

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING
THURSDAY, MARCH 22, 2012

7:00 p.m.
in
Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Brendan Sullivan, Chair
Constantine Alexander, Vice Chair
Timothy Hughes, Member
Tad Heuer, Member
Thomas Scott, Member
Slater Anderson, Member
Douglas Myers, Member

Maria Pacheco, Zoning Specialist

REPORTERS, INC.
CAPTURING THE OFFICIAL RECORD
617.786.7783/617.639.0396 (Fax)
www.reportersinc.com

I N D E X

CASE

PAGE

10157	--	3
10204	--	5
10191	--	18
10114	--	36
10051	--	38
10106	--	83
10214	--	84
10223	--	40
10224	--	84
10225	--	87
10226	--	103
10227	--	122
10228	--	133
10229	--	179
10230	--	217

P R O C E E D I N G S

(7:00 p.m.)

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

BRENDAN SULLIVAN: Let me call the Board of Zoning Appeal for March 22, 2012, to order.

The first case will be case No. 10157, 23-25 Haskell Street. Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt from correspondence from Luke Begley, B-e-g-l-e-y, dated March 20th to Mr. Sean O'Grady. (Reading) We want to send you an e-mail to let you know that we officially withdraw our Zoning Board case 10157. Thank you very much for the instruction you've previously provided for filling out our forms in a proper manner. Sincerely, Luke and Rachelle, R-a-c-h-e-l-l-e Begley.

On the motion to accept the request for a withdrawal, all those in favor.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: The matter is
withdrawn.

(7:00 p.m.)

(Sitting Members: Constantine Alexander,
Timothy Hughes, Tad Heuer, Thomas Scott,
Slater Anderson.)

CONSTANTINE ALEXANDER: The acting Chair, in place of Mr. Sullivan, will call case number, as he did, I'll repeat it, 10204, 50-54 Essex Street. You're here on behalf of the Petitioner?

JAMES KOLOSKI: Yes.

CONSTANTINE ALEXANDER: Give your name and address to the stenographer, please.

JAMES KOLOSKI: James Koloski, K-o-l-o-s-k-i. Nobadeer, N-o-b-a-d-e-e-r Collaborative. The address is 530 South Main Street, Woonsocket, Rhode Island.

ANJA BRESLER: Anja Bresler, A-n-j-a B-r-e-s-l-e-r. And I work at 50 Essex Street in Cambridge.

CONSTANTINE ALEXANDER: When this case started, you wanted to put six signs as I recall up there.

JAMES KOLOSKI: Yes.

CONSTANTINE ALEXANDER: And there was a bit of neighborhood opposition.

JAMES KOLOSKI: Yes.

CONSTANTINE ALEXANDER: We asked you to go back and collectively rethink it and talk to the neighbors and you came back with a new set of plans I understand.

JAMES KOLOSKI: Which we have, yes. I'll let Anja speak to that.

ANJA BRESLER: Yes. So I think we addressed all of the concerns that you brought up last time. One was sort of the aerial view of where the signs are going to go. One was the number of signs. We reduced them by half. There were six originally, now there's three. We were very clear about which signs were going to be removed which was a concern last time. And we did have a community meeting. There were about -- I want to say 17 of our neighbors were present. It was a very friendly collaborative meeting that the signs were discussed, other things were discussed. It was a very positive

meeting, and they had sent you an e-mail. I don't know if that's in your file.

CONSTANTINE ALEXANDER: Yes, I will read it into the record at the appropriate time.

ANJA BRESLER: As an inclusion of that meeting.

CONSTANTINE ALEXANDER: Okay. And tell us about the sizes of the three signs.

JAMES KOLOSKI: Three signs, they're the same size as --

CONSTANTINE ALEXANDER: We have them in our file, but maybe it will be helpful if we have some visuals for the Board.

JAMES KOLOSKI: They are the same as we had proposed previously.

CONSTANTINE ALEXANDER: You just reduced the number?

JAMES KOLOSKI: Yes, the only thing that changed was the number. The quantity went from six to three. But they're still

eight feet by a foot and a half is the overall dimension. They're flush-mounted to the wall. They set about two inches off the wall.

CONSTANTINE ALEXANDER: They're not illuminated?

JAMES KOLOSKI: They're not illuminated.

CONSTANTINE ALEXANDER: I'm going to suggest to the members of the Board that we place a condition that they can't be externally illuminated. We don't want any flash, spotlights in the front of the building --

JAMES KOLOSKI: Sure.

CONSTANTINE ALEXANDER: -- flashing up on the signs. Which technically is not an illuminated sign, at least for the purposes of our Zoning by-laws. I want to cut that off. I don't think that's a problem for you.

JAMES KOLOSKI: No, no, there's no

intention of illuminating these.

TAD HEUER: And the relief you need is because of the number of signs as well as the height; is that right?

JAMES KOLOSKI: The overall square footage of the signs. And the -- I don't think it's a number. I think it's --

CONSTANTINE ALEXANDER: I don't think it's height. I think it's just number. Total square footage of the signs.

TAD HEUER: They're not above 20 feet?

JAMES KOLOSKI: They're on the top of the sill of 24 which I think is about 18 feet.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Questions?

THOMAS SCOTT: Do you have a plan that shows where they're located?

JAMES KOLOSKI: Yes.

CONSTANTINE ALEXANDER: It's in the

file.

THOMAS SCOTT: I didn't see it.

CONSTANTINE ALEXANDER: Sure.

Give Mr. Scott a second to check it out. And others, I think the first half is what they originally proposed and then they came --

TAD HEUER: It's this here.

JAMES KOLOSKI: Those are the three.

There's one facing the back parking lot, one facing Essex Street at 50, and one at the corner of Harvard and Essex facing Essex.

THOMAS SCOTT: And they're not vertical anymore, they're horizontal?

JAMES KOLOSKI: No, they're vertical. Those are the existing ones that are coming down.

THOMAS SCOTT: Oh, okay.

ANJA BRESLER: When we were here last, there was confusion about what would come down and so we wanted to be very explicit

about what comes down. And all the white ones are coming down.

THOMAS SCOTT: Okay, I get it.
Okay.

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

(No Response.)

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

Anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one wishes to be heard. The Chair will also note that we are in receipt of an e-mail from a Jonathan King to this Board. (Reading) Dear Members of the Board of Zoning Appeal: We are writing with respect to the case involving new signage for the two former St. Mary buildings at 50 and

54 Essex Street now occupied by Prospect Hill Academy Charter School. A delegation of our neighborhood organization met with the head of the school, Mr. Lipert; community liaison, Ms. Bresler; and two PHA board members earlier this month. All those abutters who have spoken at the initial Zoning hearing were in attendance. The PHA presented a revised signage plan removing the existing external signs on their two buildings and reducing the number of new replacement signs from six to three. The new signs are to be flush, mat, and unlit at night. In the course of the meeting our delegation, which included abutters from Hanson Place, Essex Street, and Percy Place expressed our additional concerns of traffic problems during drop off and pick up and littering by students and noise (outdoor). Productive discussion took place. We identified a number of interests that our

community shares with the PHA school, and we expect to work together in the future. Given the revision in the signage plan and the expressed intent of PHA representatives to try to resolve the other issues, we withdraw our objections to the initial proposal and are happy to support the revised proposal of a total of three flush mat unlit signs in the buildings; two facing Essex/Harvard Street and one in the rear facing Norfolk Street parking lot. Thank you for your support for our concerns and of insisting on a consultative process with the neighborhood. And the letter from Jonathan King is signed on behalf of Essex Street neighbors.

And that's the sum and substance of I think our correspondence.

At this point I'm going to close public testimony.

Any final words you want to add?

JAMES KOLOSKI: We appreciate your

input and helping us out.

CONSTANTINE ALEXANDER: That's why we get paid the big bucks.

JAMES KOLOSKI: Right.

CONSTANTINE ALEXANDER: Any comments from members of the Board at this point? We ready for a vote?

TAD HEUER: I'm really impressed with what you've done and going back and working with the neighbors and hearing their concerns and coming up with something that really looks like it works for them and for you. I mean you guys -- we hear this now, you're going to be in close proximity with them for quite a long time. So I'm really gratified that you've been able to come to an agreement that works for everyone. I think it's a really good solution. Where you're putting the signs are the optimal solution for the most visibility with the smallest number. I think you really took a lot of the

concerns you heard from them and from us and took that into consideration, and your package that you submitted this time around answers everything that we want. It's very clear, so just very well done.

JAMES KOLOSKI: Thank you.

CONSTANTINE ALEXANDER: Okay, I'm going to make a motion.

The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being it needs signage in this dense residential neighborhood to identify the school.

And that the hardship is owing to circumstances relating to the location of the structures on the lot and the nature of the structures. Again, being massive and built for a different use than is now being used

for.

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

In this regard the Chair would note that there is unanimous support from the neighbors.

Proper signage, as defined by our Zoning By-Laws, is an important element of non-residential activities in the community.

That the PHA, the Prospect Hill School provides a valuable educational function in the community, and its ability to do so will be enhanced by appropriate signage.

On the basis of all the foregoing, the Chair moves that we grant a Variance to the Petitioner on the condition that the signage be consistent with the plans submitted by the Petitioner. The first page which has been

initialed by the Chair.

And on the further condition that the signs which are not illuminated shall not be externally illuminated as well. The signs are to be without illumination other than natural sunlight.

All those in favor of granting the Variance on this basis say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Variance granted. Thank you very much.

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

JAMES KOLOSKI: Thank you very much.

(7:15 p.m.)

(Sitting Members: Brendan Sullivan, Timothy Hughes, Tad Heuer, Thomas Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10191, 126-128 Holworthy.

If you would please reintroduce

yourself for the record whoever is going to present.

KAJ VANDKJAER: I'm Kaj Vandkjaer and I'm the architect on the 126-128 Holworthy.

BRENDAN SULLIVAN: Since last we met there have been some revisions. If you could just sort of run through them and what the violations are and the relief that's needed.

KAJ VANDKJAER: Right. We -- do you want me to go back to the earlier submission?

BRENDAN SULLIVAN: Well, very briefly, maybe in 60 words or less you can just say how you --

KAJ VANDKJAER: Yeah, we submitted a proposal on -- for a Variance application for a site -- a two-story addition to a two-family house on Holworthy with the two owner's bedrooms. 126 will have a lower level and the bedroom up top. The Board decided that the addition was too big. The

FAR was 0.73 I think, I'm not sure. We went back and discussed the possibilities and came up with a solution that we have one bedroom and then improve entry hallway with a half bath. And it's a one-story addition, which is basically replacing what is now an existing enclosed porch which incidentally is also the second means of egress for both units.

What we're proposing would A, create a better entry for 126 and 128, but mostly 126 because it was cumbersome to leave the garage and go through a sun porch and then back into your unit. And I'm sure -- but that's beside the point. I'm sure there were no firewalls or any unit separations. So what we have now we consider a project that is in style with the building as it stands. We're replacing the enclosed porch with a one-story addition which has, as far as the roof line and in most respects, has to sort of -- well, the same

shapes as the previous sun porch. We are adding three -- the FAR right now is 0.6. And obviously the area requires a 0.5, so we over the FAR. We're going to -- we're now at 0.68. We are adding three --

BRENDAN SULLIVAN: So it's about 13 percent addition?

KAJ VANDKJAER: Yeah, we're adding three-hundred and --

TAD HEUER: 297?

KAJ VANDKJAER: Is that it? 297. It should be on the.... sub-plan. Yeah, 297.8 is the addition in square feet, one story.

BRENDAN SULLIVAN: The purpose of the addition was the difficulty of going up and down stairs or going forward, and it was designed basically to have a room on the first floor bedroom, I guess bathroom, what have you, for an immediate need and going forward I guess.

BONNIE JONES: Right.

BRENDAN SULLIVAN: And obviously the wish to stay in the neighborhood and stay in your house. And just has become very difficult and will become more difficult, the stairs tend to get longer and steeper as you go forward. And so that the plan that is before us will achieve that goal.

Where both of you own one side of the other, to do an integral addition for both sides obviously aesthetically but also functionally works better for you.

TAD HEUER: But there's only one bedroom and before you had two?

BONNIE JONES: Yeah, there's a small, small room on the -- where the porch was, or is, and the bathroom. So it would be a bathroom and a small bedroom there and a bigger one on the other side.

TAD HEUER: The reason I'm looking at the first floor plan, the addition I see

a hall and a lavatory, and then on the other side I see a bathroom, a closet, and a bedroom. So is there a bedroom for -- isn't there a bedroom for 128 or no?

KAJ VANDKJAER: No.

TAD HEUER: Just for 126?

KAJ VANDKJAER: 128.

TAD HEUER: So 128 is just getting a bathroom and a hallway.

BONNIE JONES: Yeah, a bathroom on the first floor. Yeah. And when I get older.

NORMA STEEL: The hallway quote, unquote, is big enough.

KAJ VANDKJAER: I think the main concern was have a toilet on the first floor. And then better entry. Right now, as I say, it's a sun porch you walk through.

BRENDAN SULLIVAN: The other ones may have been more prominent and the other ones were slipped to the back. Monday

afternoon was when I saw them.

Okay. Let me open it to questions by the Board. Anybody have any questions at this time for the Petitioner?

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: Tim, do you have any questions at this time?

TIMOTHY HUGHES: No.

BRENDAN SULLIVAN: Tad, any questions?

TAD HEUER: Just out of curiosity, I understand the desire for dividing it cleanly down the division, but it's all on one lot. So is there a reason that you have to invade the left side setback and not -- it would look somewhat strange I acknowledge, but not to bump it this way.

KAJ VANDKJAER: Yeah, the setback conditions are on the corner lot.

TAD HEUER: Well, right. You can't invade the setback without relief but you can

create a squarer house that doesn't create a new setback violation on this side which you're now doing; right? You already have a setback violation here, and you would if you built into this anyway.

KAJ VANDKJAER: Right.

TAD HEUER: Here you're creating a setback violation because you don't have one right now.

KAJ VANDKJAER: Yes, we have the seven foot, six.

BONNIE JONES: There's more space here.

TAD HEUER: Well, there's more space, but not legally there's not more space; right? You're at twelve-foot, nine and need seven, six, but so you're going to four-foot, ten. You're going from a conforming setback to a non-conforming left setback. And here you're built into your right side setback. Yes, you're not

conforming, but you remain non-conforming. Essentially my question is you've created a setback non-conformity that you don't necessarily need to, I'm just asking --

KAJ VANDKJAER: Well, we're still within the seven feet because of the corner lot, it's a side yard.

TAD HEUER: Wait, I'm not understanding.

BONNIE JONES: This part here is open because this is an old house, you can't make it any -- we talked about this last time. This, you can't keep anything over this at this point. It has to be over here. And that's fine. We couldn't make this whole thing have a hole across here because that's a street and that's a street. And you guys told us that.

NORMA STEEL: You told us that.

TAD HEUER: All right, so now --

BONNIE JONES: And that's, there's

another house next to that house.

TAD HEUER: Right. That's usually why we don't want invasions of setbacks next to other houses. Here it says your setback is seven feet, ten inches and on your form it says your setback is four feet and a half. Which one's right?

KAJ VANDKJAER: Oh.

NORMA STEEL: Oh, there's a big difference.

KAJ VANDKJAER: Oh, wait a minute.

NORMA STEEL: There's a big difference.

THOMAS SCOTT: The stoop and the stair, that's not an invasion of the setback, is it, because there's a new roof over it.

TIMOTHY HUGHES: That doesn't count. That's where the four-foot, ten is from the step.

THOMAS SCOTT: That doesn't count.

KAJ VANDKJAER: It's a mistake on my

part.

THOMAS SCOTT: Right, your setback is --

TIMOTHY HUGHES: So it's not a violation on that side.

KAJ VANDKJAER: That side. It shouldn't say four, ten. It should say seven. I'm sorry, my typist made the mistake.

TIMOTHY HUGHES: Do you do your own typing?

KAJ VANDKJAER: Why do you ask?

TAD HEUER: That answers my question.

BRENDAN SULLIVAN: Let me open it public comment.

Is there anybody here who would like to speak on the matter of 126-128 Holworthy?

(No Response.)

BRENDAN SULLIVAN: I see nobody. There is correspondence in the file on

the letterhead of the Office of the Mayor.

(Reading) To the Board: I am writing to support the application for a Variance at 126-128 Holworthy to extend the back of the house. Norma Steel and Bonnie Jones would like to stay in their attached homes as they age. To do that, they would like to create a small addition to the first floor with a bedroom and bathroom at 126 Holworthy Street and a small hall and half bath at 128. I'm very much in favor of adapting residences so seniors are able to continue to live in their homes if they are able. While serving as chair of the Silver Ribbon Commission during the past year we specifically looked at housing for seniors in the city. We have found that most seniors would like to remain in their homes if they possibly can. I would like to see the city support them in their efforts. I hope the BZA will approve this application from Ms. Steel and Ms. Jones for

a Variance. Thank you for your consideration, Henrietta Davis.

And that is the only correspondence we have in the file.

You have spoken to neighbors and they're all very much aware of --

BONNIE JONES: Yeah.

NORMA STEEL: This should all be in there. We had all those signs. There were like eight of them.

KAJ VANDKJAER: There were eight.

BRENDAN SULLIVAN: There were eight from the previous case. And if they liked that one, they'll love this one.

NORMA STEEL: Yes.

KAJ VANDKJAER: I actually have copies if you need them.

BRENDAN SULLIVAN: The Board is in receipt of previous correspondence on a prior application plan which some people, 126-123 Holworthy, 131 Holworthy, 131, 14 Locust, 14

Locust, 124 Rear Holworthy, 124 Holworthy,
137 Holworthy.

NORMA STEEL: We wanted to make sure
we got it all covered.

BRENDAN SULLIVAN: Have expressed
their support for the plan.

Okay, anything else to add or change,
delete?

KAJ VANDKJAER: No. I mean apart
from my typo. I mean, I have blown-up
drawings but you pretty much have them there
unless you want me to show them.

BRENDAN SULLIVAN: Okay.

