traversed, the original plan was

we kept the parking lot basically the same grade as the road. And what that meant was that we had cut what was happening in the back. As Ms. Thomas had mentioned, we had remediation back there and it's soil that has to be removed in order to -- by raising the building --

JOHN HAWKINSON: Can you speak up a little?

MICHAEL MALYNOWSKI: By raising the building up, we actually come in off Monsignor O'Brien Highway and continue to climb up close to the finished floor elevation of the existing building that's there, allowing us to leave a lot of the kind of dirty dirt in place, cap it, make it safe as opposed to having to remove all of that material off site.

LAURA WERNICK: So it was raised but not shifted horizontally?

MICHAEL MALYNOWSKI: That's correct, yeah.

LAURA WERNICK: And the parking lot is also raised about two feet?

MICHAEL MALYNOWSKI: Yes. And all of that would be kind of decorated behind the building. So as you look at the front of the building, we only came up about a foot and a half. So we've got a couple

of steps right off of Monsignor. And we've got a nice grand staircase with an ADA ramp to get into the front of the hotel. But then the grade kind of chases and raises the back so you don't see the grade change from the road.

CONSTANTINE ALEXANDER: Any other questions from members of the Board?

JIM MONTEVERDE: No.

CONSTANTINE ALEXANDER: I'll open the matter to public testimony.

Is there anyone here wishing to be heard? Sir.

ALAN GREENE: I had a written statement but given the relative conversational style --

CONSTANTINE ALEXANDER: Give your name first and your address.

ALAN GREENE: My name's Alan Greene, A-L-A-N G-R-E-E-N-E. Live at 82 Fifth Street, East Cambridge. I'm a board member of the East Cambridge Planning Team, but I wish to announce that I'm speaking tonight as an individual, so my comments are my own,

not the ECPT's. I went to this 2/17 hearing, and I just want to say that in looking at the plans that I've seen on-line compared to what was there in 2017, my understanding is that the building is an overall increase of nine feet in height. The overall footprint remains pretty much the same. And the overall setback along O'Brien from the sidewalk perspective is remaining the same at eight feet. So, that -- I just want to say I'm not against the use. I'm not against the building increase in height per se, but I think that given -- and I also want to say I've been car free in Boston since 1998. So I spend a lot of time on the sidewalk and I cross that highway there. So I just think the psychological impact from the perspective of the pedestrian on the sidewalk there, when you have nine feet more, you need a further setback.

CONSTANTINE ALEXANDER: Excuse me, let me correct you. It's not nine feet, it's five feet.

ALAN GREENE: No, it's nine feet.

CONSTANTINE ALEXANDER: Not according to our files.

ALAN GREENE: It's 160 and whatever, seven inches to 169.

CONSTANTINE ALEXANDER: The plans were submitted to

us in 2017 showed a building of a height of 64 feet. What they're showing --

ALAN GREENE: No, it was 60 -- it's 60 -- it was 60 -- sorry.

ATTORNEY JAMES RAFFERTY: No. It did go from 61 to 69.11.

CONSTANTINE ALEXANDER: It did? Okay. I read the file. I saw 64.

ALAN GREENE: Yeah, so nine feet roughly. Okay?

CONSTANTINE ALEXANDER: Okay. Sorry.

ALAN GREENE: And I said 160. It's 60 to 69 plus whatever inches we're talking about. So it's a difference in nine feet. So I'm thinking we talked about the fact that the Fairfield Suites Hotel has a set -- it's five stories. This is going up to six. Right now it's five stories and that's 11 feet, 3 inches. So I would say, you know, at the time she said that economically it wasn't feasible and you granted her eight feet. I would say, though, that it's nine feet, I did a calculation of what the equivalent would be for sidewalk width, so it would be eight feet, six inches. So I would say one contingent thing could be to make the

setback eight foot, six inches which doesn't seem like a lot. But nine feet is a lot on top. So that's one thing.

Second has to do with the pedestrian crossing. At that intersection with Twin City Plaza there's, there's basically a pedestrian crossing on the Somerville line, which is the McGrath Highway. On the O'Brien side, which is Cambridge, there's no pedestrian crossing there. It is a very, very dangerous crossing from the pedestrian standpoint. So I mentioned this at the hearing in 2017 and it basically was forgotten I guess. But we really need a crossing on the Cambridge side there.

So another thing I want to say is that I spoke with Ms. Thomas about this on the phone, and in 2017 she seemed receptive to it. I mentioned that, you know, this is probably good for her clientele and it also would be good for the apartment building across the street and it would be good for all the residents wanting to get to the other side from time to time. I have since then, I haven't seen anything happen. But what I have seen was the bus stop that was originally going to be in front of the hotel, that's now been moved to the Somerville side. Okay? Now I don't know if you're related to that but it's been moved.

So what's happened is I go over to the security, this storage area that's on the other side of the area. I was crossing there recently on the McGrath side, and basically the bus stop is on the Somerville side now. I'm crossing, and basically a bus pulls up to drop off passengers. And I'm waiting for the walk signal. I was in the median and it was almost at the end of its cycle so I started to cross, and a second bus pulled out right behind it blocking the pedestrian crossing. So I was in a very dangerous situation. A bus pulls up and there's a car waiting there to turn right. And what often happens there on that intersection is there are cars exiting Sav-Mor more, the liquor store and the storage shed, and they're all looking left to see the oncoming traffic from Boston. And they're not looking right for the pedestrian that's standing right there. And so the possibility is very great that a pedestrian could walk out at the very moment that that car pulls out. And now that we've got this driveway that she wants to do, you've got twice that. You have two lanes. So that possibility is going to increase twofold. So what I'm saying is that we should make this contingent on a pedestrian crossing on the Cambridge side to protect the pedestrians that are --

CONSTANTINE ALEXANDER: Have you raised this with the Traffic Department?

ALAN GREENE: I have brought this up to the Traffic Department. I've been to CDD. I've been to massDOT, the highway division. I've talked to Mike Connolly about it. We've had meetings about all of this.

CONSTANTINE ALEXANDER: The only thing that occurs to me is that I'm not sure as a Zoning Board we have a right to impose a condition about a crossing on a public way. That's the jurisdiction of other people, not ours.

ALAN GREENE: Yeah, well, I'm just saying --

ATTORNEY JAMES RAFFERTY: It's not even a municipal public way, it's a state highway.

CONSTANTINE ALEXANDER: That's right.

BRENDAN SULLIVAN: It exceeds our authority.

CONSTANTINE ALEXANDER: Yeah. I just don't think we have -- we can -- whatever the merits are --

BRENDAN SULLIVAN: I totally sympathize. I think it's a

valid point.

ALAN GREENE: It's just, you know, everyone is passing the shell game around --

CONSTANTINE ALEXANDER: I know.

ALAN GREENE: -- and it's, like -- you know, it's very hard. I've been dealt with all the departments. There's no cohesion. It's not me, it's the other department. So I'm here. This is a good opportunity to put that pedestrian crossing in for all of this. And I wish you would account for that. Beyond that, that's the contingent I'm asking you. And whether or not you can do it. And then the six-inch increase on the sidewalk setback.

CONSTANTINE ALEXANDER: Do you have any reaction to -- can you do anything on behalf of his issue?

ATTORNEY JAMES RAFFERTY: Well, the Applicant has been in negotiation -- discussions with the Department of Transportation. There is an increase front setback here now between this plan and the previous plan. The front setback previously was at -- I think this is a three foot increase. And the prior front setback was three feet. It's going to

five feet. So that two feet additional probably represents an opportunity.

There are landscaping requirements in the front setback, in this stretch.

This is called a special district. I think it's Special District 1.

CHRISTINE THOMAS: It is.

ATTORNEY JAMES RAFFERTY: Yeah. So they have, within the Zoning Ordinance, there are certain street tree planting requirements and landscaping requirements. But in the same way, I have to say as an advocate of my client, but as an observer, Ms. Thomas and her company have taken community input very much into their design here. And as best demonstrated by their commitment and now their execution with the Somerville bicyclist and community path groups. So I know she's committed to it. She wants a safe experience for her pedestrians. The retail across the street has a new ownership. There's talk of some redevelopment in that location. I think Mr. Greene's point is probably between the activity that might be occurring at the Twin City Mall and with the anticipated extension of the Grand Junction Rail and this signalized crossing, I think these issues will be addressed by the Highway Department. We've been dealing with them on some other highway

related issues. And suffice it to say this is such a vast improvement over the existing conditions. And if the opportunity presents itself, I think I can speak for Ms. Thomas that she would be prepared to cooperate?

CHRISTINE THOMAS: Yes.

CONSTANTINE ALEXANDER: Okay.

Okay? And maybe it's not exactly what you wanted to hear.

But, again, I don't know what we can do as a Board.

ALAN GREENE: Well, I need to press the issue because it's only a matter of time as a bicyclist that was killed on Museum Way.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down.

ALAN GREENE: Okay. Again, the six inch setback of the sidewalk --

BRENDAN SULLIVAN: Again, you know, Mike Connolly who bridges municipal and state --

ALAN GREENE: I know. I've been in communication with him about it.

BRENDAN SULLIVAN: -- he's really the guy that can make it

happen, but it would exceed our authority to even go down that road.

ATTORNEY JAMES RAFFERTY: That's a hard one.

CONSTANTINE ALEXANDER: No pun intended.

ATTORNEY JAMES RAFFERTY: Down that highway.

CONSTANTINE ALEXANDER: Thank you, again.

Anyone else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We are in receipt of some written communications.

Oh, I'm sorry. I didn't see you. Ma'am.

Continuing, we are in receipt of an e-mail from the Friends of the Community Path from Lynn Weissman W-E-I-S-S-M-A-N. (Reading)

We are pleased to submit the attached PDF letter in support of the BZA granting a Special Permit for this project as proposed by the Somerville -- Somerbridge Hotel, LLC on tonight's, that's tonight, Cambridge BZA agenda. This letter is submitted jointly by The Friends of the Community Path and The Friends of the Grand Junction Plan. The updated Somerbridge Hotel proposal includes bicycle/pedestrian ramp

that will be a key connector for local and regional path network connectivity. And then there's two long page letter, which I'm not going to read into the file. The message is as indicated in the cover note that they are in support of what you want to do.

We also have an e-mail from the East Cambridge Business Association. Jason Alves, A-L-V-E-S the Executive Director. (Reading) I am writing on behalf of the East Cambridge Business Association to lend our support for the modification to the application by Somerbridge Hotel, LLC, which would allow the Applicant to proceed with their plans to develop a hotel at 263 Monsignor O'Brien Highway. The ECBA previously supported the application after seeing plans at a monthly meeting. We continue to support the project with the new changes. The modifications that allowed before the community path connection are also a positive change. We are excited to see the site developed and feel a hotel is an excellent use for these parcels. The owner has an excellent reputation and operates a nearby hotel that has been very successful and great addition to the business district. This new hotel will welcome extended stay visitors and management is already in the habit of

connecting visitors with other local business in the East Cambridge area.

A new hotel and their patrons are welcome addition to the area.

And that's it. I don't think there's anything else.

So I'm going to close public testimony. Discussion? Ready for a vote.

JIM MONTEVERDE: Ready.

CONSTANTINE ALEXANDER: Okay. This is a Special Permit case if I'm not mistaken.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Yes, it is. So I have to go for those requirements.

The Chair moves we make the following findings with regard to the Special Permit being requested:

That the requirements of the Ordinance cannot be met without the Special Permit you are speaking tonight.

That traffic generated or patterns of access or egress would cause, from resulting from what you're proposing to do -- well, let me say this right now. I think the findings we made in the prior case all -- there's

nothing here that changes the findings we made there. So I just propose we incorporate those findings without having to go through the whole rigamarole of reading them out.

So if it's okay with members of the Board the findings we made with regard to the previous Special Permit apply equally to this Special Permit.

So based on all of these findings, the Chair moves we grant the Special Permit requested on the condition that the work proceed in accordance with the plans dated December 11, 2018, the first page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

ATTORNEY JAMES RAFFERTY: Thank you very much.

* * * * *

(8:25 p.m.)

(Sitting Members Case No. BZA-017056-2019: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will now call case No. 017056, 308 Broadway.