KAJ VANDKJAER: I think there's one
thing that you do not have, I just want to make
sure that we are -- that's the front of the
house. It's not changing. And this is the
porch, the enclosed porch in question. What
I want to show is that we are basically
continuing -- we're not really changing the
nature of the quality.

BRENDAN SULLIVAN: You're just adding to the footprint.

KAJ VANDKJAER: We're not expanding. And just the stairs we're moving about four feet.

BRENDAN SULLIVAN: Yes.

KAJ VANDKJAER: So -- and the new addition will start here and come out and then go around the corner here to seven-foot setback.

BRENDAN SULLIVAN: Okay.

Any other questions from members of the Board?

Mr. Myers, what are your thoughts?

DOUGLAS MYERS: I'm fine.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I'm good with this.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: I'm good with it.

BRENDAN SULLIVAN: Mr. Heuer?

TAD HEUER: I'll just briefly say if

the City Council wants us to endorse or if the City Council endorses in-place housing or senior housing or expansive housing that go against the FAR requirements that they themselves have established, the proper place for them to do is by passing an Ordinance that allows us to do it and not by asking us to make exceptions on a case by case basis.

BRENDAN SULLIVAN: Right.

Okay, there are not going to be any changes to these drawings?

KAJ VANDKJAER: No, no.

BRENDAN SULLIVAN: Okay. Because you will have to conform to these.

KAJ VANDKJAER: Right.

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested as per the plan submitted entitled 126-128 Holworthy Street for Norma J. Steel and Bonnie Jones by KV Design and Building.

Not dated.

KAJ VANDKJAER: Oh.

BRENDAN SULLIVAN: Signed and dated by the Chair with the accompanying dimensional form which also I will sign and date today's date.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would create an untenable situation of having to climb stairs to access bathroom facilities.

Also, the Board is sympathetic to the need of both applicants to be able to have restroom facilities and possible bedroom on the first floor for their quality of life going forward. And also to allow them to have some additional room for caregivers who may be required in the future.

The Board finds that the hardship is owing to the existing non-conformity of the

house, the size and shape of the lot, and the fact that it is a corner lot having two front setbacks which severely limits any expansion.

The non-conforming nature obviously severely limits any expansion or realignment rearranging of the interior space to accommodate the present and the future needs of the Petitioner and homeowner.

The Board finds that desirable relief may be granted without substantial detriment to the public good.

The Board notes the letter from the Mayor and her reference to the Silver Ribbon Commission and their stated goal to allow seniors to remain in their housing.

And that also the Board finds that this relief, which is fair and reasonable, would not nullify or substantially derogate from the intent and purpose of the Ordinance.

All those in favor of granting the

relief as per the drawings and the subsequent dimensional change?

(Show of hands).

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes,
Scott.

BRENDAN SULLIVAN: And one in the
negative.

TAD HEUER: Yes.

(7:30 p.m.)

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

BRENDAN SULLIVAN: The Board will
hear case No. 10114, and in conjunction with
that case No. 10051 which is 175 Huron Avenue.

Is there anybody here or counsel
representing the Petitioner?

(No Response.)

BRENDAN SULLIVAN: I see none.
There is correspondence from the law firm of
Adams and Rafferty to Ms. Maria Pacheco.
(Reading) Dear Ms. Pacheco: Please accept
this correspondence as a request to continue
the above-captioned case currently scheduled
for Thursday, March 23rd to Thursday, May 10,
2012. Thank you for your attention to this
matter.

All those in favor of accepting the request for a continuance until then.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.
The matter is not continued.

CONSTANTINE ALEXANDER: What was the date?

BRENDAN SULLIVAN: May 10th.

TIMOTHY HUGHES: Is this a case heard?

BRENDAN SULLIVAN: It is a case heard.

MARIA PACHECO: 10051 is not heard.

BRENDAN SULLIVAN: On the condition that the Petitioner change the posting sign to reflect the new date of May 10, 2012, and the time of seven p.m., and that any changes to this particular application be in the file by five p.m. prior to the Monday of the May 10th hearing. The matter is continued.

(Sullivan, Alexander, Hughes, Scott

in favor; Heuer opposed.)

(7:30 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott.)

The Board will now hear case No. 10051.
Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence from the law firm of Adams and Rafferty to Ms. Maria Pacheco. (Reading) Please accept this correspondence as a request to continue the above-captioned case currently scheduled for Thursday, March 23rd to Thursday, May 10, 2012. Thank you for your attention.

All those in favor of accepting the request for a continuance.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor and one opposed.

(Sullivan, Alexander, Hughes, Scott in favor; Heuer opposed.)

BRENDAN SULLIVAN: On the condition

that the Petitioner change the posting sign to reflect the new date, May 10, 2012, and a time of seven p.m. And that any changes to the application be in the file by five p.m. on the Monday prior to May 10th hearing. And the matter is continued.

(7:35 p.m.)

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

BRENDAN SULLIVAN: The Board will

hear case No. 10223, 7-9 Crescent Street.

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, members of the Board. For the record, Sean Hope of Hope Legal Offices in Cambridge. I'm here tonight with the Deegan family. To my right I have Mrs. Ellie Deegan and her husband Tom Deegan. And I believe that's D-e-e-g-a-n. And to my right is Deidre Firouzbakht.

I'll let you spell the last name.

DEIDRE FIROUZBAKHT:

F-i-r-o-u-z-b-a-k-h-t, Deidre, D-e-i-d-r-e.

ATTORNEY SEAN HOPE: And also I have the project architect Mrs. Maggie Booz.

MAGGIE BOOZ: B-o-o-z.

ATTORNEY SEAN HOPE: So this is an application to renovate an existing two-family structure that's located in a Res. C-1 District. This lot is non-conforming in terms of its size, and also the house itself in diminishing, non-conforming. The

purpose of the application is to renovate the house to allow three generations of the Deegan family to remain in the house. The renovations include raising the roof four feet to use full use of the attic space. Addition of the dormers both on the east and west elevations to provide head height, light, and room for that third floor attic. There's also going to be new windows on the second and third floor on both sides of the property. There is a rear deck and a ramp in the rear yard setback, and also a balcony on the east elevation.

Mrs. Booz will walk you through the specifics of the renovations and why they were necessary to make the house really functional for the full family to be able to live there. But quickly by way of background, Mrs. Deegan and her family have owned the house since 1929.

I believe your grandfather had built

that house.

The Deegan family is a long-time respected Cambridge family I believe owned several properties in that area and actually divested some of those properties over time.

Tom and Ellie live on the second floor. And in recent years and in the later years Mrs. Deegan's handicap has made living on the second floor extremely difficult, obviously affecting her quality of life, not being able to navigate the stairs.

Alongside of that Deidre and her husband and their growing family live on the first floor, and they have a growing family. And part of the idea to be able to remain in the house is to have the Deegans, Ellie and Tom move down on the first floor. And also to have Deidre and Mahmood and her family move to the second floor. Part of these renovations as Mrs. Booz will walk through, is in terms of the attic space. This is a

peaked roof as you would see. And so the house is not that wide. So as you really get out of the center of the house, you would have space that's probably not GFA if it's below five feet, but also unusable space.

So part of this renovation is to be able to let Deidre and her husband can move to the second floor and be able to accommodate them permanently.

Also, the house is dated and in need of repair. So part of the dormers and the addition to the roofs are adding a modern utilities; heat and air cooling systems that aren't really possible now as well as the attic space really isn't functional.

Just to briefly walk through the relief. This is a C-1 District and it has a FAR of 0.75. The house existing is 0.78, and we're going to 0.89. On the east side of the property it's within the setback. I believe the setback's about eleven feet, four inches

and the house six. So anything we build along that setback would be within the setback.

Specifically there's a front dormer roof.

MAGGIE BOOZ: L you might say.

ATTORNEY SEAN HOPE: L-shape. The house makes an L-shape in the front. And they're going to be raising that portion, that element of the house as well, and because that's in the front yard as well as the side yard setback, that's a Variance for that element of relief.

TAD HEUER: Does that all go to 35, 11 or is that just the peak?

MAGGIE BOOZ: No, that doesn't go to 35, 11.

ATTORNEY SEAN HOPE: So 34, 11. They're all below the max height, but because that's in the front and side yard setback that front piece that bumps out of the hill

requires relief.

CONSTANTINE ALEXANDER: Sean, I'm doing it from memory, but I think the dimensional form indicates that in the rear yard setback you're going from ten feet to six inches?

ATTORNEY SEAN HOPE: Yes. That's another part of the hardship. So, obviously the renovations for the second floor for Deidre and her family, but on the first floor there's an idea to have this rear yard deck. Now, according to the code there's an exception for the rear yard setback so that if elements are less than 10 feet and less than -- less than 10 feet in-depth and four feet in height, there's an exception to the rear yard setback. It's been the determination by ISD, because the property is already within the setback, they're not allowing us to use that setback. But more to the point of the hardship, having this deck

and we looked at Maggie -- Ms. Booze will talk about different ways. Part of this hardship will allow Mrs. Deegan to be able to have freedom of movement. Right now on a night like tonight if you didn't have that deck, which is going to be flush with the first floor, she'll be able to, on her own without anyone else's assistance in terms of independence be able to go and access that backyard. So to your point, right now I think the house is just about a little bit over ten feet from the rear fence line. This deck will come out up to six inches in that rear yard.

CONSTANTINE ALEXANDER: And would the deck have steps or a ramp down to the ground level?

ATTORNEY SEAN HOPE: It will have a ramp as well.

CONSTANTINE ALEXANDER: Presumably not within the six inches of the lot line?

MAGGIE BOOZ: No.

ATTORNEY SEAN HOPE: Right. And according to the plan, I think it's on the east side and the ramp will come out. It is an important part of the hardship because really in terms of the first floor living, this is really about independence, freedom of movement, and to be able to be able to enjoy the limited outdoor space that she's able to have with that ramp. I know there was some options of looking at a float deck, but this is really made so that you wouldn't have to have anyone else assist her if she wanted to go out and be able to use that backyard area.

I would also say, too, if you look at the letters in the file, there's been extensive outreach to the neighboring abutters. I wasn't aware of any letters of opposition in the file. As well as, I think there's also a letter from Marjorie Decker as well attesting to the family's being in

Cambridge and being upstanding citizens.

Maybe, Maggie, you want to walk through some of the specifics of the plans.

MAGGIE BOOZ: Okay. So as Sean explained, the first floor which is considerably in better shape than the second floor right now will become the unit that Ellie and Tom will move down to and the second floor will be where Deidre and her family will be. And the -- what we determined was we were trying to get enough bedrooms up on the third floor. We can finish off that space with your permission, but the height of the ceiling, the height of the ridge is such that we're not getting -- we weren't getting as much space as we needed. Everything was extremely cramped. It was hard to make usable rooms.

CONSTANTINE ALEXANDER: How much square feet, if we approve relief tonight, will be in the second floor unit?

MAGGIE BOOZ: In the second floor unit?

CONSTANTINE ALEXANDER: Yes. The unit for Deidre's family. How many square feet?

DEIDRE FIROUZBAKHT: Do you mean the attic level?

CONSTANTINE ALEXANDER: Yes, I'm sorry.

DEIDRE FIROUZBAKHT: For the attic level.

MAGGIE BOOZ: Oh, I think we're adding about 400 square feet overall.

TAD HEUER: Two.

CONSTANTINE ALEXANDER: How much square feet is there now?

MAGGIE BOOZ: I don't have the numbers at the top of my head. I think we've got about 2,800 square feet total divided over, you know, probably 800 square feet each or something like that. Eight to nine

hundred square feet per floor.

TAD HEUER: Does your basement count?

MAGGIE BOOZ: It does not count.

TAD HEUER: You have existing conditions of 2858 which will put you nearly a thousand, maybe a bit under?

MAGGIE BOOZ: Yeah, that's about right.

TAD HEUER: Is that right? And then you'll be going to 3260 which is the addition of the two square feet?

MAGGIE BOOZ: That's right.

So, we're, you know, so we're proposing this raising the ridge in order to get that, just, it gets incrementally more space, that makes the rooms usable on the third floor. It also, without raising the walls, so we're just raising the ridge, we're changing the roof pitch and changing the ridge essentially. And this diagram kind of shows

you what's going on. You know, there's an outline of the house as it exists now, and then dotted in there is what the roof would look like in terms of its change.

We're trying to maintain this really strong horizontal that's here, and it's continuous all the way around the house. And so, we didn't, we decided not to try to lift the walls up and it makes a really peculiar looking building when you do that. We're looking at something that's reasonable looking, more than reasonable looking, attractive looking in terms of architecture of the house being true to the spirit of how the thing was designed in the first place. Then we've got two dormers. There are two, ten-foot wide dormers. One is accommodating a bathroom and the other is accommodating a bedroom. And, you know, trying to get vertical surfaces into the bedroom so we can put furniture.

CONSTANTINE ALEXANDER: And the dormers comply with the dormer guidelines?

MAGGIE BOOZ: They do in terms of being less than the height of the ridge and, you know, gable dormer as opposed to shed dormers. We're not trying to max out the third floor and make some mega structure. We're trying to be reasonable about what the building is and what it should look like. We've placed the dormers carefully. There's an existing protruding bay on the east side of the house. As you can see, we've centered the dormer above that to make it look like, you know, it was really part of the architecture of the building. And it's those kind of efforts that we're trying to make in order to renovate the house in a reasonable way and make a reasonable request to you all.

I should say that the deck has two ramps, one on the east side and one on the west

side on the driveway. And that driveway side we're 17 feet back from the, from the property line, but the deck does come right in between an existing garage and the house itself. The ramp, I should say comes between them. But we wanted to be able to get Ellie to be able to come out the driveway side or on the side where there's really the kind of outdoor space for the, you know, for Deidre and her family where they actually spend most of their time.

And the other thing I should say is that this deck, I mean, we could have just made a little place for Ellie to come out and come down a ramp. But the ramps are not actually to ADA standards. They're not -- there's not enough length along the side of the house to do that, so they're steeper than ADA standards would call for. And so it means that we want this to be sort of a gathering space, that the family can, you know, gather

on that deck, and that, you know, Ellie simply not on a deck by herself and with her family and eating outside and that sort of thing. So that's the, that's the motivation for the size of the deck and thus the request.

TAD HEUER: What is the size of the deck roughly?

MAGGIE BOOZ: It's the width of the house. It's about, it's probably about 20 by 10. So it's the width of the house to here. So we could get the ramps down the side.

BRENDAN SULLIVAN: This one drawing, I think it says nine-foot, six. Would that be --

MAGGIE BOOZ: Yeah, nine-foot, six. I'm sorry. It's a ten-foot setback to the wall. This is a photograph of that wall by the way. It's very, it's a very solid sort of barrier.

CONSTANTINE ALEXANDER: The neighbor who is most affected by the deck, do

you have support with the neighbor?

DEIDRE FIROUZBAKHT: Yes, we talked to them. We talked to -- actually, it's a condo unit. We talked to everybody, and we actually have a letter --

CONSTANTINE ALEXANDER: We have a lot of letters in the file, if that neighbor provided a letter.

DEIDRE FIROUZBAKHT: Yes.

MAGGIE BOOZ: The other thing I'd like to point out is just, you know, how much yard we're talking about in here. I mean, it's an unusual shape here. This building here has -- owns the, you know, owns the land up to six feet away from the L -- the end of the L of 79 Crescent Street. But the fact is it's, there's a sort of generosity of space on that particular lot, and so I feel like we're not encroaching on that neighbor and that neighbor saw it that way as well. You know, some psychological way.

BRENDAN SULLIVAN: But any less of a deck you'd have an inadequate deck and inadequate green space --

MAGGIE BOOZ: Yeah.

BRENDAN SULLIVAN: -- behind it to the lot line.

MAGGIE BOOZ: It would be a compromised green space and a deck you couldn't get a table on.

BRENDAN SULLIVAN: The deck would be somewhat useless and not functional. So that the deck is basically the open space --

MAGGIE BOOZ: Yeah.

BRENDAN SULLIVAN: -- for recreation, for assembly, for whatever. Yes. Okay.

MAGGIE BOOZ: It is also -- we thought we would conform to that exception in the beginning. We thought we would conform to the not over four feet, not over ten feet off the foundation if it aligns with the

existing building but we didn't conform to that.

CONSTANTINE ALEXANDER: Is there any fencing, by the way, on the deck particularly as it abuts the rear or the lot line six inches?

MAGGIE BOOZ: There's not proposed.

CONSTANTINE ALEXANDER: Not proposed, okay.

MAGGIE BOOZ: This is the wall that is at the back of that deck. So we're -- I'm just saying, you know, we're saying six inches so that we can, you know, nail things.

CONSTANTINE ALEXANDER: Six inches from that wall?

MAGGIE BOOZ: Six inches from that wall, yeah.

CONSTANTINE ALEXANDER: There's no question of privacy. The wall provides privacy.

MAGGIE BOOZ: That's correct, yeah.

BRENDAN SULLIVAN: To collect leaves.

MAGGIE BOOZ: Yeah, good point.

BRENDAN SULLIVAN: To collect leaves.

CONSTANTINE ALEXANDER: You can play baseball.

MAGGIE BOOZ: It's a nice spot.

BRENDAN SULLIVAN: And push the snow off the deck into the six-inch no man's land.

MAGGIE BOOZ: If we ever get any.

TAD HEUER: Is the deck four feet high or less than it is now?

MAGGIE BOOZ: It's less than four feet high. Yeah, it's at first floor level. It's about three feet up.

ATTORNEY SEAN HOPE: It was built to comply with the exceptions except (inaudible).

MAGGIE BOOZ: Right.

BRENDAN SULLIVAN: All right.

MAGGIE BOOZ: And plus the length of the ramp would have to be considerable to get up through, you know, three feet.

BRENDAN SULLIVAN: Any other questions at this time?

Tom, any questions at this point?

THOMAS SCOTT: No.

BRENDAN SULLIVAN: Tim? Tad?

TAD HEUER: The windows on the plan show six over one divided lights. Is that what you have in the house now or is that --

MAGGIE BOOZ: Yeah, existing window configuration, yeah.