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

ARCH HORST: Hello.

CONSTANTINE ALEXANDER: Mr. Horst, good evening.

ARCH HORST: How are you?

CONSTANTINE ALEXANDER: Okay.

MICHAEL DRISCOLL: My name is Mike Driscoll and I'm the owner of 308 Broadway.

ARCH HORST: I'm Arch Horst, principal at Black River

Architects in Cambridge. And I think -- I don't know if you have this picture, but this is the building.

CONSTANTINE ALEXANDER: I think we do, but let's see. Maybe not.

JIM MONTEVERDE: No, I think the file only had the drawings not the photo.

ARCH HORST: Okay. Well....

CONSTANTINE ALEXANDER: Yeah, we have the drawings. I have a question about the drawings but we'll get to that in a second.

BRENDAN SULLIVAN: I think there's question.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Can you speak up?

MICHAEL DRISCOLL: Sure. Sorry.

ANDREA HICKEY: You can grab the microphone.

JOHN HAWKINSON: The red light means the batter is dead.

MICHAEL DRISCOLL: So I'm Mike Driscoll and I'm the owner of 308 Broadway.

ARCH HORST: Arch Horst, Black River Architects.

So this is the building, and it was -- first on time I was in this building was six or seven years ago. The first floor was being used to store carpets and there were two units on the upper two floors, apartments. And what wasn't quite clear at the time was what kind of condition the building was in. It was actually the structure had listed about an inch and a half or maybe more to the right. And that as part of the renovation, that has all been straightened out. The property's been pulled back slightly so it no longer encroaches on the sidewalk. So it's been brought into greater conformance just as a product of renovation.

And what we're here for tonight is to put a door in the back, and because it's too close to the rear lot line, and put a door on the top floor out to a deck that was already there. And to put some dormers on the side, which modestly increased the floor area ratio.

CONSTANTINE ALEXANDER: Can you show me on these plans where those dormers are.

ARCH HORST: Yeah.

CONSTANTINE ALEXANDER: I can't find them. And that's just probably me.

ARCH HORST: Maybe this is better. Well, actually here's -- maybe this is better. Well, actually in plan they're right here.

CONSTANTINE ALEXANDER: I want to see the exterior appearance of the dormers.

ARCH HORST: Okay, that's here.

CONSTANTINE ALEXANDER: Yeah.

ARCH HORST: They are right here, here. This one exists.

CONSTANTINE ALEXANDER: Yeah, I was going to say. All I see here are the existing dormers. I see no plans which are the as proposed that show the new dormers, that's why I'm confused.

ARCH HORST: It should be there. I'm sorry if it's not.

CONSTANTINE ALEXANDER: It probably is but I just missed it. Why don't you find it for me and for other board members. I don't think we can approve the dormers without seeing them.

ARCH HORST: Well, that's understandable.

Yeah, they're right here.

CONSTANTINE ALEXANDER: What does it say underneath, existing?

ARCH HORST: No, you're right.

CONSTANTINE ALEXANDER: How are we going to approve the plans if we don't have the plans of the dormers?

ARCH HORST: Before I totally agree with you. Let's look at the back.

CONSTANTINE ALEXANDER: I don't think you'll find them.

ARCH HORST: I hope you're wrong.

CONSTANTINE ALEXANDER: Otherwise we're not going to hear this case tonight.

ARCH HORST: Yeah, you are wrong.

CONSTANTINE ALEXANDER: I am wrong. Good.

Let me see.

ARCH HORST: That's the existing right there. And the last page shows the proposed.

CONSTANTINE ALEXANDER: Yeah.

JIM MONTEVERDE: There's existing. Existing.

CONSTANTINE ALEXANDER: That's one.

ARCH HORST: That exists.

CONSTANTINE ALEXANDER: Yes.

JIM MONTEVERDE: Revised, right? That's that and that.

CONSTANTINE ALEXANDER: Those are the two. Okay.

Okay, thank you. I just missed it.

LAURA WERNICK: You asked about the plans.

JIM MONTEVERDE: The plan is another story.

LAURA WERNICK: The plans show anything?

ARCH HORST: Yeah, they do. They should.

CONSTANTINE ALEXANDER: The plans show -- I want to see the visual impact.

JIM MONTEVERDE: Yeah, I thought the plans did as well.

CONSTANTINE ALEXANDER: Okay, sorry.

ARCH HORST: No problem.

So, anyway, the building was out of whack and it's been straightened up. It was so bad that the contractors told me, I don't know if it's really true, he said he didn't like even walking in it. It was really in bad shape. And it's probably fortunate that it's been fixed up because it was well on its way to hitting that brick building on the right.

CONSTANTINE ALEXANDER: I can understand. I've seen the building, I know exactly from the outside. But that doesn't relate to the dormer. The building needs work. Okay, you got to do the work. But you want to add a dormer. Why? What's the justification for the dormer?

ARCH HORST: Extra space on the top floor. Headroom. It's very low headroom. It's 8.6 at the very peak and then it naturally goes down to zero at the edges. This adds about 80 square feet I think.

CONSTANTINE ALEXANDER: About 80 square feet, you're correct.

ARCH HORST: Yeah.

CONSTANTINE ALEXANDER: And the compliance with the dormer guidelines?

ARCH HORST: It actually does comply.

CONSTANTINE ALEXANDER: I think it does looking at the plans, but I wanted you to confirm that.

ARCH HORST: Yeah, it's hard sometimes to do that.

CONSTANTINE ALEXANDER: Yeah. You know that.

ARCH HORST: But in this case we were able to. Yeah.

CONSTANTINE ALEXANDER: Okay. So you're going to add a modest amount of square footage to the building.

ARCH HORST: Yeah.

CONSTANTINE ALEXANDER: You're going to do it through dormers that comply with the dormer guidelines?

ARCH HORST: Right.

CONSTANTINE ALEXANDER: And the reason for that is you need additional living space in the units where the dormers will be part of it.

ARCH HORST: Right.

And it basically is to help defray the cost of all of this.

CONSTANTINE ALEXANDER: That doesn't run for zoning purposes. Forget about that.

ARCH HORST: Yeah. But it's a reality.

BRENDAN SULLIVAN: What is the total number of feet, lineal feet of dormer on each side?

ARCH HORST: I think it's --

CONSTANTINE ALEXANDER: You got a ruler?

ARCH HORST: About -- we dimensioned it. Ten feet.

Outside dimension.

BRENDAN SULLIVAN: Of the new one.

ARCH HORST: Yes, on each side.

BRENDAN SULLIVAN: And the existing?

ARCH HORST: Is about five-and-a-half I think. I think it might be dimensioned there, too, if you take a look.

JIM MONTEVERDE: So that's the existing?

ARCH HORST: Yeah.

JIM MONTEVERDE: No dimension. That's the ceiling height.

And that's the -- one more floor. So those are proposed. 8.10 inside? 8.10.

ARCH HORST: Yeah, I think by the time you add that up, it's pretty close to ten feet.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: And the -- the door is Special

Permit. We'll get to that in a second.

We'll just stay with the Variance part of the case first, take a vote on that, and then we'll get to the Special Permit.

ARCH HORST: Thank you.

CONSTANTINE ALEXANDER: Questions from members of the Board. I'm sorry, do you have anything more to say on the Variance?

ARCH HORST: No.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

JIM MONTEVERDE: No.

CONSTANTINE ALEXANDER: No.

Anyone wish -- I'll open the matter up to public testimony.

You want to be heard, Miss?

CARLY HEROSIAN: Yes.

CONSTANTINE ALEXANDER: Could you come forward, please.

CARLY HEROSIAN: Yes, my name is Carly Herosian. Live at 261 Mount Auburn Street in Cambridge. We have an interest in the

renovations that you plan on doing.

THE STENOGRAPHER: Can you just spell your last name for me, please?

CARLY HEROSIAN: Yes. H-E-R-O-S-I-A-N.

So we wanted to know -- so you're going to be increasing the living space. Is this going to be, you know, adding basically a fourth floor to this building? Because you're adding, you know, about 80 feet. Like, is this going to be, will this constitute adding an additional floor? It's just increasing the space?

ARCH HORST: Yeah.

CARLY HEROSIAN: And then you plan to add the door. So are you going to have -- you're constructing a full deck there?

MICHAEL DRISCOLL: So you want to speak?

CONSTANTINE ALEXANDER: You nodded no but she can't take that down. Just say no.

MICHAEL DRISCOLL: I'm sorry. No.

CONSTANTINE ALEXANDER: Okay.

CARLY HEROSIAN: So you plan to add this deck. Do you

have a fire escape, you know, in case people need to get out? Do you have a method of egress from that?

CONSTANTINE ALEXANDER: I assume you're going to build in compliance with the state Building Code?

MICHAEL DRISCOLL: Yeah.

ARCH HORST: Yes.

CONSTANTINE ALEXANDER: And that would deal with access in the event of fire or other emergencies.

CARLY HEROSIAN: Well, it's a very small area in back. So we want to --

CONSTANTINE ALEXANDER: Well, but they have to comply with the state Building Code to get relief. They're here before us tonight. They believe they comply with the state Building Code.

ARCH HORST: We've talked to Inspectional Services about it.

CARLY HEROSIAN: Okay.

And then just generally, what's your intention, you know, for this property? I know you're new. You just bought the property. It was

owned by a professor for a very long time. And, you know, just kind of get an idea of your intention. And do you plan to live there? Do you plan to keep it or flip it?

CONSTANTINE ALEXANDER: This is not really relevant. If you want to answer it, please do. But I just have to point out that's not a relevant determination for us to make a zoning decision.

CARLY HEROSIAN: Quick answer so we won't waste your time.

CONSTANTINE ALEXANDER: Do you want to respond to it or not?

MICHAEL DRISCOLL: Arch, do you want to answer.

ARCH HORST: Well, I mean it's going to be -- the hope is that it will be sold or rented.

CONSTANTINE ALEXANDER: I presume. Unless you're going to move your offices there.

ARCH HORST: No.

CARLY HEROSIAN: Okay. All right. Thank you.

MICHAEL DRISCOLL: Thank you.

CONSTANTINE ALEXANDER: You're welcome. Thank you for coming down.

LAURA WERNICK: So on the attic level will that just be additional space for the -- it's not going to be a new unit, it's going to be just a continuation of the existing unit?

MICHAEL DRISCOLL: Yes.

ARCH HORST: Basically they're townhouses. I mean that's the way to think about it. The vertical units side by side separated.

LAURA WERNICK: And ultimately you'll be dividing them up into bedrooms or is it just one large space up there?

ARCH HORST: At the moment we're proposing it to be one large space. I mean it's possible that somebody might buy it and do that. But one half it's unlikely they would do it because there's only one dormer on the right-hand half.

LAURA WERNICK: Right.

ARCH HORST: So it would be kind of tough. I mean, you could do it. Units are big enough that I don't know that there would be a real pressure to do that.

LAURA WERNICK: Okay.

ARCH HORST: But definitely it's just two units.

LAURA WERNICK: Yeah.

CONSTANTINE ALEXANDER: I want to talk about the door that goes to the deck on the third floor, but that's part of the Special Permit.

MICHAEL DRISCOLL: Yes.

CONSTANTINE ALEXANDER: So not yet. But I want to hear about that. Because we're not generally favorably disposed toward decks of this height for privacy concerns for abutters and the like and noise issues, too. But not yet. We'll stay with the Variance.

Anyone else?

CARLY HEROSIAN: One more comment. Just with the noise issue, we do -- we are worried about the noise, you know, if you do rent those units out. So especially if you're adding so much living space and having that porch, it's really close to the surrounding buildings. So just to be cautious of that.

MICHAEL DRISCOLL: Absolutely.

CONSTANTINE ALEXANDER: Yeah, well, why do you need -- I understand the why, it's rhetorical question. But given the issue, there could be issues of privacy and noise, it would be better for the city if you could not have this door with this deck at this level. Why is it essential?

ARCH HORST: The backyard is almost non-existent. So this is the only outdoor space --

CONSTANTINE ALEXANDER: Yeah, got it.

ARCH HORST: -- that the units will have. I mean really.