TAD HEUER: Are those true divided or false divided?

MAGGIE BOOZ: They'll be double glazed. The new windows, they'll be double glazed, I'm sorry. I mean, we haven't actually discussed the details of the windows, but I'm 90 percent certain.

CONSTANTINE ALEXANDER: You have

discussed the location the windows; right?

MAGGIE BOOZ: Indeed we have, yes.

TAD HEUER: And is the pitch of your new dormer the same as the pitch of the proposed change to the front of the L?

MAGGIE BOOZ: Yes. Those are the same pitch. These here are the same pitch. And they are 90 degrees to this. So they're the -- I mean, they are the same pitch as the -- as the new roof pitch.

BRENDAN SULLIVAN: Okay.

MAGGIE BOOZ: So they're 45 degrees.

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

Is there anybody here who would like to speak on the matter at 7-9 Crescent Street?

Yes, if you would -- I'll give you the last word, how's that?

SALLY WATERS: I am Sally Waters I am cousins to these wonderful people here. And I have a lot of family on my street, and I

really want them to stay on the street and I want her to be free to go out on a ramp in the back. It's what she needs. Ellie, that's my grandson.

BRENDAN SULLIVAN: Okay.

Is there anybody else who would like to speak on -- yes, please come forward and give your name and address for the record.

SHAHLA HAGHAYEGHI: My name is Shahla Haghayeghi, S-h-a-h-l-a H-a-g-h-a-y-e-g-h-i, I live at 1105 at Mass. Ave. for 35 years. I'm Deidre's mother-in-law and I raised my two kids in Cambridge, and I know they're going to be happy there if they stay with his mother, and I wish, you know, you guys concern about that because my -- I want my son to be happy.

BRENDAN SULLIVAN: Anybody else wishing to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: There is

correspondence in the file on the letterhead of the Cambridge City Council. (Reading) To Whom It May Concern: As a lifelong resident of Cambridge, I'm writing to show support of Tom and Ellie Deegan's application for Zoning relief from the your Board in connection with their home located at 7-9 Crescent Street. Ellie and her family have lived at 7-9 Crescent Street since its construction by Ellie's grandfather in 1931. Ellie's disability has worsened over the years requiring changes to the house to provide greater accessibility and increasing Ellie's dependence on health from family, especially her daughter Deidre. This proposed renovation project will offer Ellie much needed relief from having to travel stairs, and it will also provide her greater access to the outside. She will also be able to keep her daughter Deidre close since the attic level renovations will allow Deidre to

accommodate her growing family. Deidre, her husband and son are quickly outgrowing the first floor especially with their hopes to grow their family. It is my hope that you will grant the Zoning relief that Tom and Ellie have requested so that Ellie, an original part of Cambridge history, can continue to live at 7-9 Crescent Street. As Cambridge has been focusing on allowing our elderly community to age gracefully in a city that is been able to provide for them, keeping a family like the Deegans together and in our city is vital to preserving the fabric of our community. Sincerely, Marjorie Decker.

There is correspondence from a Bill George who owns the property at 102-104 Oxford Street. He's writing in support of the application who has known the Deegans and the Deidre for many years and support the effort to keep their family on this property.

There is correspondence from Sue

Kriegsman, K-r-i-e-g-s-m-a-n and Hitesh, H-i-t-e-s-h Trivedi, T-r-i-v-e-d-i, 12 Crescent Street who also write to show their support for the application.

There is correspondence from Jeffrey Burman and Janice Walker who own the house at 100 Oxford Street across the street, at the corner of Crescent and Oxford and write to support the application.

There is correspondence from Elsie Sunderland, S-u-n-d-e-r-l-a-n-d and John Frank who own the house at 15 Crescent Street and they write to support.

There is correspondence from Jason Innes, I-n-n-e-s and Liz Vance, V-a-n-c-e who own the townhouse located at 6 Eustis Street behind the subject property and they're writing to show their support for the application.

There is correspondence from Jason and Lindsey Politi, P-o-l-i-t-i. They own the

house at 31 Crescent Street. And they write their support for the Deegans who are longtime residents. (Reading) Their efforts to maintain a strong sense of community on Crescent Street and include relative newcomers like ourselves into that community cannot be overstated. We are delighted that they are planning to take the necessary steps to take to allow them to continue to live comfortably in their home hopefully for many years to come.

And correspondence from Debra Lee who owns the house located at 29 Crescent Street who writes in support of the application.

And that is the sum substance of correspondence.

Okay, anything else to add, delete, change? Oh, and I'm sorry, you wanted to have the last word, yes.

ELEANOR DEEGAN: I'm Deidre's mother. Tom's her father. And she was born

and brought up in this house. I spent a good deal of my childhood in this house, and my young adulthood. I went away to college and, you know, tramped around a while and came back and moved back in and have been living there for 40 years up on the second floor which has just been lovely. It's a beautiful apartment. But, you know, age has caught up to me. I have congenital handicaps that have gotten worse with age and make my mobility just really almost not existent at this point. I can walk with a walker, which means I can get myself down a ramp and back up a ramp, and have my lunch out at the picnic table in the side yard. I mean, I, I've gone sometimes over a month without leaving the house because it involves so much getting me down the stairs, getting into the car. You know, just -- or just getting me around the side yard. This will make my life just so much easier. These young people love this

property so much. They just want to make it into something very special, and I can feel my grandfather smiling.

BRENDAN SULLIVAN: All right. Well said. Thank you.

Okay, let me close all the testimony.

CONSTANTINE ALEXANDER: There are not too many cases that I really feel good about granting a Variance and this is one I do feel good about. This is exactly what the kind of land use policy we should be promoting about this. I'm enthusiastically in favor of granting the Variance.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I think I'm in favor of it. Just a question on the third level. Can you just explain again, like, how many families live in the house and how that all -- are they all co-mingled living together?

MAGGIE BOOZ: No. It's two

separate families. It's two separate units. The first unit is very standard really. Standard two-bedroom unit with a living room, dining room, kitchen and the two bedrooms. And then the second floor, it will be living room, dining room, one of the bedrooms gets turned into a little TV space, and the back bedroom gets turned into a breakfast room next to the kitchen, and then the third floor has, you know, three bedrooms.

THOMAS SCOTT: That are part of that unit?

MAGGIE BOOZ: Yep, yep. There's an existing stair that goes up to the third floor now, you know, full stair.

BRENDAN SULLIVAN: Unfinished attic.

MAGGIE BOOZ: Unfinished attic.

THOMAS SCOTT: I was confused. I thought you were making a third unit on the third floor. That's not true.

MAGGIE BOOZ: No. Sorry.

THOMAS SCOTT: Okay. I'm good.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: I'm good with it.

BRENDAN SULLIVAN: Mr. Heuer?

TAD HEUER: Square footage is a bit on the high side which we tend to be seeing that that seems to be a trend, but I'm okay.

BRENDAN SULLIVAN: I'll make a motion, then, to grant the relief requested. I have a plethora of paper here, and I'm not sure with three or four different dates, but I will sign, I guess, the appropriate one, Maggie and Mr. Hope. There's one dated 2/29. Is that the current one? I have that, I have 3/19.

MAGGIE BOOZ: That has two skylights that were --

BRENDAN SULLIVAN: Okay. If you can get me the applicable document?

Let me make a motion, then, to grant the

relief requested as per the plans submitted and initialed and dated by the Chair, and the applicable dimensional form submitted as part of the application.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would really limit their ability to stay in the house due to progressing health problems and the need for the applicant to relocate to the first floor and also to be able to access the outside independently.

This will also allow a family member who is currently a caregiver to be able to stay in the house for an extended period of time, to be able to provide the care for the Applicant.

The Board finds that the hardship is owing to the size and shape of the house on the lot, the existing non-conforming nature,

which by itself severely limits any additions to the house which would require some relief from this Board.

The Board finds that the requested relief is a fair and reasonable one.

The Board finds that the desirable relief may be granted without substantial detriment to the public good.

The Board notes letters in support from abutters and from the community generally from people on the street, from the City Councilor.

The Board also notes a previous letter from Mayor Davis which I find is also quite pertinent to this particular application and her being on the Silver Ribbon Committee to allow seniors to remain in their homes and also have adequate space for caregivers to provide services to the elderly.

The Board finds that relief may be granted without nullifying or substantially

derogating from the intent and purpose of the Ordinance. And that will do it.

All those in favor of granting the relief?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

TAD HEUER: Again, just to reiterate, I'm voting in favor but the statement from the Mayor that she desires that this Board grant relief based on senior housing and living and being able to age in place is a laudable one, but not one that the Board can make case by case. I think the City Council should enact an Ordinance that we can then enforce.

BRENDAN SULLIVAN: Okay, good luck.

CONSTANTINE ALEXANDER: Special Permit.

BRENDAN SULLIVAN: Oh, I'm sorry.

Well, good luck on that one.

CONSTANTINE ALEXANDER: Don't go anywhere yet.

BRENDAN SULLIVAN: On the Special Permit to install the new windows. Those are clearly defined in the drawings here?

MAGGIE BOOZ: Uh-huh.

BRENDAN SULLIVAN: Which are shown on -- let me make a motion, then, to grant the Special Permit to allow for the installation of new and relocation of existing; is that correct?

MAGGIE BOOZ: Yes.

TAD HEUER: Do you have relocation on the non-front --

MAGGIE BOOZ: Can I clearly mark them on here?

TAD HEUER: Yes.

Do you have relocation on the non-front facade location of windows?

MAGGIE BOOZ: Yes. On the second

floor on the east side we have a relocation of two windows in the kitchen.

CONSTANTINE ALEXANDER: What are you doing?

TAD HEUER: Just marking the --

MAGGIE BOOZ: I just wanted them to be clearly marked on the -- there was a window change.

CONSTANTINE ALEXANDER: But I'm not sure --

MAGGIE BOOZ: This is a relocation.

CONSTANTINE ALEXANDER: Okay. We didn't see what it was before.

TAD HEUER: We don't have current elevations.

CONSTANTINE ALEXANDER: I know. I noticed that is missing in the file, but okay.

MAGGIE BOOZ: Okay, basically --

CONSTANTINE ALEXANDER: It will be useful in the future on relocation of windows if we could have the before and the after.

MAGGIE BOOZ: Existing and proposed? Okay. I could also submit them to the file tomorrow. But they're --

CONSTANTINE ALEXANDER: We have to take action tonight.

MAGGIE BOOZ: Yeah, okay. But just so that they're in the file.

BRENDAN SULLIVAN: That would be helpful.

THOMAS SCOTT: Can I also request that the rooms be labelled? I find that a little troubling, you know, I'm trying to understand how the plan works, there was --

DEIDRE FIROUZBAKHT: There's existing right here.

THOMAS SCOTT: There's no labelling.

MAGGIE BOOZ: All right, so here's a set of existing conditions, plans so that you can see where heads will be changing. Shall I go through and explain?

BRENDAN SULLIVAN: No, if you just markup what is the subject of the Special Permit basically.

MAGGIE BOOZ: Okay. Yeah, if I could, please, thank you.

So on the second floor we're moving two windows about 20 inches.

ATTORNEY SEAN HOPE: And it's more important for the plans that you sign, right, than to walk the Board through -- do you also want to see?

CONSTANTINE ALEXANDER: I'd like to see. I for one would like to see what's happening.

MAGGIE BOOZ: These two windows here. We're proposing to move them over 20 inches in that direction towards the rear yard. That's the window change on the east side.

CONSTANTINE ALEXANDER: Number of windows hasn't changed?

MAGGIE BOOZ: No.

CONSTANTINE ALEXANDER: Just moving them 20 inches.

MAGGIE BOOZ: Same thing, same size. Everything's the same.

BRENDAN SULLIVAN: Just a re-alignment because of the interior space?

MAGGIE BOOZ: Yes, exactly.

On the rear facade we're adding these three new windows to get more light into the kitchen. This is a half wall, so we're trying to get more, just more light. And the same thing on the west side, two new windows next to two existing windows.

On the third floor we're adding two windows in the front and two windows in the rear.

BRENDAN SULLIVAN: Okay, front.

TAD HEUER: Doesn't matter.

BRENDAN SULLIVAN: Is exempt.

MAGGIE BOOZ: The rear is within the

setback.

CONSTANTINE ALEXANDER: Are the neighbors aware of the new windows as opposed to the relocation of windows? That does impact obviously their property.

ATTORNEY SEAN HOPE: Yes.

MAGGIE BOOZ: And then of course the new windows that are the dormer and the new window.

BRENDAN SULLIVAN: Okay.

Any other questions?

CONSTANTINE ALEXANDER: No, I would just repeat the comments that the next time we need to get more detail on the relocation of windows, particularly on the elevation before and after.

MAGGIE BOOZ: Okay. Yeah, I'm sorry about that.

BRENDAN SULLIVAN: Let me make a motion, then, to grant the Special Permit which will allow for the addition of windows

and also the relocation of existing windows or window placements.

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

The Board finds that the proposed windows are modest and are not inconsistent with the overall intent and requirements of the Ordinance.

The windows will provide much needed natural air and light to the house and its inhabitants, and as a result of a re-alignment of some of the interior space which necessitates the realignment and changing of some of the windows. And also the addition will -- dormers will require sufficient and adequate windows that fall within the sit back.

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

character.

The Board finds that continued operation of or development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use, and there would not be any nuisance or hazard created to the detriment of the health, safety, and welfare of the occupant or the proposed use of the citizens of the city.

And the Board finds that the additional windows relocation actually is aesthetically pleasing. And that the replacement is reasonably screened and set back sufficiently from neighboring properties.

And the proposal would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

All those in favor of granting Special Permit for the windows --

CONSTANTINE ALEXANDER: Have you tied them to those plans? I'm sorry, I missed it.

BRENDAN SULLIVAN: And as per the plans initialed by the Chair.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes, Scott.)

BRENDAN SULLIVAN: One opposed.

TAD HEUER: And that's purely procedural, that not having the plans, it's difficult to review them. They need to be in the file five p.m. the Monday before. Having seen them here, they look fine. It's just very difficult. If everyone did that, we'd have a very long night.

BRENDAN SULLIVAN: Okay. Good.

MARIA PACHECO: You need to withdraw the other one.

(8:10 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10106. Mr. Hope.

ATTORNEY SEAN HOPE: Good evening, for the record, Attorney Sean Hope, Hope Legal Offices in Cambridge. I have the Deegan family here tonight as well as the architect Maggie Booz. We would wish to withdraw the case. This is a continued case that has now been concluded by the conclusion of the previous case so we would wish to withdraw if the Board would deem it appropriate.

BRENDAN SULLIVAN: On the motion to accept the request for withdrawal.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(8:10 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10214, and in conjunction with case 10224, 28 Garfield Street. Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence from Rishi Reddi, R-i-s-h-i R-e-d-d-i. (Reading) After our conversation this morning I'm requesting a continuance for the hearing regarding the home at 28 Garfield Street. These cases 10224 and 10214 were scheduled to be heard tomorrow night, March 22nd by the Zoning Board of Appeals. I request that they be rescheduled for the next available date to allow my family adequate time to work with our immediate abutters in redesigning the driveway and garage. Thank you for your

assistance in this matter.

All those who are in favor of accepting the request to continue both cases until May 24, 2012.

CONSTANTINE ALEXANDER: These are both cases not heard, Brendan? I think so.

BRENDAN SULLIVAN: Both no heard.

CONSTANTINE ALEXANDER: I can't sit on the 24th.

BRENDAN SULLIVAN: On the condition that the Petitioner change the posting signs to reflect the new date of May 24th and the time of seven p.m. And that any additional changes to the plans and the dimensional form be in the file by five p.m. on the Monday prior to the May 24th hearing.

All those in favor of continuing the matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes,

Heuer, Scott.)

(8:15 p.m.)

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

BRENDAN SULLIVAN: The Board will
hear case No. 10225, 600 Mass. Avenue.

Okay, Mr. Embry.

ATTORNEY BRUCE EMBRY: Good evening, members of the Board. My name is Bruce Embry, E-m-b-r-y. I'm an attorney here in Cambridge. My office is at 55 Cambridge Parkway. I'm here representing Chipotle Mexican Grill of Colorado and their local affiliates who will be asking for a Special Permit to run a fast food establishment at 600 Mass. Ave. I'm joined tonight once again by Brad Toothman who is a regional manager for Chipotle who can answer any of your particular questions about the operation of the facility.

There's nothing especially complicated about this. The space is the former home of Wendy's. Wendy's obviously not being there anymore. This is an excellent opportunity for Chipotle to upgrade the site both in terms of physical appearance and we believe also in menu options.

The fast food use is essentially a

duplicative use for what was there. There are no parking or traffic issues. It's virtually a 100 percent walk-in, and for the most part, eat-in business. There are no safety issues. There will be 49 seats inside and the request is for six seats outside.

CONSTANTINE ALEXANDER: Mr. Embry, do you really think on that location you can have outdoor seating? I mean, give me -- I mean --

BRAD TOOTHMAN: We hope so. We've been working with the DPW. They've requested to put it out, out into -- away from the building because of the -- we're gonna give it a shot. You know, we've actually done a couple of things. We have some operable windows that we're actually installing up in the front so that you can open them up on a nice day, at least the window side of it, up front to create that. So we're gonna give it a shot. We'll see how it does.

CONSTANTINE ALEXANDER: Good look.

BRAD TOOTHMAN: I know.

ATTORNEY BRUCE EMBRY: It will be interesting to see how it fits into that to the streetscape there.

CONSTANTINE ALEXANDER: That's one way of looking at it; right?

ATTORNEY BRUCE EMBRY: And perhaps, who knows, it may encourage more of the same and there may be more of a sort of Perusian look to the street. A block or two --

BRENDAN SULLIVAN: It may be a trend --

CONSTANTINE ALEXANDER: The left bank this ain't I'm telling you.

BRENDAN SULLIVAN: It may be a trendsetter.

ATTORNEY BRUCE EMBRY: The hope is that it will certainly make the -- that particular location attractive visually and maybe inspirationally to the neighborhood

and who knows.