CONSTANTINE ALEXANDER: I believe you.

ARCH HORST: But three feet at most in the backyard which is one reason why we need a Special Permit for the door.

CONSTANTINE ALEXANDER: Okay.

JIM MONTEVERDE: Is it used as outdoor space now?

MICHAEL DRISCOLL: Yes.

JIM MONTEVERDE: There's a chain link fence up there?

MICHAEL DRISCOLL: Yes.

ARCH HORST: Oh, you mean on the first floor?

JIM MONTEVERDE: No, up above.

ARCH HORST: Yes.

JIM MONTEVERDE: So that's the chain link fence, that will
come down, you'll put up a deck, you'll put up a --

MICHAEL DRISCOLL: Yes.

JIM MONTEVERDE: You can describe what that is when we
get to the --

MICHAEL DRISCOLL: Sure.

JIM MONTEVERDE: -- that part of it. But that's, you're
really replacing what's already --

MICHAEL DRISCOLL: Yes.

JIM MONTEVERDE: -- in use.

MICHAEL DRISCOLL: Yes.

ARCH HORST: Yeah.

JIM MONTEVERDE: And so that instead of having someone
climb out the window, you're putting a door in.

ARCH HORST: Well, there's already one door. We're

putting a second.

JIM MONTEVERDE: You're putting a second. So that's two apartments could each -- or two units could each have separate access?

MICHAEL DRISCOLL: So right now -- exactly. So there's already one door there, but they'll essentially be a wall going in the middle. So the unit, if you're looking from the street, the unit to the right would have no way to access.

JIM MONTEVERDE: Right. But it won't be a new use for that space.

MICHAEL DRISCOLL: No.

JIM MONTEVERDE: It's already used as a deck right now?

MICHAEL DRISCOLL: Yes.

CONSTANTINE ALEXANDER: Okay. Good questions.

CARLY HEROSIAN: We've --

CONSTANTINE ALEXANDER: One more. Yes, come forward.

CARLY HEROSIAN: We've lived in the neighborhood for a long time and we've rarely seen people up there. But the chain link fence

is there, so I don't know if it's been consistently had that usage. So just want to say that.

CONSTANTINE ALEXANDER: How big will the -- the unit that has the second door, how big in terms of floor space, how many feet?

MICHAEL DRISCOLL: The entire unit or that top floor?

CONSTANTINE ALEXANDER: That unit. The one that will have access to the deck.

MICHAEL DRISCOLL: Well, they'll both have access to decks.

CONSTANTINE ALEXANDER: What's the total square footage of those units?

MICHAEL DRISCOLL: Give or take 1900.

ARCH HORST: I think that's about right, yeah.

CONSTANTINE ALEXANDER: In total?

MICHAEL DRISCOLL: In total.

CONSTANTINE ALEXANDER: So you could have more than one person living in those and congregating out on the deck?

ARCH HORST: Yeah.

CONSTANTINE ALEXANDER: Okay.

ARCH HORST: It's unclear how much it will get used simply because it's on the top floor.

CONSTANTINE ALEXANDER: Why would the top floor be a problem?

ARCH HORST: People just --my experience as an architect, people think it's a great idea and then it never gets used. But....

CONSTANTINE ALEXANDER: I mean, I can see in that area --

ARCH HORST: In that area --

CONSTANTINE ALEXANDER: A very narrow lot. I mean, very small lot.

ARCH HORST: Absolutely. Where else are you going to go?

CONSTANTINE ALEXANDER: The idea of being able to three stories up and looking out would be very attractive.

MICHAEL DRISCOLL: Right.

ARCH HORST: Yes.

CONSTANTINE ALEXANDER: Which is a plus and a minus in terms of impact on the neighborhood.

LAURA WERNICK: How do you see the attic space being used? Another bedroom? Or just a storage space?

ARCH HORST: Probably not. I think it would be used as an office if anything. Or maybe guest space. You know, someone comes -- when I visit my daughter, I end up often in the attic.

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

(No Response.)

CONSTANTINE ALEXANDER: We've had public testimony. I don't think there's anything in our files. No memos. Complaints. We're all set. So I'm going to close public testimony. We're not -- talking only about the Variance.

Ready for a vote?

Okay, the Chair moves with respect to the Variance being sought, we make the following findings:

That a literal enforcement of the provisions of the Ordinance

would involve a substantial hardship. Such hardship being is that this is an older building in poor condition, and that to make it a residential -- attic with residential use for the two dwelling units that are there now requires modification as an additional space as proposed by the Petitioner. And, of course, this would apply to whoever owns the property.

That the hardship is owing to the, really, the shape of the structure and the topography of the land. It's a very small lot, very little open space, and thereby requiring whoever owns the property something more than what is there right now, and as proposed by the Petitioner.

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

In this regard it will improve the housing stock of the City of Cambridge by taking a building that is in very poor condition and making it a usable structure for -- there are a number of residential units as being proposed.

So on the basis of these findings the Chair moves that we grant the Variance requested on the condition that the work proceed in

accordance with plans prepared by Black River Architects, dated December 21, 2018, and the first page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

CONSTANTINE ALEXANDER: Variance granted.

ARCH HORST: Thank you.

CONSTANTINE ALEXANDER: Now let's move to the Special Permit. And the Special Permit deals with adding a door to the existing rooftop deck, as we've talked about already, and install a window within a rear yard setback where a window used to exist.

MICHAEL DRISCOLL: Right.

CONSTANTINE ALEXANDER: Talk to us about it.

ARCH HORST: Well, the window was hidden by at some point siding. So we didn't know it was there. But when they did the interior demolition, the header -- the window itself was still in place. And

it will provide a view and light for what's going to become a living room.

Now, there is a window facing to the left as you're facing the building, but there's nothing out the back.

CONSTANTINE ALEXANDER: So in terms of people inside of the house looking out the window, is it intrusive on neighboring properties in terms of privacy. So you're looking at someone's bedroom window?

MICHAEL DRISCOLL: No.

CONSTANTINE ALEXANDER: None of that.

ARCH HORST: You're looking at someone's parking lot.

MICHAEL DRISCOLL: You're looking at basically a tree.

ARCH HORST: So that's on the first floor.

CONSTANTINE ALEXANDER: Yeah.

And on the roof, we've already talked a bit about the roof deck.

ARCH HORST: Right.

MICHAEL DRISCOLL: Right.

CONSTANTINE ALEXANDER: Anything more you want to

add about that?

JIM MONTEVERDE: Can you just talk about does the chain link fence remain or do you improve it?

MICHAEL DRISCOLL: Oh, no, we're going to absolutely improve it.

JIM MONTEVERDE: And what do you make that knee wall, side wall of that deck? What is it? Just describe the construction of it.

MICHAEL DRISCOLL: It will be --

JIM MONTEVERDE: Is it open, closed, can you see through it?

ARCH HORST: It's drawn as open. I mean, that -- if that's not what you want, you should tell us, but that's what we thought looked best.

BRENDAN SULLIVAN: Just a typical rail detail. Balusters.

CONSTANTINE ALEXANDER: I assumed that.

JIM MONTEVERDE: Yeah, rail and balusters?

ARCH HORST: That's what's drawn and that's what's intend.

MICHAEL DRISCOLL: I could show you.

BRENDAN SULLIVAN: I mean, that fits the house.

CONSTANTINE ALEXANDER: Yeah.

JIM MONTEVERDE: Right. Okay, thank you.

MICHAEL DRISCOLL: You're welcome.

CONSTANTINE ALEXANDER: Any other questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: None.

I'll open the matter again to public testimony. We're talking now about the window and the additional doors. Anyone wishing to be heard on this matter?

CARLY HEROSIAN: With the fence what do you plan to use for building material? I mean, actually no, forget that. Sorry.

MICHAEL DRISCOLL: That's okay.

CONSTANTINE ALEXANDER: Okay.

CARLY HEROSIAN: As long as it's not a chain link fence I guess.

ARCH HORST: No.

CONSTANTINE ALEXANDER: I'll close public testimony. I guess no one else wishes to be heard.

As I indicated before, we have no letters in the file. So ready for a vote on this Special Permit?

The Chair moves that we make the following findings with regard to the Special Permit being sought:

That the requirements of the Ordinance cannot be met unless we grant you the Special Permit.

That traffic generated or patterns of access or egress resulting from what you're proposing will not cause congestion, hazard, or substantial change in established neighborhood character. In this regard there is already a roof deck that's not been usable because of the chain link fence. And in terms of change in established neighborhood character, all we're talking about in terms of window is one new window or one relocated window.

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

And, again, we've questioned and you have responded to the

impact of that window in terms of the -- on neighboring properties, and there's a distance between the two parking lot. I think you said in between your structure and nearby structure.

And that no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the city. And I think facts speak for themselves on this. What is being proposed will not create nuisances or hazards in terms of an additional door and new window.

And that generally what you're proposing will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

And in this regard as I said with regard to the Variance we approved, that what you're doing is improving the housing stock of the City of Cambridge without any offsetting detrimental effects. Any material offsetting detrimental effects.

So on the basis of these findings, the Chair moves we grant the Special Permit requested on the condition that the work proceed again in accordance with the plans we've identified with regard to the Variance.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special

Permit granted.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

ARCH HORST: Thank you very much.

* * * * *

(8:45 p.m.)

(Sitting Members Case No. BZA-017054-2018: Constantine Alexander,

Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 017054, 35-37 Berkshire Street.

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

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair, members of the Board. Again, James Rafferty, 907 Massachusetts Avenue appearing on behalf of the Applicant.

CONSTANTINE ALEXANDER: Mr. Rafferty, before we get into the merits we've got some serious procedural issues here. I'm looking at the advertisement.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: The Special Permit says to reinstate previously granted Special Permit. We never granted a --

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: So there's nothing to reinstate.

ATTORNEY JAMES RAFFERTY: Well, what I was -- I discovered that error today.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: So I mean what we're asking for is to reinstate the case that's cited that we were previously granted case is the Variance case.

CONSTANTINE ALEXANDER: No, no, but you at the hearing for that previous case --

ATTORNEY JAMES RAFFERTY: That's correct. And that was -- and so it is -- the original application had a couple of prayers of relief.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: It was the Variance for a new building.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: It was a Variance for an additional unit.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And then it was a Special Permit to address parking and windows.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And prior to the hearing or during the process we withdrew the Variance for the additional unit.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And then it was pointed out that -- so without the additional unit, the Special Permit was moot and the request for the parking was irrelevant, so that was withdrawn, too. And the thinking on the window was well, the Variance for the building didn't deal with the window.

CONSTANTINE ALEXANDER: The window's not relevant.

ATTORNEY JAMES RAFFERTY: So this is a case of a lapsed Variance.

CONSTANTINE ALEXANDER: No, no, no, you're missing my point. You at the hearing withdrew the application for the Special Permit for parking.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: That withdrawal means a denial.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: As you know.

ATTORNEY JAMES RAFFERTY: Right.

I want to make -- we're not looking to have that Special Permit. That was a mistake in the filing. If you look at the application -- in the description, the description, the scope of work that we filed did reference, but that was a clerical error on our part because we took the prior decision and we incorrectly -- we looked at the old application and referenced the Special Permit. That's inaccurate. The zoning, the prior zoning decision that has lapsed --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- that we are asking to be renewed, does not contain any Special Permit relief and we are not speaking any Special Permit relief. We are merely seeking the reinstatement or a new Variance based on the lapse of the Variance in case --

CONSTANTINE ALEXANDER: No, no, I understand --

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: -- the Variance.

We're going this way. I understand the case and the Variance, the reinstatement of the Variance. I understood that entirely.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: But you also -- if we did reinstate the Variance and create another dwelling unit, you need --

ATTORNEY JAMES RAFFERTY: We're not seeking that.

CONSTANTINE ALEXANDER: No, no, now. But you're going to have at the end of the day four dwelling units.

ATTORNEY JAMES RAFFERTY: No, we're not. Look at the dimensional form. Three dwelling units on the dimensional form. Look at the plans, three dwelling units.

CONSTANTINE ALEXANDER: But you say in your -- you say in your advertisement, add an additional dwelling unit in the basement.