TAD HEUER: You're a pioneer.

BRAD TOOTHMAN: We're trying to.

TIMOTHY HUGHES: Was this sidewalk roughly the same size as the sidewalk in front of the Middle East? Because they have outdoor seating.

ATTORNEY BRUCE EMBRY: And similarly here in the block just adjacent here there are some seats that are outside as well. I and I think the idea is just to create sort of a different visual appeal to the location and sort of attractive to magnetize people to come there, interrupt their visual affect for the entire street so that they can get to see where the location is. And that's, there isn't -- as I said, there's not much more complicated than that.

BRENDAN SULLIVAN: Now the actual relief that we're granting you is not a typical Variance for fast food because that

has already been established by the previous tenant there, being --

ATTORNEY BRUCE EMBRY: Wendy's.

BRENDAN SULLIVAN: -- Wendy's.

And so it's a Special Permit under the Fast Food Ordinance regulation. The outdoor seating is, again, not one that we can approve, given a promat to. That's licensing I believe; is that correct?

BRAD TOOTHMAN: Yes.

ATTORNEY BRUCE EMBRY: And we're working with the DPW.

BRENDAN SULLIVAN: This is just the entire package that you're representing to us?

BRAD TOOTHMAN: Yes.

CONSTANTINE ALEXANDER: Brendan, just so the record is clear, it's a mixed use. They don't need a Variance.

ATTORNEY BRUCE EMBRY: Just a fast food Special Permit.

CONSTANTINE ALEXANDER: It's a matter of right given the Special Permit so to be clear. The fact that the Wendy's was there before is not relevant.

BRENDAN SULLIVAN: They have to meet the other criteria for the fast food establishment. Okay.

CONSTANTINE ALEXANDER: That's right.

BRENDAN SULLIVAN: Okay. Anything else to add?

ATTORNEY BRUCE EMBRY: No. In a word.

CONSTANTINE ALEXANDER: Have you suggested recommending to your client that rather than locate here, locate in Spinelli's Place next to your martial arts client and you can have food and --

ATTORNEY BRUCE EMBRY: There's one just a couple hundred yards from there actually. We don't want to cannibalize our

own locations.

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

TIMOTHY HUGHES: No. Go through your list.

CONSTANTINE ALEXANDER: I'm fine.

TAD HEUER: So it does seem that you're -- in your Alewife location you have a Sleepy's and a liquor store and here you have a Sleepy's and a liquor store. Is this kind of a co-branding marketing approach?

BRAD TOOTHMAN: Yes -- no. Coincidence.

ATTORNEY BRUCE EMBRY: Yeah, right.

BRAD TOOTHMAN: I never thought about that actually.

ATTORNEY BRUCE EMBRY: I didn't either.

BRAD TOOTHMAN: Good pick up.

BRENDAN SULLIVAN: They probably complement each other in some way.

ATTORNEY BRUCE EMBRY: There's some cosmic thing going on.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the proposal for the Chipotle Mexican Grill at 600 mass Ave.?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance and there are no letters in the file.

Okay, nothing to add, delete, change?

ATTORNEY BRUCE EMBRY: No, sir.

BRENDAN SULLIVAN: Under the 11.30 fast order food establishment in considering the application for a Special Permit, the Board shall find, in addition to other criteria, that the following requirements are met:

The operation of the establishment will not create traffic problems. And we can

establish that it has not.

It would not reduce available parking. The parking is on street and it is metered.

It will not threaten public safety in the streets or sidewalks or encourage or produce double parking on the adjacent public streets. And we can safely say that it probably would not.

The physical design, including color and use of materials, shall be compatible with, and sensitive to the visual and physical characteristics of other buildings, public spaces and uses.

CONSTANTINE ALEXANDER: Brendan, they haven't shown us any. What are you going to do for signage?

ATTORNEY BRUCE EMBRY: Just conforming signage.

CONSTANTINE ALEXANDER: Conforming to what?

ATTORNEY BRUCE EMBRY: In terms of

size and location.

CONSTANTINE ALEXANDER: You're not going to need any Zoning relief for signs? You're going to comply with the Zoning By-laws?

ATTORNEY BRUCE EMBRY: Yes.

CONSTANTINE ALEXANDER: And the nature of the materials is like you have at other Chipotles.

ATTORNEY BRUCE EMBRY: Exactly. It's a theme for typical appearance. We provided some, albeit kind of sketchy photographs, that show what the typical signage looks like.

BRENDAN SULLIVAN: Less garish than some of the adjoining. So you may not want to comply -- be compatible with.

The establishment fulfills a need for such service in the neighborhood. They're substituting one for another, a different type of menu, and are there other Mexican

grills in the immediate area?

BRAD TOOTHMAN: No.

BRENDAN SULLIVAN: There are not. So it's a new fare that is being brought into the area.

The establishment will attract patrons primarily from walk-in trade as opposed to drive-in or automobile-related trade, and we can safely say that is true being Central Square.

The establishment shall, to the greatest extent, utilize biodegradable packaging in food and utensils and other items provided for consumption. The answer is yes.

The establishment shall provide convenient, suitable, and well-marked waste receptacles to encourage patrons properly to dispose of all packaging materials. There will be obviously sufficient receptacles inside the store, possibly outside the store

as it is --

BRAD TOOTHMAN: Yes.

BRENDAN SULLIVAN: It is public property so it's --

BRAD TOOTHMAN: There's a trash, can too, outside.

BRENDAN SULLIVAN: Yes, and it's --

ATTORNEY BRUCE EMBRY: The DPW requirements to have trash receptacles.

BRENDAN SULLIVAN: That's right. They're sufficient up and down Mass. Avenue.

The establishment complies with all state and local requirements applicable to ingress, egress, and use of all facilities on the premises for handicapped and disabled persons. And the answer to that is yes.

ATTORNEY BRUCE EMBRY: Yes.

BRENDAN SULLIVAN: Okay.

The Special Permit issued for fast order food establishment hereunder may be utilized only by the owner/operator of such

establishment as described in the applicable documents, or those documents that may be modified on the conditions of a Special Permit.

In granting a Special Permit, the Board shall specifically detail in its decision the kind of fast order food for which the permit is granted, and shall also identify those other aspects of the establishment as outlined in the application for which alterations will require the issuance of a new Special Permit. The only condition would be a change of ownership and possible change in the type of food that is being offered.

CONSTANTINE ALEXANDER: Yes.

Agree with that.

BRENDAN SULLIVAN: Anything else to add to that? Change of ownership, change of the product that is being proposed here tonight.

TAD HEUER: Yes, that's right.

BRENDAN SULLIVAN: Okay.

So, we've seen that those requirements can be met.

The other relief is 10.43. A Special Permit under 10.43 will be granted where the a specific provisions of the Ordinance are met, the Board finds that it appears that the requirements of this Ordinance can be met.

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

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

And that nuisance or hazard would not be created -- there would not be any nuisance or hazard created to the detriment of the

health, safety, or welfare of the occupant of the proposed use or to the citizens.

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

And the Board finds that the new use is not inconsistent with the urban design objective as set forth in Section 19.30.

Anything else to add?

All those in favor of granting the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

BRAD TOOTHMAN: Thank you.

ATTORNEY BRUCE EMBRY: Thanks very much.

(8:25 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10226, 1001 Mass. Avenue.

If you would introduce yourself for the record and spell your last name and give your address whoever is presenting.

ATTORNEY JESSICA MANGANELLO: Hi.

My name is Jessica Manganello. It's Manganello of New Leaf Legal. I'm right here at 649 Massachusetts Avenue. I'm here representing 02 Yoga Studios.

I have with me Mimi Loureiro, the owner of the 02 Yoga Studios here with me, and Bill Kaplan of the 997 Mass. Ave. Nominee Trust which is the owner of 1001.

So we're here today to submit a Special Permit to ask for a waiver of five parking spots that are required under the Zoning. We plan to have a yoga studio in the space, a massage therapy facility, and a sit-down cafe, not fast food. And under the Zoning requirements they're required to have nine spaces. Currently there are four available through this space.

TAD HEUER: Can you walk us through -- so the nine is for what combination? Is that all in, all uses yoga.

ATTORNEY JESSICA MANGANELLO: Yes.

TAD HEUER: Restaurant, massage.

ATTORNEY JESSICA MANGANELLO: So for the cafe they're going to have 30 seats, and right now the requirement is one parking space per 15 seats. That's six parking spaces per instruction hall. The yoga hall is the instruction room is the one room and then there is 480 square feet of the massage therapy space, and it's one parking space per 500 square feet.

BRENDAN SULLIVAN: Parking spaces are in back?

ATTORNEY JESSICA MANGANELLO: Yes. Actually, here are the parking spaces that available before. The spaces are actually sandwiched between the few other buildings on that block. It's right in the overlay district between Harvard Square and Central Square. It has the parking requirements, but there are actually four empty commercial spaces on this block right now. And a few

other businesses leaving, and usually there is plenty of parking right available on Mass. Ave. in that area. We actually don't believe that parking will be affected or that it will be a nuisance just because the nature of this business is very localized. We anticipate a lot of local residents, people who are working locally patronizing the space. The surrounding streets are all residential permit parking only. And we think that for the most part given the timing and how long people will be there, it will be well within the turnaround time with the parking limitations on Mass. Ave.

CONSTANTINE ALEXANDER: Can you elaborate a little bit about the cafe and exactly what kind of menu and what you plan to do and how many seats and stuff?

ATTORNEY JESSICA MANGANELLO: Yes. So it's 30 seats, going to be a vegan, juice bar, and cafe; sandwiches, salads, soups.

It's meant to be a sit down so it will be open to the public, but it's targeting people who are there for massage therapy and yoga students.

CONSTANTINE ALEXANDER: And the hours of the cafe will be, any idea?

MIMI LOUREIRO: It will be correspond closely to the class schedule.

CONSTANTINE ALEXANDER: And what's that?

MIMI LOUREIRO: Seven a.m. in the morning until seven p.m. at night and probably just in the morning on the weekends.

BRENDAN SULLIVAN: In your pleadings I notice that you stated that the existing area has been unrented and empty for ten years?

ATTORNEY JESSICA MANGANELLO: Yes.

BRENDAN SULLIVAN: What was there ten years ago?

BILL KAPLAN: It was a dot-com was

there. They had 45 people work there. It was office space.

CONSTANTINE ALEXANDER: Really?

BRENDAN SULLIVAN: I never even noticed that. I really didn't notice that it had been vacant for so long either.

BILL KAPLAN: Yeah. Well, it's set back. This portion is set back and has a smaller frontage.

BRENDAN SULLIVAN: Yes, okay.

BILL KAPLAN: Before that it was Circle Furniture.

BRENDAN SULLIVAN: Oh, okay. Maybe that's -- yes. So I sort of knew that they were there someplace.

ATTORNEY JESSICA MANGANELLO: It's definitely a hope by moving this multiuse space onto that block, it might attract additional businesses. I know there is a restaurant that's kind of waiting to see what happens with this permit before they proceed

with their own. They would like to be on the corner.

TAD HEUER: Just out of curiosity, what's the general size of the other adjoining units? Are they roughly this size, shape?

BILL KAPLAN: Yeah, I mean -- there are -- they're different shapes, but there are -- yes, we have a 7500 square foot space. We have a 4,000 square foot space, and then two that are the 1200, and 1,000 square foot space.

BRENDAN SULLIVAN: You're in operation now currently?

MIMI LOUREIRO: Yes.

BRENDAN SULLIVAN: Whereabouts?

MIMI LOUREIRO: In Somerville.

BRENDAN SULLIVAN: And this will be in addition to or you're moving to --

MIMI LOUREIRO: In addition to.

BRENDAN SULLIVAN: So this would be

studio No. 2?

MIMI LOUREIRO: Yes.

BRENDAN SULLIVAN: And how many students or clients do you have?

MIMI LOUREIRO: Probably -- I'd say we get about a thousand per month.

BRENDAN SULLIVAN: Okay. And enough from the Cambridge area that it's worth your while to --

MIMI LOUREIRO: Yes, absolutely.

BRENDAN SULLIVAN: -- have one here in addition to the Somerville location also?

MIMI LOUREIRO: Yeah, yeah, for sure.

CONSTANTINE ALEXANDER: If you have a thousand people, a thousand customers, whatever you want to, clients at your new location, that comes out a month, that comes to about 30 on average, 30 a day, 35 a day?

MIMI LOUREIRO: Right.

CONSTANTINE ALEXANDER: That's not

a lot of people over the course of almost a 12-hour day.

MIMI LOUREIRO: Exactly.

BRENDAN SULLIVAN: And your hours of operation again? I'm sorry, I missed that.

MIMI LOUREIRO: Usually from seven in the morning until seven at night. But we might have, you know, two classes in the morning and then a noon class and then a class in the evening.

BRENDAN SULLIVAN: There's breaks in between obviously because of scheduling and whatever?

MIMI LOUREIRO: Exactly.

CONSTANTINE ALEXANDER: And I trust in your Somerville location you don't have many people driving?

MIMI LOUREIRO: No. We chose this location because in, just like in Somerville, lots of people -- there's tons of public transportation, and a lot of people live

right in the area. So most of the people that come there live within half mile.

BRENDAN SULLIVAN: Okay.

MIMI LOUREIRO: And we're expecting the same to be here, the demographics exactly. There's tons of students and tons of people who live here and the T stops are nine minutes on either end of us.

BRENDAN SULLIVAN: Yes.

TAD HEUER: How many employees do you expect to need or have?

MIMI LOUREIRO: I have a part-time manager and I have eight to ten teachers.

TAD HEUER: Okay. And how many of them are on-site at any given time?

MIMI LOUREIRO: Two. So it's usually me and a teacher or a manager and a teacher at any one time.

TAD HEUER: And do you expect -- how many -- my question is really going to the parking spaces. How many of the parking

spaces do you expect to be taken up at any given time by you, whoever teachers, and --

MIMI LOUREIRO: At the most one. My manager lives two blocks away from the studio, and most of my teachers live within walking distance.

TAD HEUER: Okay.

BRENDAN SULLIVAN: So the four spaces will be underutilized for staff obviously?

MIMI LOUREIRO: Yeah.

BRENDAN SULLIVAN: Not necessarily for staff. Possibly one or two spaces. So the other two spaces for -- well, whoever can get there I suppose.

MIMI LOUREIRO: Or a massage client or something like that.

BRENDAN SULLIVAN: Okay, somebody specific in a sense as opposed to clients really.

MIMI LOUREIRO: Right.

BRENDAN SULLIVAN: Yes, okay.

Okay. Anything else at this point?

TAD HEUER: In terms of deliveries, what's your intended delivery schedule particularly for the cafe?

MIMI LOUREIRO: Oh, well most of the food is gonna be made off site. So we're actually working with an existing restaurant right now that they're in Allston, and they have their kitchen already set up there. So they're gonna be doing daily food deliveries.

TAD HEUER: Once a day?

MIMI LOUREIRO: Once a day, yeah.

TAD HEUER: In the morning presumably?

MIMI LOUREIRO: In the early morning.

TAD HEUER: Before you open?

MIMI LOUREIRO: Yes.

TAD HEUER: Is there a loading zone?

BILL KAPLAN: There is.

MIMI LOUREIRO: There is.

TAD HEUER: And that's what they'll be utilizing?

MIMI LOUREIRO: Yes.

BRENDAN SULLIVAN: Tim, any questions?

TIMOTHY HUGHES: No.

BRENDAN SULLIVAN: Let me open it public comments.

Is there anybody here who would like to speak on the matter 1001 Mass. Avenue?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance and there is no correspondence in the -- there is no, there are no correspondence in the file.

Okay. Anything to add or?

ATTORNEY JESSICA MANGANELLO: No.

BRENDAN SULLIVAN: All right. Let me close the presentation part and the Board discuss it.

Gus, what are your thoughts?

CONSTANTINE ALEXANDER: Do I have any thoughts? No, I'm fine. I mean, it seems obvious that there is plenty of public transportation. That the nature of the activity is such that you're not going to, you're going to attract people that walk or bike. You're not going to get car drivers. I'm a little nervous about the massage part of the business, because that could attract people who drive from another community to come for the massage therapy.

MIMI LOUREIRO: Right.

CONSTANTINE ALEXANDER: So I'm a little -- I don't think it's going to be enough people driving to cause traffic problems. Bottom line is I'm okay.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: Just for the cafe how are -- what about trash and how are you going to maintain that space? Where does the trash

go?

MIMI LOUREIRO: There's a -- right in the loading area, there's also dumpsters. There's -- right now there's a restaurant in the building as well. And so we have, we have composting or recycling or trash dumpsters all there in the back.

THOMAS SCOTT: Oh, okay.

MIMI LOUREIRO: We've already set them up just in case.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: I'm good with it.

BRENDAN SULLIVAN: You into yoga?

TIMOTHY HUGHES: No, not particularly.

BRENDAN SULLIVAN: You could be.

TIMOTHY HUGHES: I stretch. I am into massage therapy, though.

ATTORNEY JESSICA MANGANELLO: I hear it's going to be good.

TAD HEUER: Are you within walking

distance?

TIMOTHY HUGHES: I can walk there, sure.

CONSTANTINE ALEXANDER: Sure you can.

TIMOTHY HUGHES: You can walk anywhere.

TAD HEUER: Indeed.

To Gus's point, I would point out that you have three massage rooms; is that right?

BILL KAPLAN: Uh-huh.

TAD HEUER: So if we're looking at potential drivers to those, you can only have a maximum of three clients at any given time at most, and if we have potentially only one space being used by staff, we would still be able to max out the number of spaces even with the reduction of parking, and I wouldn't imagine that would be a difficulty.

BRENDAN SULLIVAN: Okay. Let me make a motion, then, to grant the Special

Permit to waive the parking space requirements associated with the intended occupancy at 1001 Mass. Avenue which is the 02 Yoga Studios.

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

The Board finds that the regulation requires nine parking spaces, but the premises has been designated only for parking space. Testimony has shown that the four parking spaces will probably be not utilized on a regular basis and, therefore, the relief from the Ordinance would be a fair and reasonable request.