BRENDAN SULLIVAN: No, I think what happens is --

ATTORNEY JAMES RAFFERTY: It doesn't say that.

BRENDAN SULLIVAN: That was a copy from the original

application.

ATTORNEY JAMES RAFFERTY: The Special Permit doesn't speak to the dwelling units if you read it.

CONSTANTINE ALEXANDER: No, I'm talking about -- the Variance said.

LAURA WERNICK: It's the way it was advertised.

JIM MONTEVERDE: The announcement here?

CONSTANTINE ALEXANDER: Do you have the advertisement?

ATTORNEY JAMES RAFFERTY: I'm looking at the agenda.

BRENDAN SULLIVAN: When I saw that, I actually went back to the original case, because I said did we grant -- I don't remember granting that other unit. So I was confused by the verbiage of this.

JIM MONTEVERDE: It's a cut and paste but you didn't mean to.

ATTORNEY JAMES RAFFERTY: I didn't -- do you have our application there?

CONSTANTINE ALEXANDER: Yes, I do.

ATTORNEY JAMES RAFFERTY: Did you see the description of work in our application? There's no reference to an additional dwelling unit. In our application, which you're looking at right there, that cover sheet, we didn't ask for an additional dwelling. I don't know how that wound up in the notice.

CONSTANTINE ALEXANDER: Well, then I assume it did. I don't know either.

ATTORNEY JAMES RAFFERTY: But you can see the -- you see the description of the work, right?

CONSTANTINE ALEXANDER: The reason is that additional dwelling unit you're going to add, you will add it as a matter of right because of the -- provided we grant you a Special Permit which you're not seeking.

LAURA WERNICK: He's not.

ATTORNEY JAMES RAFFERTY: This is what we submitted.

CONSTANTINE ALEXANDER: I know.

ATTORNEY JAMES RAFFERTY: I think, and I'm not criticizing, I think someone who prepares these notices simply took the

notice from the prior case and reused it. We didn't submit a pleading asking for an additional dwelling unit. The plans don't show an additional dwelling unit. The dimensional form shows only three dwelling units.

CONSTANTINE ALEXANDER: Then why are you speaking a Special Permit for the additional parking?

ATTORNEY JAMES RAFFERTY: Because we failed to recognize that the Special Permit wasn't needed. That was an error on our part.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So we're simply saying we're -- we never, we never -- we are withdrawing the Special Permit. It's not our intent. All we're asking for is it says in the first, to reinstate the Variance. It's incorrect. We said "and Special Permit." But there was no Special Permit in that case.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: We agree.

CONSTANTINE ALEXANDER: We agree with that.

ATTORNEY JAMES RAFFERTY: I'm moving to modify the

request because we incorrectly referenced a zoning decision suggesting there was Special Permit relief, which there was not.

CONSTANTINE ALEXANDER: So all you're looking for is no Special Permit relief at all tonight?

ATTORNEY JAMES RAFFERTY: Nothing.

This decision which lapsed by a month which meant -- this is the decision. The same findings, the same set of plans.

CONSTANTINE ALEXANDER: I understand that.

ATTORNEY JAMES RAFFERTY: That's the decision we are asking for a Variance on today.

CONSTANTINE ALEXANDER: I just want to be clear. You're not seeking any Special Permit tonight?

ATTORNEY JAMES RAFFERTY: None whatsoever.

CONSTANTINE ALEXANDER: Fine, thank you. Okay.

ATTORNEY JAMES RAFFERTY: None whatsoever. And the confusion is on our part. The reference to the Special Permit was a mistake when we prepared this application. But the plans, the dimensional form, there was no -- I mean, the Special Permit was -- the

Special Permit, didn't deal with -- there was no reference in anything we filed about an additional dwelling unit. There was a reference to the Special Permit, and the Special Permit dealt with the windows which we've now concluded are superfluous or redundant because the Variance would address those. And the issue for the parking space was relevant with the other unit. So that was an error on our part to include that. We're not seeking that relief tonight.

CONSTANTINE ALEXANDER: Now I'm clear.

ATTORNEY JAMES RAFFERTY: Tonight's application only seeks a Variance to allow for the home, the three-family structure approved in this case and --

CONSTANTINE ALEXANDER: And the plans haven't changed for that?

ATTORNEY JAMES RAFFERTY: Not a single change. This was a case where they were working with insurance company and payoff and it was a little bit of neglect. And we got a panicked phone call, because had they discovered this in October and the one year lapse hadn't occurred, we could have come in and asked for the six-month

extension. So fortunately my office sends out a very thorough letter with Variance decisions that informs Applicants you have one year, and if you do not act upon this within a year, you -- and my malpractice carrier reviews those letters.

CONSTANTINE ALEXANDER: Okay, the case is a very simple case.

ATTORNEY JAMES RAFFERTY: It's a very simple case.

CONSTANTINE ALEXANDER: I couldn't tell that from the advertisement.

ATTORNEY JAMES RAFFERTY: My apologies. And I only learned today that we had caused this problem. Had I, had I realized that, I would have corrected it much sooner. I --

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: So my apologies. It is our fault for referencing the Special Permit. We don't seek the Special Permit. We seek the same finding of the Board on hardship, related to the fire, area of the structure. It's slightly larger because we put, there are code compliant rear egresses in the new plan. They were not code

compliant when the house, when the three-family, prior to the fire. So it's slightly larger. So that's why you may recall there was a Special Permit mechanism actually created as a result of that fire to allow for houses to be rebuilt under Special Permit. But the footprint here is slightly larger and that's the footprint that was approved. It's the same set of plans, same dimensional information, we're asking that the Board find.

CONSTANTINE ALEXANDER: Got it.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: All right, with that, long winded and now that we straightened that out. Anything else you want to say about the case?

ATTORNEY JAMES RAFFERTY: I think I've said too much.

CONSTANTINE ALEXANDER: Questions from members of the Board. This is a case -- I don't know if you remember. We heard this case 13 months ago I guess.

ATTORNEY JAMES RAFFERTY: Yeah.

CONSTANTINE ALEXANDER: Granted the Variance without any problems. And everything else fell by the wayside. Because

originally, just for the benefit of the members who weren't here before,
originally they came in and sought four dwelling units.

ATTORNEY JAMES RAFFERTY: That's right.

LAURA WERNICK: I think we picked it up from the
conversation.

JIM MONTEVERDE: Yes, we got it.

CONSTANTINE ALEXANDER: Okay, fine. All right.

ATTORNEY JAMES RAFFERTY: And three of you sat on
that case. Poor Patrick was one of two and Janet Green.

CONSTANTINE ALEXANDER: Any questions from
members of the Board?

JIM MONTEVERDE: No, thank you.

CONSTANTINE ALEXANDER: I'll open the matter up to
public testimony. Is there anyone wishing to be heard in this matter?

(No Response.)

CONSTANTINE ALEXANDER: No one and nothing in our
file. We're ready for a vote.

The Chair moves we grant the reinstatement of the Variance

as requested based upon the following findings:

That the findings we made in the case before 13 months ago apply equally tonight in terms of there has been no change in the neighborhood, no change in the nature of the structure.

ATTORNEY JAMES RAFFERTY: Do you want to see what you found or do you care?

CONSTANTINE ALEXANDER: I'm just going to incorporate it all by reference. No sense in going through it all over again.

So, all those findings -- the Chair moves that all those findings apply equally to today and, therefore, and including with regard to the plans that we condition the prior relief on. And so on the basis of all, and the fact that nothing has changed, that we -- the Chair moves that we grant the reinstatement, your words, of the Variance that we had previously granted.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

ATTORNEY JAMES RAFFERTY: Thank you very much.

Again, my apologies for the confusion.

* * * * *

(9:00 p.m.)

(Sitting Members Case No. BZA-017055-2018: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair calls case No. 017055, 74-76 Dana Street.

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

THAD SEYMOUR: Mr. Chairman, members of the Board, my name is Thad Seymour I'm representing 74 Dana Street, LLC. We're requesting a Special Permit to dig our basement down and have occupancy as part of our first floor unit there.

CONSTANTINE ALEXANDER: The Special Permit is simply it's the relief from the FAR issues. Our Ordinance now allows but you have to get a Special Permit for that. It's not a Special Permit for any other reason.

THAD SEYMOUR: Got it.

CONSTANTINE ALEXANDER: I want to be clear on that.

THAD SEYMOUR: Got it.

CONSTANTINE ALEXANDER: And the requirement for the Special Permit that you're seeking on -- I thought I had it marked, is that provided that the permit granting authority, that's us, finds that the uses occupying such exempted GFA support the character of the neighborhood or district in which the epilogue is located. Speak to that if you would the.

THAD SEYMOUR: So we've spoken with, you know, members of the neighborhood. I've got a letter here from Sanford Gilmore, who's lived on Dana Street for quite sometime, owns the abutting property. We've spoken to other potential buyers, brokers, relators, and the feedback we're getting is there is a need for larger family space. So by adding a basement we create that. And in the hope is that we can get

buyers that will stay, that will raise a family there and not, you know, have a child and need to move.

CONSTANTINE ALEXANDER: Well, the other thing, the neighborhood, it's residential. So you're not changing the character of the neighborhood.

THAD SEYMOUR: Now, we are not changing the character.

CONSTANTINE ALEXANDER: Which is what the Ordinance says.

THAD SEYMOUR: And the building was in bad shape. We went to extensive measures to waterproof basement, mitigate mold, mildew, that kind of thing. So by doing that we had to affect the basement to begin with. There was a plywood and pallet floor down there with dirt below it, water issues, this and that. So we believe that we are supporting the neighborhood and holding the integrity of the neighborhood and the goals of the city.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

LAURA WERNICK: So have you already dug the floor?

THAD SEYMOUR: We have not. We have not.

LAURA WERNICK: And is the intent when you say family room, is it literally a family room?

CONSTANTINE ALEXANDER: There's a plan here.

THAD SEYMOUR: There's a plan there. There's a bedroom as well as a family room is the whole --

CONSTANTINE ALEXANDER: Yeah, it's a bedroom and a family room.

THAD SEYMOUR: -- as well, yeah. A rumpus room.

CONSTANTINE ALEXANDER: Rumpus room that's how you described it. That's right. I hadn't seen that expression since 50 years ago.

JIM MONTEVERDE: Yeah, right, the 50s.

THAD SEYMOUR: I got it from a friend's father in high school. They had an attic and he always called it a rumpus room. Just go into the rumpus room, get out of the way.

JIM MONTEVERDE: And for a sleeping room you meet whatever the code requirements are?

THAD SEYMOUR: Yeah, we've been speaking with Sisia about that in a number of different capacities.

CONSTANTINE ALEXANDER: Any other questions or comments from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: I'll open the matter up to public testimony. I don't think we need to do that. I'm sure this gentleman doesn't want to speak except in support, right?

THAD SEYMOUR: Exactly.

CONSTANTINE ALEXANDER: Close public testimony. We have no letters in the file.

You said you had a letter from someone?

THAD SEYMOUR: I do, I do. He only sent it to us today.

CONSTANTINE ALEXANDER: Okay.

It's from Sanford Gilmore.

THAD SEYMOUR: Yep.

CONSTANTINE ALEXANDER: 72 Dana Street?

THAD SEYMOUR: He owns the neighboring property,

correct.

CONSTANTINE ALEXANDER: And he's writing to express his enthusiastic support for the renovation on condo conversion project. He's next-door to you. He's at 72 Dana. Next door at 74 Dana Street. I don't need to read the rest of it. It's a letter in support.

So, again, the finding that we need to make to grant you the relief you're seeking is very narrow. In that we have to find that the use -- that the uses occupying such exempted, the basement here, support the character of the neighborhood or district in which the applicable lot is located.

So on the basis of this -- I move that we make this finding and on the basis of this finding, we grant the Special Permit requested.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

THAD SEYMOUR: Thank you. Thank you, all.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

(Whereupon, at 9:05 p.m., the

Zoning Board of Appeals Adjourned.)

* * * * *

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I have read the foregoing transcript of the Zoning Board of Appeals, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statement(s) made by me.

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 the hearing herein before set forth is a true and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2019.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
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My Commission Expires:
April 29, 2022

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