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

The Board notes that this particular area has undergone some tremendous amount of

vacancies. This particular space having been vacant for ten years, and that to allow the reduction of the parking and this particular establishment to go in there, will be an encouraging sign to fill the space and also attract additional traffic to the other businesses on this particular block.

The Board finds that continued operation of or development of adjacent uses would not be adversely affected by the nature of the proposed use. In fact, may be even enhanced by it.

The Board finds that there would not be any nuisance or hazard created to the detriment of the health, safety, and/or welfare of the occupants of the proposed use or to the citizens of the city. And that the proposed use would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

The Board notes that the reduction of the parking, again, is a fair and reasonable and also that it is well situated on the public transit line, and hence also by the testimony shown that a lot of the clients are from the immediate area.

CONSTANTINE ALEXANDER: Brendan, under Section 6.35.1 it says: We have to determine and cite evidence in our decision. And then it goes on -- I think you covered all these, but let's make sure we have.

Cite evidence in the decision that the lesser amount of parking will not cause excessive congestion, endanger public safety, substantially reduce parking availability for other uses or otherwise adversely impact the neighborhood.

And I think -- I'm not sure -- we want to make it clear that we don't think that what you would propose to do would substantially reduce parking availability for other uses.

BRENDAN SULLIVAN: So said by the
Chair.

All those in favor of granting the
Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(8:40 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes, Tad

Heuer, Thomas Scott.)

BRENDAN SULLIVAN: The Board will hear case 10227, 36 Spinelli Place.

Okay, Mr. Embry.

ATTORNEY BRUCE EMBRY: Good evening, once again, members of the Board. Bruce Embry. Once again 55 Cambridge Parkway. I'm here representing Mr. Robert Giordano who does business as American Martial Arts Center. I am in fact joined by Robert Giordano.

Mr. Giordano would like to locate his martial arts studio in a warehouse building located at 36 Spinelli. Present use is a warehouse use. It's about 42, almost 4300 square feet of essentially open space in the warehouse that he would be making use of as his martial arts studio.

BRENDAN SULLIVAN: The present -- well, Moore and McPherson were there, prior to that was the plumbing supply.

ATTORNEY BRUCE EMBRY: Right.

BRENDAN SULLIVAN: And next to that is the security. Are you not taking over the security; is that correct?

ROBERT GIORDANO: I'm not --

ATTORNEY BRUCE EMBRY: I don't know that either one of us is familiar with what was there previously.

BRENDAN SULLIVAN: So the security is staying. You're basically taking over what Moore and McPherson had.

ROBERT GIORDANO: Yeah, that's it though.

BRENDAN SULLIVAN: Is that correct? Also the plumbing supply prior to them.

ROBERT GIORDANO: (Nodding head.)

BRENDAN SULLIVAN: Okay. So it's just that space there.

ATTORNEY BRUCE EMBRY: Just that space A as shown on the drawing.

BRENDAN SULLIVAN: And not B and not

C, so it's basically just space A.

ATTORNEY BRUCE EMBRY: Just that large open space there.

BRENDAN SULLIVAN: The Board notes that on the Table of Uses the proposed use is permitted by way of Special Permit and is not excluded from the zone.

CONSTANTINE ALEXANDER: On that point, Brendan, I'm trying to figure out why the City Council in its wisdom wanted to have a Special Permit for this kind of enterprise in a warehouse district. And the only thing I can come up with is that they're trying to discourage people from -- they want the city to have a certain amount of warehouse space. And a Special Permit allows us to control the erosion of the warehouse base in this area. And in other words, not make another shopping center out of it.

Just talk to me a little bit about the amount of warehouse space that will remain if

we grant relief in the general area. Or other kind of industrial uses, warehouse industrial uses.

TAD HEUER: And in connection with that, how big is the space that you're going to be renting?

ROBERT GIORDANO: It's 4284 square feet.

ATTORNEY BRUCE EMBRY: Well, essentially the remaining space in this individual building will be warehouse space by in large. The surrounding buildings are warehouse and office space.

ROBERT GIORDANO: All the way down Smith Place is warehouse.

ATTORNEY BRUCE EMBRY: Yeah, it's essentially surrounded by other warehouse spaces.

CONSTANTINE ALEXANDER: That's what I wanted to hear. Okay.

TAD HEUER: What's your parking

situation there in terms of -- you just heard the yoga studio.

ATTORNEY BRUCE EMBRY: The Zoning Act requires that we provide six spaces for this use. The building is essentially surrounded by open space which is presently parking area, and there are at least, conservatively at least 18 to 20 spaces surrounding the building even if you don't bring spaces up to the front of the building where the loading dock is.

BRENDAN SULLIVAN: Hours of operation?

ROBERT GIORDANO: I do private lessons during the day. So like probably it could be anywhere from ten o'clock, and then we get busy when we start to close about -- four-thirty, five o'clock we get busier. And it goes to about eight-thirty, nine-ish. Sometimes a little later.

BRENDAN SULLIVAN: Okay.

The activity of the adjoining business diminish. Yours tends to --

ROBERT GIORDANO: Yeah, I get busiest when they're closing.

ATTORNEY BRUCE EMBRY: That's what makes it attractive for Mr. Giordano is that his more -- the larger volume of his use actually comes when all of the surrounding uses have gone home. So, you know, it provides easy access for the parking and there's no traffic issue at that point.

BRENDAN SULLIVAN: Yes.

Anything else at this time?

Tom? Tim?

TIMOTHY HUGHES: No. I'm good with it.

BRENDAN SULLIVAN: Not into yoga. How about martial arts?

TIMOTHY HUGHES: (Inaudible).

ATTORNEY BRUCE EMBRY: Sort of extremes there.

TIMOTHY HUGHES: Well, you know, tai-chi is like kind of a yoga martial art thing.

ROBERT GIORDANO: Yeah, we don't do that.

BRENDAN SULLIVAN: It's funny how they would even classify this under educational in a sense, but I mean I don't know what category.

CONSTANTINE ALEXANDER: It's educational.

ATTORNEY BRUCE EMBRY: I went to the trouble of inquiring with Ranjit because I couldn't figure out where it fit. And that's what he told me it was to be determined.

CONSTANTINE ALEXANDER: I think yoga is a place which is somewhat similar are also treated by education by ISD.

TAD HEUER: As are dance studios.

ATTORNEY BRUCE EMBRY: Because they're teaching classes essentially.

ROBERT GIORDANO: It's instructional.

CONSTANTINE ALEXANDER: Brendan, I think the record should show that the petitioner did not threaten us with a karate chop.

THOMAS SCOTT: Not yet. We haven't voted yet.

CONSTANTINE ALEXANDER: If we turn him down.

TIMOTHY HUGHES: That's because it's American martial arts.

BRENDAN SULLIVAN: Any questions at this point?

TAD HEUER: No.

BRENDAN SULLIVAN: Let me open it to public comments.

Is there anybody here who would like to comment on the application at 36 Spinelli Place?

(No Response.)

BRENDAN SULLIVAN: I see nobody. And none of your abutters, Joe Burrill or any of them have expressed an opinion one way or the other? Okay.

Anything else?

We'll get them out of here unscathed. Let me make a motion, then, to grant a Special Permit to allow for the martial arts studio, American Martial Arts Center as per the application in the file.

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

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

The Board finds that as per the presentation, that the intensity of this particular use and application is counter to the adjoining businesses and hence would not

compete with or conflict with the adjoining businesses.

Continued operation of or development of adjacent uses would not be adversely affected as per my previous statement, and the nature of this proposed use is different. And the intensity is different than the adjoining businesses.

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

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

All those in favor of granting the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes,

Heuer, Scott.)

TIMOTHY HUGHES: Knock yourself
out.

ATTORNEY BRUCE EMBRY: No, knock
other people out.

(8:50 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10228, 34-36 Blakeslee.

Please introduce yourself and spell your last name and address for the record.

JOHN McMAHON: My name is John McMahon. I'm the owner of the property with my wife Susan to my right. And my daughter to the further right is an occupant of the 34 Blakeslee Street right now.

BRENDAN SULLIVAN: Okay. What is it you would like to do and why should we let you do it?

JOHN McMAHON: Just as an advisory, my hearing's not too good. So if I look a little spaced out if you ask a question,

that's probably the reason why.

SUZANNE GRAVES: Just ask louder.
Otherwise I'll go like this.

JOHN McMAHON: My hearing aid is
over here. And a slight case of tinnitus.

[The] McMahan's have owned this
property since its inception. My father was
born there in 1923, and it was purchased by
my grandfather who was ended up being a
sergeant of the Cambridge Police Department.
And my father ended up being a sergeant at the
Cambridge Police Department as well as my
brother being a police officer who is retired
now. And my uncle who came from this house
as well is a fireman. And my aunt was the
night manager nurse at the so-called
Cambridge City Hospital. So I just say that
to tell that we're connected to the
community. We're not developers trying to
come in and make a score and leave.

If I could draw your attention to -- and

also I was a civil engineer working for the Public Works Department here for ten years in my younger years.

SUZANNE GRAVES: He was also a lifeguard, and he wound up working for the City of Cambridge then.

JOHN McMAHON: That's enough, enough.

I want to draw your attention to this which gives you an indication of the amount of square footage of similarly situated homes on our street as well as the street behind us. If you don't have it, I'll just pass this along.

TAD HEUER: Actually, I have --

JOHN McMAHON: You'll just see that we're smaller than everybody else.

TAD HEUER: I just have a question about that. You are smaller on that number, but your number that we have to go by is 4,428, not 2,574; right?

SUZANNE GRAVES: 4,000?

JOHN McMAHON: You're talking about the basement as well?

TAD HEUER: So, maybe if the basement is in there. That would be even -- that would be a huge basement.

JOHN McMAHON: These numbers are taken off your records. I can't espouse that they're perfect.

TAD HEUER: Right. It's just that the number we need to look at is the 4,428. So the 2574, the numbers in the city's database aren't necessarily the ones that we go by here.

SUZANNE GRAVES: I would guess that the 4,000 number is for the basement which is not a living space at all. Nor will it ever be a living space.

TAD HEUER: You certainly -- you don't have 2,000 square feet in your basement, do you?

SUZANNE GRAVES: No, but we want to pop up the third.

TAD HEUER: Right, but this is just your existing.

SUZANNE GRAVES: Existing 4,000? No way, no way.

BRENDAN SULLIVAN: Well, I think where the confusion is --

JOHN McMAHON: Any errors or omissions, I apologize in advance for.

BRENDAN SULLIVAN: No, we really need to disregard the Assessor's number because their number doesn't necessarily translate into a Zoning number.

JOHN McMAHON: Right, right. That's right. I understand that.

BRENDAN SULLIVAN: Okay. So it can be misleading to go by that.

JOHN McMAHON: Right. The only reason I show that --

BRENDAN SULLIVAN: There are too

many variables, and the number that we have to go by is the Zoning which is the gross floor area. And now I guess that begets the question how did the 4428 come to be.

TAD HEUER: Sure.

SUZANNE GRAVES: No way.

Currently?

JOHN McMAHON: Your instructions, as I interpreted them, had me include the basement as well as any space that may have theoretically been available in the attic even though it's not used.

CONSTANTINE ALEXANDER: You use the basement, is it the height of the basement more than seven feet?

JOHN McMAHON: Yes.

CONSTANTINE ALEXANDER: That's why you have to include it.

JOHN McMAHON: Right, right.

TAD HEUER: Did you include all the floor area in the attic?

JOHN McMAHON: No, I can't because it's sloped.

TAD HEUER: Right, so that's my question.

JOHN McMAHON: No, you can't. We didn't.

TAD HEUER: You just included everything over five feet?

JOHN McMAHON: Right, right.

SUZANNE GRAVES: Right.

TAD HEUER: Right. So it's, it's a three-story house plus one cedar plate --

SUZANNE GRAVES: Two and a half.

TAD HEUER: So 4,400 square feet is probably right.

SUZANNE GRAVES: If that includes, that includes the basement.

TAD HEUER: It includes the basement and the attic space above five feet; right.

SUZANNE GRAVES: But why do you have the basement more than eight feet? Seven

feet.

TAD HEUER: Seven feet.

JOHN McMAHON: I went by their ProForma the best I could.

BRENDAN SULLIVAN: Okay.

JOHN McMAHON: As you may have seen, there's a photograph of the house. The front has a wrought iron railing supports as well as railings. And the back has a porch that is all boxed in. It doesn't really look like a porch. It looks like a block stuck on the back of the house. And we hope to fix that.

And I've also included --

SUZANNE GRAVES: Do you have the pictures?

JOHN McMAHON: -- photographs of what's --

SUZANNE GRAVES: Pictures.

TAD HEUER: No, I want that really.

SUZANNE GRAVES: You want that?

TAD HEUER: Yes. Pictures are nice

for us, but usually we want that.

JOHN McMAHON: You can borrow mine if you want as well. And I just want to make the case that what we're asking for is not uncommon on our street. We have dormers on one side of us, dormers on the back side of us. If you look at this one in back of us, it's not particularly pretty. We have dormers on the other side of us and in the house behind us.

CONSTANTINE ALEXANDER: While we're on the subject of dormers, just because there are ugly dormers on the street is not a justification for us to approve more ugly dormers.

JOHN McMAHON: I agree. Ours is not.

CONSTANTINE ALEXANDER: Well, I had a little trouble with your dormer design that goes right to the ridge line. It's not very attractive. And why I guess why do you need

to go to the ridge line? Why don't you drop it down a little bit and maybe so you're a foot or two below the ridge line?

JOHN McMAHON: The --

CONSTANTINE ALEXANDER: To me it would be more aesthetically pleasing. That's just me.

JOHN McMAHON: Well, if you look at the house from almost any view except for maybe in the neighbor's view, you really can't see the dormers because you can't see where they reach the -- from the street level. You would not be able to see where actually, the dormer actually hits the peak honestly.

BRENDAN SULLIVAN: You would if you come around the bend, John.

JOHN McMAHON: And you want it to have some sort of pitch on it so that we don't have, you know, that curvy effect at the outside wall. And, you know, I've seen some of the neighbors with those, and it's

just -- it looks like you're in a cave when you don't add -- when you don't add the actual height to it. And you do want some drainage so the water sheds off. So you don't want to go minimal drainage just so you can get that little extra two feet that attaches to the ridge line. It really is just going to look like a bump, you know.

CONSTANTINE ALEXANDER: Well, I'm going to defer to Mr. Scott over here.

JOHN McMAHON: Okay.

THOMAS SCOTT: This dormer in this photograph is held down from the ridge some distance. It's kind of hard to see how far. But the dormer guideline represents --

JOHN McMAHON: It does recommend?

THOMAS SCOTT: -- that you hold it down from the ridge.

JOHN McMAHON: Okay.

THOMAS SCOTT: And I think it would be --

JOHN McMAHON: I think it's possible.

THOMAS SCOTT: Yes, it's definitely possible. And it would make the dormer look a little more effective or attractive on the house, I think, if it was held down from the ridge.

JOHN McMAHON: I think it's eminently doable what you're requesting.

SUZANNE GRAVES: Like, how many inches? I'm sorry, I'm curious. I'm just curious. I'm just asking the question, like what are you --

THOMAS SCOTT: I think it's a foot. I'm pretty sure it's a foot. I don't have the guideline with me.

SUZANNE GRAVES: So the ridge line is the main thing so it comes down a foot and then starts out?

THOMAS SCOTT: Yes.

SUZANNE GRAVES: So rather than come

straight out off of the ridge?

CONSTANTINE ALEXANDER: Right.

SUZANNE GRAVES: Okay. I didn't understand what you were asking.

CONSTANTINE ALEXANDER: Come, that's what he's asking.

SUZANNE GRAVES: So rather than just come straight off of the ridge, you're saying come down and then go that way?

JOHN McMAHON: Though we do have evidence of where they didn't do that.

CONSTANTINE ALEXANDER: I told you the fact that they're ugly dormers in the neighborhood, it doesn't justify more ugly dormers.

JOHN McMAHON: I agree.

CONSTANTINE ALEXANDER: Don't go there.

JOHN McMAHON: Okay. Essentially what we would like to do is to totally renovate the house, remove all the exterior

siding, replace all the windows. We have already invested in the electrical. We've replaced all the electrical panels and all the satellite connections.

CONSTANTINE ALEXANDER: With regard to replacing the windows, are you just replacing the frames and the glass or you're not changing the location of the windows, are you?

JOHN McMAHON: No, no.

And our roof needs repair now. It's, you know, it's a double roof up there. It's been up there too long. It needs to be replaced anyhow no matter what we do here.

In addition, we're gonna tear down both porches and we're going to put back the same style of front porch that everybody else has, which is the typical column, you know, round column and get rid of the wrought iron effect.

In the rear we're gonna remove the rear porch and replace it with something that

looks more like a porch. What we're gonna do is put basically wood doors across that will have windows that could be replaced with screens or glass. They'll just be, you know, three-season effect, and it will look again like a porch. So, I think as far as the neighbors are concerned, we have discussed what we're trying with the neighbors on our left and our right. They contacted us, and we spent our time with them and went through the plans in detail. And once they understood them, they had no concerns that they could express to us. So they appear to be happy as far as we know.

BRENDAN SULLIVAN: Where are you presently living, John?

JOHN McMAHON: Live in Sudbury Mass.

BRENDAN SULLIVAN: And your intent is to vacate Sudbury and move back to --

JOHN McMAHON: Yes, that would be for sale as soon as we know a date that we can

get in here.

My two daughters live downstairs.

BRENDAN SULLIVAN: Currently?

JOHN McMAHON: Currently. We've totally renovated the downstairs apartment with a new bedroom and bathroom and upgraded the flooring, paint, everything. Again --

BRENDAN SULLIVAN: So the intent is that they would remain in the house and that you would then move up to the expanded second floor.

JOHN McMAHON: Yes, yes.

BRENDAN SULLIVAN: Is that what it is?

JOHN McMAHON: And in time change to -- we would change places when we no longer go up the stairs anymore.

BRENDAN SULLIVAN: Okay.

Anything else with this?

SUZANNE GRAVES: So we must have misunderstood, okay? Because when -- that's

what we thought we were doing. But we must have misunderstood. This is what you want to have happen.

THOMAS SCOTT: Right.

SUZANNE GRAVES: Okay. So we must have misunderstood.

JOHN McMAHON: We'll adapt to that. You'll get plans with that change.

BRENDAN SULLIVAN: Okay.

TAD HEUER: So that being said.

BRENDAN SULLIVAN: Any --

CONSTANTINE ALEXANDER: No, I mean, with regard to the -- if everybody else is comfortable with the dormers as designed, I'll go along with it. Personally I would like to see it dropped. I'll leave it to the rest of the members of the Board.

TAD HEUER: I would agree.

SUZANNE GRAVES: You would agree?

TAD HEUER: Yes.

SUZANNE GRAVES: You would like to

see it dropped, not like this?

TAD HEUER: Absolutely.

JOHN McMAHON: We agree to that.

BRENDAN SULLIVAN: It may necessitate revised drawings before we would vote on it though.

JOHN McMAHON: Of course.

BRENDAN SULLIVAN: Okay. Tom, anything at this point?

THOMAS SCOTT: What's the new height? Because you're raising the roof; right? You're raising the pitch of the roof.

JOHN McMAHON: It's right up to the maximum that's allowed.

THOMAS SCOTT: It's up to 35?

JOHN McMAHON: Yes. It's four feet or three feet. We have it somewhere.

SUZANNE GRAVES: Three feet, nine inches?

JOHN McMAHON: Three feet, nine inches what it is currently.

CONSTANTINE ALEXANDER: Brendan, with regard to new plans I just wonder if -- it seems to me we could grant relief, tie it to these plans, on the condition that the dormer be dropped a foot or whatever number we want to put in. I don't think we -- do you think we still need new plans or wouldn't that be sufficient from a point of view?

BRENDAN SULLIVAN: Well, it may be at the end of the exercise.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: Okay, whatever you think.

BRENDAN SULLIVAN: If that's the only -- okay. Any questions at this point?

TIMOTHY HUGHES: I don't have any questions, no.

BRENDAN SULLIVAN: Tad any?

TAD HEUER: So my question is not so much a question as a, I just run some of the

numbers trying to deal with this basement issue. Just so you're aware, if you're to grant what you're requesting, which is 737 square feet, that would be --

JOHN McMAHON: That sounds about right, yeah.

TAD HEUER: That would be the largest grant of any of the about 500 cases that I've sat on by over 100 feet. It's a large number to be requesting, particularly where you're in a 0.6 district and you're already over, so you're a 0.8 and you're going to a 0.96. Usually when we're looking at these things, the numbers are a bit smaller and the ratios are a bit smaller. And usually they're in situations when the lot is undersized. So the reason that the ratio looks big is because your denominator, the lot size looks small. Here, though, you don't have an undersized lot. You actually have an oversized lot. You need to be a

minimum at 5,000 and you're comfortably over, which is somewhat unusual for Cambridge. So the usual kinds of hardship of, you know, size of the lot and placement of the structure on the lot and the things that are required to get you over the Variance hump, the legal standards for a Variance, similar ones that are in play for other people, you know, aren't in play for this property because you've got a regularly sized lot and you've got a house that's larger than that regularly sized lot that would otherwise be allowed in the district, and you're asking to add more square footage than, like I said, I've never sat on a case that we've allowed.

So, purely by the numbers and looking at, you know, my sense, the Board acts as a safety valve not as a spot zoning areas of the city that the city should be really setting up. They want it to be denser, they need to tell us and we say it's okay or it's not. To

me this is a large ask within the parameters of our limited authority.

So when I was looking at the floor plate, you know, you mentioned the basement isn't, you know, habitable and counts in your FAR, and that's something we take into consideration and have in the past. Roughly guessing the floor plates are all about the same, because your four walls are about the same. It's a little over -- it's about 1250 square feet per floor plate.

JOHN McMAHON: Yes.

TAD HEUER: I presume that's 1250 in the basement. Even if you take that out, you'd be -- with the addition you're proposing, you'd be at non-basement GFA gross floor area of 3923. So nearly 4,000 square feet, which would put you in the equivalent at a 0.72 in a 0.6 district. So you would still be going well over the district again on a regularly sized lot. Even if we said

ignore the basement because it's underground and you'll never use it and things like that. So part of what I'm struggling with is a very large request and it starts to shade into things that I think are outside our jurisdiction just because of the size of it. You know, we act as a safety valve not as a correction. So I think that's my concern.

BRENDAN SULLIVAN: Wait a minute, John.

JOHN McMAHON: Go ahead.

BRENDAN SULLIVAN: What was additional square footage?

TAD HEUER: Without the basement?

BRENDAN SULLIVAN: Well, no, that's the request in front of us. I came up with 737.

TAD HEUER: That's right. 737.

BRENDAN SULLIVAN: Okay, I'm sorry.

TAD HEUER: So an additional 737 square feet.

BRENDAN SULLIVAN: Which is 20 percent.

TAD HEUER: Yes. And I said even if you were to take out the basement floor plate in that, you'd still be at 3923 and you're allowed 231. So, you know, you'd still be over.

JOHN McMAHON: Mr. Chairman.

BRENDAN SULLIVAN: Yes.

JOHN McMAHON: I'd like to offer that we have decided to, unlike what you see going on in some parts of town, we are taking our porch in the rear back to a porch look versus an enclosed look. If you look in the neighborhood, we are taking that back to, you know, more like a porch and we could very easily convert that space into interior space by adding a simple heating element and make it more interior without anybody ever knowing about it, but we're taking that away.

TAD HEUER: Right.

JOHN McMAHON: And we're giving it back. So I'm offering you the concept that, yes, we are asking for some, but we're also giving some back just for the look of the building and the look of the neighborhood.

TAD HEUER: Right.

BRENDAN SULLIVAN: It's not an open porch, though?

JOHN McMAHON: No.

SUZANNE GRAVES: It's a screened-in porch.

BRENDAN SULLIVAN: Or glass?

JOHN McMAHON: Right, right.

SUZANNE GRAVES: So we could have glass windows in there. The intention is to have a screened-in porch.

BRENDAN SULLIVAN: Right.

THOMAS SCOTT: But it still counts towards your FAR. If it's covered, it counts towards your FAR regardless whether it's a porch or an enclosed room.

TAD HEUER: Certainly it looks better.

JOHN McMAHON: I understand that.

THOMAS SCOTT: It looks better, absolutely agree.

SUZANNE GRAVES: We're trying to work to make it look good.

JOHN McMAHON: Look at that. This is terrible.

THOMAS SCOTT: I'm looking at it.

JOHN McMAHON: It's terrible. We want to fix that.

BRENDAN SULLIVAN: Just where is the 737 coming?

TAD HEUER: From popping your roof. Once you pop your roof, you eliminate the knee wall and you create a third story at 35 feet. That's where you get it. Because your knee wall no longer appears and everything along that wall becomes countable, it's usable.

BRENDAN SULLIVAN: Right. I guess

that's a two part question. I sort of knew where it was coming from. Why is it coming from there? Why does it have to be 737 some odd feet?

TAD HEUER: True. And part of that, you know, it's because it allows -- that's what you get if you go to max height.

BRENDAN SULLIVAN: And then I'm thinking is any of the proposal excess other than the whole volume that's just going up.

TAD HEUER: Well, the city would say yes; right?

BRENDAN SULLIVAN: Just an internal discussion I'm having among myself here. In a sense, you know, I'm just sort of vocalizing all that.

TAD HEUER: I mean, again, I think part of this is when you look at what FAR does. FAR is a regulation of bulk. And the fact that you can go to 35 feet and stay within the Ordinance doesn't necessarily assist you

when you will violate FAR. And part of that is because all of these measures work together. You know, height allows you to get more FAR. And once you have more FAR, once you're over the limit, the city has said you're trading bulk of that house for height. If you want more height, you can get less bulk. If you want more bulk, you have to have less height. You're not -- the city isn't saying you can -- both of these you can stay within and therefore you get both bulk and height. I mean, that's my interpretation of how the Ordinance reads.

JOHN McMAHON: So we're not the first house on the street that's extended up to 35 feet?

SUZANNE GRAVES: Understand that, you know --

JOHN McMAHON: Please understand that.

SUZANNE GRAVES: I got what you

said, okay?

CONSTANTINE ALEXANDER: I was on the dormers.

SUZANNE GRAVES: But even if you look at, you know, I mean, we did bring pictures on purpose because on either side of us it's -- they've done --

CONSTANTINE ALEXANDER: I've seen it.

SUZANNE GRAVES: -- bigger than what we're asking to have happen. Across the street same thing. In back. I mean, everyone in that neighborhood has gotten more than we're asking for. And so that's --

BRENDAN SULLIVAN: Well, they have put in some dormers. I'm not sure if anybody had raised their roof up.

SUZANNE GRAVES: Yes.

JOHN McMAHON: Two have. Two have that we know of.

SUZANNE GRAVES: On each side.

JOHN McMAHON: Well, actually one up and one next to us.

SUZANNE GRAVES: So that's, you can see that it's much higher.

JOHN McMAHON: Yeah, that one behind it.

BRENDAN SULLIVAN: Well --

SUZANNE GRAVES: We have other pictures.

JOHN McMAHON: They do, too.

SUZANNE GRAVES: Yeah.

JOHN McMAHON: And yes, we agree that what has happened doesn't mean that it should happen. But I think we're trying to make it look nice.

SUZANNE GRAVES: So Kate and Lauren live on the first floor. We would live on the second and the third. And we're -- we really would like this to be something that's doable for us to live in. So it's going to be smaller than where we are right now.

BRENDAN SULLIVAN: Well, I don't know.

Okay, let me open it to public comment anyhow and we'll continue along the process.

Is there anybody here who would like to speak on the matter at 34-36 Blakeslee Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody.

You talked to your neighbors? Had any of them given any --

SUZANNE GRAVES: No. They've actually said it sounds and looks so much better than what's there. They're kind of excited about it. So....

JOHN McMAHON: When do we start is the first question?

SUZANNE GRAVES: It's something that they both have on each side and across from us. So the neighbor across from husband spends six months in France and he's not there

right now, but I don't think that he'd have any difficulty with it.

BRENDAN SULLIVAN: Okay.

SUZANNE GRAVES: We talked to the other people that have lived on the street and they're all -- everybody seems to be very happy that John's going to be moving back into the neighborhood.

THOMAS SCOTT: So I have a question. Is all the FAR increase on the third floor? It's all there?

SUZANNE GRAVES: It's all there.

THOMAS SCOTT: It's all there. So all the other levels are the same?

SUZANNE GRAVES: Absolutely the same.

THOMAS SCOTT: Not changing.

TIMOTHY HUGHES: The petition does say something about expanding the rear porch.

SUZANNE GRAVES: The inside are going to be the same; right? We're asking

for an extra foot on the rear porch to extend it back. And that would be just so that there would be enough room to put a table in there, walk around the table. Right now it's seven feet. We're asking to make it eight feet.

We're asking to reestablish within the same porch a separate exit out the back so that the second floor -- right now the second floor has to walk through the first floor's porch in order to get outside which is not a good safety thing. So we want to make sure --

JOHN McMAHON: I think the kids will trust me. We'll see.

BRENDAN SULLIVAN: Gus, what are your thoughts?

CONSTANTINE ALEXANDER: My thoughts? Well, I think Tad makes excellent points. They're all -- I think they're absolutely right on. And to me the case is not a slam dunk. By the numbers it's a

troublesome case. However, I think I can support -- I will support relief assuming the dormer gets lowered by a foot or so. Because at the end of the day it seems to me the heightened FAR doesn't have an impact on the neighborhood. I mean, it's all -- at the end of the day I think the neighborhood will be better off with a structure as modified than what it there right now. And so I don't see any negative neighborhood impact. I see no neighborhood opposition. And so as I say, with some reluctance, but I'm prepared to vote in favor of the relief being sought. But Tad's point, again, I would reiterate a very pertinent and very good.

SUZANNE GRAVES: Thank you.

BRENDAN SULLIVAN: Tom, what's your thought?

THOMAS SCOTT: Well, I guess I have the same opinion that, you know, we're really pushing the FAR. This is one of the

largest --

TAD HEUER: The largest.

THOMAS SCOTT: -- the largest FAR increases we've seen. And -- but to Gus's point, you know, I think the improvements to the architecture are really commendable. It's really kind of taking a house that has lost all its identity through these horrific additions and bringing it back to what it should be. I think aesthetically it's going to be a much, a much better home because of all the improvements that you're making. And the restorations really is what you're doing. You're bringing the house back to what it used to be. And I think the -- because all of the enclosed FAR that you're adding is kind of falls within the roof structure and is really almost concealed except for the dormers that it's, it's tolerable I think. So I would be in favor of it.

BRENDAN SULLIVAN: Tim.

TIMOTHY HUGHES: I agree with what both Gus and Tom said, but -- and I understand what Tad says. I'm not, I'm not so much troubled by the numbers. When I think about how much basement FAR is factored in that's actually not being used, and the numbers, you know, are a lot less. It's actually -- if you were to take the basement out, you're -- you would be conforming at around 59. You would just be under 0.6, you know? And, again, it does go to 0.72 and it is a big jump compared to most of what we do, but I think, you know, the tradeoff is that we get a better piece of property for the city.

BRENDAN SULLIVAN: Okay, Mr. Heuer.

TAD HEUER: So I think that there's been some conflation between improve and modify being synonymous with expand. It's very easy to improve and modify a piece of property without expanding a piece of

property. You can put better finishes on. You can paint, you can retile, you can mold. You can make a better, more usable property without necessarily making it a bigger property.

And what I'm kind of hearing is that because it will be a more aesthetic property, that in and of itself should be enough to allow an expansion of this size. I would point out that there's no justification for that in the case law whatsoever. It's just not there. And that any Variance granted on that basis is suspect on that basis.

I would also suggest that as I stated before, the FAR is something that is set by the city. We're not City Council. We can't vote to increase the size of homes simply because, you know, a good case has been made. We need to find a hardship. And here I guess the hardship's are usually lot size, the shape of the structure on the lot, other

difficulties. Here we have essentially an all but conforming property. The non-conformities come in terms of dimension, and the dimensions aren't the things that are at issue here. What's being asked for is straight FAR, not dimensional relief. As a matter of fact, the FAR is conforming now if you took out the basement, would be well over conforming, but in either situation what's been asked for put it well over conforming. And to the extent that the city wanted this to be a 0.75 district, it would have made it a 0.75 district. They made it a 0.6 district. I don't know why. It's not my place to question. It's my place to see personally if it's an excessive amount. And that's something beyond the safety valve function that the Board of Zoning Appeal is required to conform by law. Here we don't have an undersized lot. We have a very large FAR increase. I believe that the FAR is

what's pushing the other numbers to stay in check. That the height is allowed to stay 35 because it's being excessively bulked. And I just don't see the legal basis for a hardship. I think the number that's just the raw amount of square footage that's being requested is, it not only would be the largest we've ever granted, it's the largest we've ever seen being requested. And the largest number that I think that we granted has requested is 500. Maybe we granted one in the 600s on Fayerweather which I also voted against for very similar reasons. And we voted in the 500 several times, but I don't think I've ever sat on one in the 700s. And even if you take the basement out, you're still well over the FAR at the 13 percent increase. That's a significant jump, and I just don't believe that that's within our jurisdiction to grant at all. Quite frankly it's not even a close case for me.

BRENDAN SULLIVAN: Okay.

JOHN McMAHON: Mr. Chairman.

BRENDAN SULLIVAN: No, that's okay.
I'm going to close the presentation part of
this.

JOHN McMAHON: Okay.

BRENDAN SULLIVAN: On the left side.
If you go to elevation there, where you have
on the windows, replace, replace, and you
have existing, are you replacing those with
in kind windows or are those new?

JOHN McMAHON: They would be new.

BRENDAN SULLIVAN: In new locations
or --

JOHN McMAHON: No, no. Replaced
in -- I'm not sure if I'm getting your
language correct in my head. We're
replacing windows where they exist with the
same size windows with brand new.

BRENDAN SULLIVAN: Okay, it's at --

SUZANNE GRAVES: Same panes and

everything.

BRENDAN SULLIVAN: Okay, because there was --

SUZANNE GRAVES: They would be double paned.

BRENDAN SULLIVAN: It would have triggered some additional relief that's not being asked for here, that's all.

Any additional windows in location and/or size would require a Special Permit if it's within the side yard setbacks, which that side would be.

This one here I'm not comfortable with, but I think I will reluctantly agree with three of the other members of the Board in that some of the other houses in the area are substantially are built out. I don't think that this one will substantially stand out as being totally different because the others have all expanded somewhat greatly. Some have already been built prior to the

Ordinance in a very large manner. And this is probably the -- this house and one of the Manstrellis (phonetic) down by the corner are about the only two that have not expanded actually.

Anyhow, let me make the motion to grant the relief requested as per the application and the drawings that are in the file initialed by the Chair.

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

It would preclude the Petitioner from completing their desire to move back into a family home and to build out this house for their future needs for themselves and for other family members who occupy the first floor.

And that the Board finds that the hardship is owing to the existing

non-conforming nature of the house which severely limits, in fact, precludes any expansion of the house which would require some relief from the Board.

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

It's a tough one.

TAD HEUER: Sure is.

BRENDAN SULLIVAN: On the condition that the plans be modified to reflect the compliance with the dormer guideline that the roof of the dormer come down one foot from the ridge.

SUZANNE GRAVES: This one?

BRENDAN SULLIVAN: On both the right side elevation and also on the left side elevation. And that the plans be submitted

prior to my signing the decision.

I would ask that -- can we get a waiver on the filing? Do we need a waiver for the filing if the plans are not submitted timely?

MARIA PACHECO: Yes.

SUZANNE GRAVES: What's timely?

BRENDAN SULLIVAN: Just sort of a procedural thing, but we have a time limit from now to have this filed, all right? By statute. But what I want to make sure is that I get the drawings in first before I sign it.

SUZANNE GRAVES: Right.

BRENDAN SULLIVAN: I don't want the clock to run out. So I need that.

SUZANNE GRAVES: Two weeks?

JOHN McMAHON: What type of window do we have?

BRENDAN SULLIVAN: No, no. The dormer -- the roof line has to come down.

CONSTANTINE ALEXANDER: All we're asking you to do is sign a waiver from the

statutory requirement. The quicker you -- there's not a time frame for you.

SUZANNE GRAVES: Oh, okay. I thought. I don't know when the architect can get them in.

CONSTANTINE ALEXANDER: But the quicker you get revised plans to us, the quicker we can sign the decision.

BRENDAN SULLIVAN: It may take three to four weeks for the decision to be typed up and ready to be signed. I would get these back as quickly as possible. So, again, it's on the right-side elevation and the left-side elevation that I would ask that you amend to reflect the new roof line and its relationship to the ridge which would be one foot down from the ridge. So that those two pages need to be resubmitted.

SUZANNE GRAVES: Okay. We'll do that.

BRENDAN SULLIVAN: Okay.

Anything else to add?

On the motion, then, to grant the relief requested.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes, Scott.)

BRENDAN SULLIVAN: And one objecting.

(Heuer.)

JOHN McMAHON: Thank you, Chairman and members of the Board, even those who voted against us.

(9:30 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10229, 96 Griswold Street. Whoever is going to present introduce yourselves and spell your last name and give your address.

CAROLYN CALLENDER-CIPOLETTA:
Sure. My name is Carolyn
Callender-Cipoletta,
C-a-l-l-e-n-d-e-r - C-i-p-o-l-e-t-t-a.

BRENDAN SULLIVAN: Okay.

CAROLYN CALLENDER-CIPOLETTA: I live at 98 Griswold Street currently, and my mom is 80-years-old and her health has begun to deteriorate. So my hope is to be able to add a bedroom and a bathroom on the first floor because our house right now, the bathroom -- we only have one bathroom that's on the second floor. Currently my mom lives

in a three-room apartment in Malden alone and she's always lived independently but things have changed for her and she's hoping to live with me.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Your plans show that you're going to remove the shed in the backyard? Is that the case if we grant relief?

CAROLYN CALLENDER-CIPOLETTA:

True.

CONSTANTINE ALEXANDER: That's important to me anyway. That shed will go if we give you the relief you wanted.

TAD HEUER: And you're here on a Special Permit, not a Variance; right?

CAROLYN CALLENDER-CIPOLETTA:

Correct.

TAD HEUER: Because you're under your FAR and you're not going to exceed your FAR?

CAROLYN CALLENDER-CIPOLETTA:

Correct.

TAD HEUER: And you're not violating any setbacks. You're within your setbacks?

JOHN LODGE: I'm John Lodge, L-o-d-g-e. I'm the architect.

So the building is non-conforming in that the front is within the front yard. It's on a corner light.

TAD HEUER: Correct.

JOHN LODGE: But the addition is all within the setback.

TAD HEUER: Right. So the addition doesn't violate any setbacks?

JOHN LODGE: No, no, the addition doesn't violate setbacks and we don't violate FAR and open space.

CONSTANTINE ALEXANDER: This is a conforming addition to a non-conforming structure?

JOHN LODGE: Correct. So our

problem is -- I think it's 8.22.1.

CONSTANTINE ALEXANDER: It's more than ten percent?

JOHN LODGE: Yes, more than ten percent but less than 25 percent.

TAD HEUER: And just so -- I mean, what's more than 10 percent meaning what percent roughly?

JOHN LODGE: It's -- well it's 300.

CONSTANTINE ALEXANDER: 16 percent roughly.

JOHN LODGE: Okay.

TAD HEUER: So well under the 25 percent.

JOHN LODGE: Yeah, yeah.

TAD HEUER: Cap so to speak.

JOHN LODGE: Yeah.

TAD HEUER: And what's your absolute -- what's your floor area? What's your GFA that you're adding?

JOHN LODGE: The -- it's 300 square

feet.

TAD HEUER: So if this were -- just tell me how much smaller you wouldn't be here at all?

JOHN LODGE: Well, all right. So the house as it exists now is 1838 square feet. So if it was 184 square feet as opposed to 300 -- so if we were 115 square feet less, we wouldn't be. But at 115 square feet, we can't really get an accessible bathroom.

TAD HEUER: Understood.

BRENDAN SULLIVAN: Okay. And that's it?

CAROLYN CALLENDER-CIPOLETTA:
That's it.

BRENDAN SULLIVAN: Pretty simple.

TAD HEUER: Public comment.

BRENDAN SULLIVAN: Yes, I know.

Let me open it -- any other questions from the Board at this point?

Tim?

TIMOTHY HUGHES: No, it's good.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the matter 96 Griswold Street.

DAVID GRIFFIN: You mean 92 Griswold Street?

TIMOTHY HUGHES: Well, we heard 98 and 96 and 92. Which one is it?

BRENDAN SULLIVAN: Yes.

DAVID GRIFFIN: Well, they're 96 and we're 92 so we're the abutters to their property.

BRENDAN SULLIVAN: All right.

DAVID GRIFFIN: So do we have the floor now?

BRENDAN SULLIVAN: Yes, you do. Identify yourself.

DAVID GRIFFIN: I'm David Griffin and this is my mother Claire Griffin and she's the owner of the house. She's 76-years-old.

Anyway, the issue that we have with this is based on their surveying, they're saying that we're encroaching almost four feet of their land; okay? But according to the Land Court ruling of July 17, 1941, where we're we should be. And if you were to look at the front of their lot, which is here, 44 feet -- 34 feet, 44 feet. On theirs they're saying 30 feet and 40 feet. Okay? So my question becomes where did the four feet go? I mean, how did, you know, how did they gain four feet to the left where they want to put the structure? See, because the fact of the matter is if they want to put the structure up based on the registered land where they have it, based on the surveying, they're going to have to -- they're going to violate the seven-and-a-half feet setback. However, the recorded line says -- in other words, if we go by the registered thing --

TAD HEUER: Yes.

DAVID GRIFFIN: Then they can do it because they're taking three feet of our land. If we go by the recorded piece, then they can't do it.

TAD HEUER: Do you have a fence there?

DAVID GRIFFIN: Yes. And there's evergreens -- evergreen trees that go down. There's a fence that runs parallel. There's -- the other part of it is the driveway was put in in 1965. So....

TAD HEUER: Where's the driveway?

DAVID GRIFFIN: It's about six, eight inches to the side lot.

TAD HEUER: Inside your lot?

DAVID GRIFFIN: Yes. And the hedges are along the lot line. The previous tenant of that house, the owner of that house put those hedges on the lot line. They were the ones that put the fence up and they lined it it up with the hedges going straight back.

So the question becomes, well, if we were on the land, why wasn't that brought up when the fence was put up?

CONSTANTINE ALEXANDER: Sir, can I ask you a question? I'm sorry.

TAD HEUER: One second.

Is this registered or recorded land?

DAVID GRIFFIN: They have the registered, and this is recorded.

TAD HEUER: All right. So they have registered, you have recorded.

DAVID GRIFFIN: Right.

TAD HEUER: So you can't -- I'm not saying this happened or anything else, but they can adversely possess recorded land. You cannot adversely possess registered land.

DAVID GRIFFIN: No. We're the recorded land. We can adverse possess what we have. They're the registered. They're trying to come over three feet on to our

property saying that registered.

TAD HEUER: Right. Registered land cannot --

DAVID GRIFFIN: Cannot be adverse possessed, and that's what they're claiming. We're claiming recorded land.

TAD HEUER: Right. Recorded land can be adversely possessed.

DAVID GRIFFIN: Right. Well, we're not adverse possessing anything. We're where we should be. What they're saying is they want to come in three -- they're saying that our driveway abuts -- is three feet inside their property line, which it's not.

TAD HEUER: All right. What was the Land Court proceeding about in 1941?

DAVID GRIFFIN: It was based on the deeds of the house and where the square footage and where the property lines began.

TAD HEUER: As to these two properties that we're talking about now?

DAVID GRIFFIN: Correct.

TAD HEUER: Go ahead.

CONSTANTINE ALEXANDER: Well, I'm a little bit confused. We're not, tonight if we grant relief, we're not going to be anyway adjudicating property boundaries. It will be what it is, and that's a separate issue. The question for us is, they want to build an addition where they say they want to build it, do you oppose it?

DAVID GRIFFIN: Yes.

CONSTANTINE ALEXANDER: On what basis?

DAVID GRIFFIN: On the basis that it's going to be within the seven-and-a-half foot setback.

CONSTANTINE ALEXANDER: I know that. Okay, so they're seeking -- we have the ability to give relief from that. So I want to understand why, just because it's within the setback; privacy issues,

intrusion --

DAVID GRIFFIN: Privacy issues as well. Plus it's a detriment to the neighborhood. Each one of those last five houses on that house (sic) have the same amount of space between them. Okay, so if they come closer to our property line, there goes our privacy.

CONSTANTINE ALEXANDER: So what you're saying is that they're not entitled to a Special Permit. The relief they need to seek is a not a Special Permit but a Variance.

DAVID GRIFFIN: Absolutely.

CONSTANTINE ALEXANDER: I'm just trying to understand exactly what's before us.

JOHN LODGE: The way we started the -- actually, the first thing we did when we started the project was to get a new survey just because we probably going to --

CONSTANTINE ALEXANDER: You always

need a survey.

JOHN LODGE: Right. The survey took a long time to get. We couldn't figure out why. We kept calling and they said well, there's a lot of issues. So they gave us the survey. I pressed Boston Survey. I said are you sure? They said we're sure. They said okay. So based on that that's where we sort of -- those are the setbacks that we used. And I think that Carolyn and Randy were perfectly willing to, you know, let the driveway stand where it is, etcetera. I mean, all they need is the setback really. Which in theory, based on the survey, they have.

CONSTANTINE ALEXANDER: Let me give you my reaction to this situation. It seems to me we should take the survey as you present it to us, which shows that you don't have -- you don't need a Variance, you need a Special Permit as you're seeking. Because

we're not in a position to adjudicate --

JOHN LODGE: If George Collins put his stamp on the survey --

CONSTANTINE ALEXANDER: We're not in a position to adjudicate land boundaries.

JOHN LODGE: Right.

CONSTANTINE ALEXANDER: If we were to grant relief, the risk you face is that they can challenge it on the grounds that the Special Permit was not the appropriate form of relief because if they appropriately addressed the boundaries, you guys needed a Variance. So you understand that? I'm not sure how we're going to decide the case. But that's really the risk you face. If they want to pursue this in court, they would challenge the form of relief that we granted, assuming we grant the relief. Okay.

JOHN LODGE: Okay.

BRENDAN SULLIVAN: Which said that it probably should have gone to Land Court to

have been adjudicated prior to --

CONSTANTINE ALEXANDER: Sure.

BRENDAN SULLIVAN: -- just to have a clean application.

JOHN LODGE: Okay, well I mean, so from my perspective I said -- you know, I called up the surveyor and I said you're sure about this?

CONSTANTINE ALEXANDER: Yeah, I would just quarrel with Brendan's notion, what should have been done. You have a right to do what you want. You can rely on the survey if you wish. I'm just telling you the risk you're taking if you do rely on the survey, that's all.

JOHN LODGE: Right, right. I mean, the reality is that, you know, we could reconfigure it to work with -- we could reconfigure it to work with a slightly -- within that different setback, and it would still have the same issue, but

we can make it work as a Special Permit because I could, you know, we could probably reconfigure it so that it stays within the seven-and-a-half foot setback.

CONSTANTINE ALEXANDER: If you do that, you have to come back with new plans.

JOHN LODGE: Right, we'd have to come back.

CONSTANTINE ALEXANDER: But you have to decide. Do you want to come back with new plans, reconfigured, and still take your position with Special Permit? It's up to you. It's your call. I'm just trying to read you your rights to understand.

CAROLYN CALLENDER-CIPOLETTA: I'm a little nervous. I thought that's what we were supposed to. I thought that's what Sean thought that's what we were supposed to do. I want to do what's quickest because it's hard. She's in Malden. I'm trying to be there back and forth.

BRENDAN SULLIVAN: I understand.

CONSTANTINE ALEXANDER: Well, the quickest is to get a solution that doesn't require -- doesn't involve opposition from your neighbor. I haven't heard you've gotten there yet.

CAROLYN CALLENDER-CIPOLETTA: I don't think that's going to happen. The other abutter is fine.

CONSTANTINE ALEXANDER: Then you've got to make your call, go ahead, and assuming we grant relief, take a risk.

BRENDAN SULLIVAN: Yes, there is a cloud over --

CONSTANTINE ALEXANDER: Yes, it's a big risk you're taking.

BRENDAN SULLIVAN: -- over any action. The Griffins obviously would have presumed standing and could contest it which would basically tie everything up. Now, would I be wrong in saying --

TAD HEUER: Well, strangely not necessarily because this is a Special Permit, you can proceed at risk under Special Permit where you can't proceed at risk under a Variance.

BRENDAN SULLIVAN: Right. But you're really rolling the dice because of the issue at hand.

If say there was subsequent action to this, which could hold everything in abeyance and it would be some many months.

CONSTANTINE ALEXANDER: Years.

BRENDAN SULLIVAN: Years before it would be fully adjudicated, then it would be my judgment that they could then come back with an alternate plan.

CONSTANTINE ALEXANDER: Oh, sure.

BRENDAN SULLIVAN: And it would not trigger the repetitive petition because it would be a different plan.

CONSTANTINE ALEXANDER: Different

form of relief. It would be a Variance rather than a Special Permit.

BRENDAN SULLIVAN: Well, it could be a Special Permit, too, if they can reconfigure this. But I think it would be in --

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: Okay.

JOHN LODGE: I mean, it seems to me that we really, the survey is a separate issue. Getting the Special Permit tonight, you know, if we can get the Special Permit, great. If we have to reconfigure it and come back, you know, based on something else, then fine, we can do that, too.

CONSTANTINE ALEXANDER: I'm sorry, I don't like the idea if we're giving a Special Permit, and then you go back and abandon your plans and come back with a new Special Permit.

JOHN LODGE: Well, I mean, we

wouldn't abandon them unless we --

CONSTANTINE ALEXANDER: Well, wait a minute, I think you should decide what you want to do. If you want to reconfigure to try to pick a different Special Permit, then reconfigure. That's my view anyway. I don't think we should be going off a hypothetical on Special Permit.

JOHN LODGE: Well, to my mind, you know, a stamped survey is not a hypothetical.

BRENDAN SULLIVAN: Let me just throw that out. Have you, you have your survey and I think that you're comfortable with the survey even though, again, another authority made it.

JOHN LODGE: Yeah.

BRENDAN SULLIVAN: Now, have you somewhat sought legal advice as to the dilemma of the situation?

CAROLYN CALLENDER-CIPOLETTA: No.

JOHN LODGE: No.

BRENDAN SULLIVAN: Would that be advisable I would think at this point?

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Rather than making any rash, quick decisions tonight, go forward which then opens up a whole other avenue vis-a-vis the Griffins and their stated position. So that -- again, I'm not a lawyer. I would think that you may want to have a session with a lawyer, say this is the situation. You know, you have an abutter who has expressed a position, feels very strongly about their position, this is our position, and what would you advise? I would think.

CONSTANTINE ALEXANDER: I would endorse that. You would be very -- I know you want to move quickly, and there's a good reason for that. But you would be very well advised to talk to an attorney and understand your options and risks before you go ahead. It really would be --

CAROLYN CALLENDER-CIPOLETTA: So does that mean if I seek legal counsel, that then like is there a court hearing and I wait for court dates and things? No.

CONSTANTINE ALEXANDER: Just getting a lawyer to explain the pros and cons and the issues before you, that's all.

BRENDAN SULLIVAN: Yes. It would be just a session with a lawyer who could give you --

CAROLYN CALLENDER-CIPOLETTA: But will he present it like this? Somebody decides this whether it's registered or --

BRENDAN SULLIVAN: Well, I think you would have to sit down -- you would have to ask those questions to a lawyer. In other words, I would get a hold of a real estate attorney who could then -- you basically have this conversation with him.

TAD HEUER: So, I am a real estate attorney so I'm not going to advise on this

necessarily. But what you have is a survey. Do you have a title? Have you run title on this?

JOHN LODGE: Well, I think that the surveyor did and that's why it took so long. I'm not -- I don't have it.

TAD HEUER: Right. Because really what --

JOHN LODGE: It's the title that's going to rule.

TAD HEUER: The survey is nice, but where your neighbors have come in and shown us, you know, something that nominally at least, we'll take them at their word, relates to a previous Land Court proceeding. You know, a title examiner would go and go through all of, you know, all the registered side, the whole recorded side, they'll go through all the Land Court opinions, go through the grantor and grantee, and you work your way all the way back to where there's no dispute,

probably before this was subdivided. And then work your way forward, and see what you have, and that gives you your title report which says here is everything anyone has ever done or related to about this land essentially. And that should help clarify how, you know, where you're four feet went or where it didn't go. You know, what's encroaching on what. It will give you a much clearer picture than just the survey which is, you know, essentially what you have here it says based on whatever assumptions we've made, we don't know what they are, we determined that the 34 feet and the 44 feet are the appropriate lot lines. What you really want is someone whose run title on all this and has, you know, will ideally have these two documents that Mr. Griffin's provided plus your own survey and everything else. And you'll have, maybe pages and pages of incremental changes but at least you'll

have it all in one place and that will give you a sense of who owns what and where.

And, you know, like you said, Boston Survey may have done this, but it will be viable for you to ask if they have. And if they have, ask for a copy of it. And if they haven't, you know, you probably want to be asking someone, either a real estate attorney or a title examiner, probably through a consultation with a real estate attorney, you know, what your next step is to make that clear for everyone. I mean, you guys are going to be living next to each other for a while. I think at some point you'd like to know who owns what.

CAROLYN CALLENDER-CIPOLETTA: Can I just ask one more question? If these people had done a title search, the survey people, and then is it safe to move forward?

TAD HEUER: Well, you can always move forward. The question is whether your

neighbors will accept what your title examiner has done. They may or may not.

CAROLYN CALLENDER-CIPOLETTA: So who -- I'm just not understanding who decides? Like, where am I trying to get to for someone to look at all the documentation to say this is it? This is what is true, is true?

TAD HEUER: If there's a dispute, you would end up in the Land Court. So you would bring an action to quiet title in the Land Court. The Land Court would take all the documents and they would come up with a determination that the lot line is here. They draw you a map essentially. And my sense is that based on the representation of the Griffins that's what happened 70 years ago for some reason. You would go and essentially ask for another determination to quiet title at the Land Court. That being said, the Land Court will take years to give

you that determination.

CONSTANTINE ALEXANDER: Let's be clear. You don't -- what Tad is telling you obviously is correct. If you wanted to make sure there's no dispute going forward, you can do that but it takes years.

The other alternative is to talk to a real estate lawyer to really assess whether you need to do that. He or she may tell you don't worry about it. I'm not saying he or she will. Don't worry about it, the risk is minimal. At least you can get tied up in court, but at least you're going to win the lawsuit. And you can go forward on that basis if you get that kind of advice.

That's really your choice. You can eliminate all risk but put this off for a couple of years or get some competent legal advice to tell you what the risks are and then you make a decision whether you want to go to court or go forward.

TAD HEUER: I mean your other option someone mentioned you can go and redesign the project so that even if you use the worst -- the smallest lot line as to you, and I would imagine that this may also -- you'd also have to do -- how this works, the FAR calculations because you're shaving off essentially one side of the yard.

JOHN LODGE: Plus the Assessor's office has the square footage of the lot based on this. So if not, then they've been paying taxes on land that they didn't own for a long time.

TAD HEUER: That's not our issue. You would redesign to see what kind of a project you could proceed on, if any, and I don't know how much square footage you would lose and whether that would put you over 25 percent and, therefore, put you out of the Special Permit provision. But you could go back and do a redesigned addition well within

even the most contested, the most -- the lot line that's most adverse to you at the FAR that's the most adverse to you and come back and say we still can do this by Special Permit, which is the lower standard than a Variance. I mean the other alternative is you can come back and say we're going to take the lot lines that are best for us and we would like to seek a Variance, because even if what the Griffins say is true, and the lot line is where they say it is, there won't be an adverse impact on the neighborhood and, you know, there's a legitimate hardship and then you would make that case to us and we would decide whether in that situation a Variance is granted. We just can't address that tonight because all you've advertised for is a Special Permit.

CAROLYN CALLENDER-CIPOLETTA: We should have come for a Variance.

TIMOTHY HUGHES: No, no. You did

the right thing given the information you had.

CAROLYN CALLENDER-CIPOLETTA:

Okay. So if we -- if we went to an attorney and he said, you know, or she said, this looks good, you know, there's low risk and then we began the building project, could it be halted because there's a dispute with the neighbor?

TAD HEUER: You're always entitled as an -- under the statute, if you're an abutter with presumed standing, to sue us essentially. But the landowner for improperly granting permit or you building under a permit that you aren't entitled to have. And that would go either to Land Court or Superior Court.

But what we were mentioning earlier is you can proceed under a Special Permit at your own risk. Which means, if you get the Building Permits, we issue a Special Permit,

the Building Department issues you a Building Permit, you can start building with the caveat that if you're sued because your neighbors say you weren't entitled to it and they win, you may have to tear the whole thing down.

Similarly if you go for a Variance and they sue, you can't start building because the Building Department won't issue you a Building Permit. So if they were to sue and say you're not entitled to this Building Permit because you weren't entitled to a Variance, you couldn't start building at all even if you wanted to.

BRENDAN SULLIVAN: There are more questions than there are answers. And I think I would advocate for stepping back and getting some legal advice knowing exactly because even you said you're not too sure about certain things. And I think you definitely need to be sure about the status

of it all. And then proceed, you know, there's two or three different avenues then to proceed. But it would be I think not responsible of us to proceed and then just send you on your way. It wouldn't be doing you justice. It wouldn't be doing the Griffins justice either. So I think not to be Judge Baker's Guidance Center by any means, but at the same token do the right thing for the ultimate solution to do whatever. So what I would ask is for probably a request to continue this matter. You'll have to sign a waiver to your statutory requirement for the hearing and decision, and we'll set the date for -- can we do it in April?

MARIA PACHECO: We can do April 26th.

BRENDAN SULLIVAN: April 26th. And would this be considered heard?

CONSTANTINE ALEXANDER: I think so.

BRENDAN SULLIVAN: April 26th, are you here?

CONSTANTINE ALEXANDER: I am.

BRENDAN SULLIVAN: Tim, April 26th?

TIMOTHY HUGHES: I'm checking right now.

CONSTANTINE ALEXANDER: We've got a full night that night.

TIMOTHY HUGHES: I'm available.
4/26.

CONSTANTINE ALEXANDER: Be prepared to stay very late on April 26th.

BRENDAN SULLIVAN: I'll make a motion to continue this matter to April 26th. And, again, if you're not ready by then, you can call us ahead of time to request a continuance again. Call us a few days before. It's important that it be done right and not quickly.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Let me make a

motion, then, to continue this matter to April 26th at seven p.m. on the condition that the Petitioner sign a waiver to the statutory requirement for the hearing on the decision. And also that the posting sign change to the reflect the new date of April 26th and the time of seven p.m. And any additional changes to the drawings be in the file by five p.m. on the Monday prior to the April 26th. So if you're changing --

JOHN LODGE: What day is the Monday?

BRENDAN SULLIVAN: April 26th. Any changes to this plan be in the file by Monday -- five o'clock the Monday prior to April 26th.

CONSTANTINE ALEXANDER: Only if you make changes. If you're going to make changes.

TAD HEUER: Right, and you can only make changes under this Petition if you're going to be seeking a Special Permit.

CONSTANTINE ALEXANDER: Good point.
Good point.

Let me reiterate about what he said with regard to the posting sign. Take a magic marker, you go out and change the date to April 26th and the time to seven p.m. If you don't do that, we're not going to hear the case on April 26th. Don't get yourself in trouble.

THOMAS SCOTT: Can I ask one question to the Griffins I guess?

Is there any solution or have you had any discussions with them? Is there any solution that you would find acceptable or is the whole notion of kind of them expanding into their backyard out of the question?

DAVID GRIFFIN: Well --

THOMAS SCOTT: You know, like if they move to the other side of the lot --

DAVID GRIFFIN: Well, we don't want to come across as hardness here. I can

understand that she wants to take care of her mom, and that's admirable. On the other side of the coin, can I say what we were --

CLAIRE GRIFFIN: Yeah, go ahead.

DAVID GRIFFIN: If they wanted to extend straight back and not -- and parallel with where the house is now and come no closer to the property line, we would have no problem with that.

THOMAS SCOTT: Okay.

DAVID GRIFFIN: But as far as coming up -- you know, jetting out from the house towards the property line and then going back, that's an issue.

THOMAS SCOTT: Yes. That's why I asked the question.

JOHN LODGE: If that's the case, maybe then we have a better case for a Variance.

THOMAS SCOTT: You know what I'm saying, maybe there's some amenable solution

that you can kind of help them get what they want and you guys can get what you want. It just requires a little bit of conversation.

CONSTANTINE ALEXANDER: And avoid necessarily retaining counsel, too.

CAROLYN CALLENDER-CIPOLETTA:
We've actually had a conversation. Claire and I spoke on the phone. I didn't know there was any opposition to the plan, Claire.

CLAIRE GRIFFIN: See, I didn't know it was coming out on the side until you told me. I thought it was going out back.

BRENDAN SULLIVAN: All right, so you can have some conversation which is less expensive than hiring lawyers.

THOMAS SCOTT: Yes, if you can.

BRENDAN SULLIVAN: On the motion to continue this matter until April 26th.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes,

Heuer, Scott.)

TAD HEUER: And also, if you need more time than the 26th, just let them know so they don't make the trip down. And if you decided early that you're just not going to go ahead, just let them know not to come down for us to tell them we're going to do it another day.

DAVID GRIFFIN: So we don't get another letter in the mail?

TIMOTHY HUGHES: No, you won't.

BRENDAN SULLIVAN: Duly notified.

CONSTANTINE ALEXANDER: Duly notified.

BRENDAN SULLIVAN: If you have any questions, call Sean O'Grady. Okay. Bury him with phone calls. No, seriously there is no silly question. If you have anything at all, call Sean. And the Griffins can call, too. Just ask so you can get a clearer picture of exactly what's going on.

Thank you.

(10:00 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10230, 820 Somerville Avenue.

Counsel, are you aware of the Planning Board decision?

CONSTANTINE ALEXANDER: Do you have photo simulations with you tonight?

ATTORNEY KATIE THOMASON: I do.

BRENDAN SULLIVAN: Will you introduce yourself? You're Katie?

ATTORNEY KATIE THOMASON: Katie Thomason.

BRENDAN SULLIVAN: Do you have a card?

ATTORNEY KATIE THOMASON: I do.

My name is Katie Thomason. I'm with the law firm of K&L Gates. I represent the

Petitioner Walgreens in this matter. This is Damian Smith. Damian, D-a-m-i-a-n. He's a district manager for Walgreens in charge of the stores in this area.

So, I guess what's probably helpful is that I first orient you to the layout and signage of the neighborhood and the buildings at issue. And then I'll explain the proposal and why we're here and then go through the standards for a Variance.

So, Walgreens has leased space in the Porter Square Galleria. And this is a rendering of the building back here and in front of you. It's in a Business C District. So just by way of orientation -- I can stand up if you can still hear me.

So this is Somerville Ave. White Street is here. This is the Porter Square shopping center, and then Mass. Ave. is on the other side. This is the Porter Square T stop right here. And that's existing. It's sort

of existing. Pizzeria Uno has actually moved out and those signs and awnings are down now.

So, the store's taken a significant amount of space. Nearly 19,000 square feet on the first and second floors of the building. They're taking the space currently occupied by Pier 1 on the first floor, and the former Blockbuster space on the second floor and the dentist office which I think is behind the Blockbuster space on the second floor.

So, this side of the building is set back considerably from the street, much further back than the other side of the building and also the building directly across White Street.

So now that you're sort of oriented where we are, I'll walk us through what the proposal is and why we're here. Actually, I'll show you this. So this is the rendering

showing the sign that we're proposing. It's a nearly 15-foot wide and a 40-inch tall internally illuminated script sign.

CONSTANTINE ALEXANDER: Could I stop you right there?

ATTORNEY KATIE THOMASON: Sure.

CONSTANTINE ALEXANDER: Under our Zoning Code, you're only supposed to have 20 inches of the illuminated sign, plus no more than 20 inches?

ATTORNEY KATIE THOMASON: 30 inches.

CONSTANTINE ALEXANDER: 30 inches. And how many inches --

ATTORNEY KATIE THOMASON: We're at 40.

CONSTANTINE ALEXANDER: 40?

ATTORNEY KATIE THOMASON: Yes.

CONSTANTINE ALEXANDER: Are you sure it's 30 inches? I thought you were going to be much more than what's permitted

by our Zoning By-Law.

ATTORNEY KATIE THOMASON: No.

CONSTANTINE ALEXANDER: 716.

ATTORNEY KATIE THOMASON: Yes, 716.

Here it is. 3A on this page.

CONSTANTINE ALEXANDER: I can find it here, yes.

ATTORNEY KATIE THOMASON: It says either the vertical or the horizontal dimension of the sign does not exceed 30 inches.

CONSTANTINE ALEXANDER: Keep going. I'm sorry.

ATTORNEY KATIE THOMASON: So that's one of the points I'm getting to. The sign is non-conforming for that reason. It is -- because the sign is internally illuminated, the Ordinance requires that either the horizontal or the vertical be 30 inches or less. And our shortest here is the vertical which is 40 inches.

The other thing is in a business district, the Zoning Ordinance prohibits wall signs above the second story windows. So those are the two reasons we are here.

We believe that granting of a Variance will not substantially -- would not be substantial detriment to public good because the proposed sign is consistent with other signage in the area, including neighboring retail properties and historic signage on the building.

The Porter Square Shopping Center across White Street has multiple and internally illuminated signs, and signs which exceed the height limit. All of which legally exist by Variances.

The prior restaurant tenant -- well, Uno's also had an internally illuminated wall sign above the second story windows. Also the sign -- it's notable, doesn't face any residential area. It faces the T stop and

other commercial properties. There's no substantial derogation from the intent of the Ordinance because two explicit purposes of the Ordinance are to conserve the value of land and buildings, and to encourage the most rational use of land. And here obviously the value of the building is preserved by allowing a retail tenant to make good competitive use of the space, and the value of nearby land and buildings is not negatively affected by having an internally illuminated sign identifying a successful retail establishment. Again, it's a commercial area. Signs like this are common for this particular area.

The retail establishment is the most rational use of this property and is encouraged by allowing adequate signage. And again the signage history of the building shows that --

CONSTANTINE ALEXANDER: Ma'am, what

you handed out, the last two pages show an alternative it looks like. The Walgreen sign being where the Pier 1 --

ATTORNEY KATIE THOMASON: That is a conforming rendering.

CONSTANTINE ALEXANDER: Why won't you do that?

ATTORNEY KATIE THOMASON: Because the sign is almost illegible from Mass. Ave. when you're --

CONSTANTINE ALEXANDER: Why? If CVS has a sign, that's not any bigger. It's not as high up off the wall as yours. You're going to dominate the streetscape with that. It's going to be a beacon, illuminated on top of it. Overly large, illuminated sign, very high up. It's going to loom over everything. CVS is going to come back and say wait a minute, if they can do it why can't we? We're going to allow a bigger sign --

ATTORNEY KATIE THOMASON: Well, the

difference between us and CVS is we're taking a very large space --

CONSTANTINE ALEXANDER: Well, that's your decision.

ATTORNEY KATIE THOMASON: And the first and second floor.

CONSTANTINE ALEXANDER: That's your decision. You decide you want this space, take the space. You need to take 19,000 square feet, that doesn't give you a justification for putting an overly large sign.

ATTORNEY KATIE THOMASON: Well, I believe that, you know, second-story retail is very uncommon, and we want a 70-year-old woman coming off the T being able to identify that she's at Walgreens.

CONSTANTINE ALEXANDER: I'm sorry, you get off the T because I live in this area. You can walk out of the T right here, and the first thing you see is this. You'll see a

sign right here that says Walgreens instead of this overly large illuminated sign on top of the building. Don't tell me you need this so people can find your store. They can find it very easily just like they found Pier 1 Imports by a sign right there.

TAD HEUER: But perhaps not as successful considering Pier 1 Imports is no longer there.

CONSTANTINE ALEXANDER: Well, they were there for decades. They moved because of other corporation reasons, not because of a lack of business.

ATTORNEY KATIE THOMASON: There's another view of the property showing the CVS sign in comparison to the proposed Walgreens sign. And we don't believe that the Walgreens sign is actually any more intrusive.

TAD HEUER: See, you're going to have second-story retail, but you also have

first-store retail; right?

ATTORNEY KATIE THOMASON: Right.

TAD HEUER: So you're taking space on the first floor?

ATTORNEY KATIE THOMASON: Right.

TAD HEUER: One instance that I'm thinking of is on JFK Street where we approved the Kaplan signage package. And Kaplan's concern, the reason they wanted banner signage above on the second story was because A, the American Express folks in the corner of Mass. Ave. and JFK and Mount Auburn kept having people walk in their front door thinking Kaplan when Kaplan literally was on the second floor. They said we want banners on the second floor so people kind of had this sense that you have to go up to Kaplan. Coincidentally or not it also gives them more visibility. But they had a plausible reason for saying we don't want to bother the American Express travel agency because

people kept walking through the front door looking for us. Here people are going to be wondering in front door looking for Walgreens, and now we'll go upstairs because there's more stuff they want. It's not that putting it on the second story is necessary because you have second-story retail. The retailer is two floors, one of which is the first floor which seems to be the logical place for a sign; right?

DAMIAN SMITH: One of our other concerns is our store in comparison to the CVS store, is set back. The CVS store is out on the corner. And I understand we're making the decision that we want to be there. We don't have to be there, and I understand that. But you were making the comparison between the sign that CVS has and the sign that we have. There are stores out on the corner. Ours is set further back and it's going to be a little more difficult to see.

CONSTANTINE ALEXANDER: I'm sorry, I don't accept that.

DAMIAN SMITH: Okay.

CONSTANTINE ALEXANDER: I mean, if you're walking anywhere in that area, you can see that sign. You can if you were on the lower level where Pier 1 Imports was --

DAMIAN SMITH: If you're walking. But if you're driving, you might not. I've driven it enough times myself to be able to make that observation. In fact, I drove it again tonight. If you're walking, if you're coming out of the T stop, there is some validity to what you're saying. If you're driving and you're making that left off of the Mass. Ave., you might miss it.

CONSTANTINE ALEXANDER: Except that Pier 1 Imports now has not only a sign on front, they have a wall sign on the side. The driveway in there. Which you haven't proposed. Which solves the problem. You

can have a sign where just like Pier 1 Imports, it's two signs, neither illuminated, one is a place where Pier 1 Imports.

ATTORNEY KATIE THOMASON: I think the Pier 1 sign is illuminated.

CONSTANTINE ALEXANDER: I don't think it is. It's a flat board.

The point is that to me you're looking for advertising which is not necessarily wrong, but you're looking for something overly large to introduce yourself to the neighborhood. And I think you if you want to rent a space, you take the signage the city gives you. I mean, there's no hardship here. There's no -- this space can be used with signage where signage was before. You just want to advertise yourself as opposed to CVS.

DAMIAN SMITH: I think one of the things that we'd like to be able to do is do something similar to what was being done at

the property in the past. I think that point was made earlier, that there was a Pizzeria Uno sign there as you can see from the pictures here, and that it wasn't -- I don't understand the difference personally between what Pizzeria Uno had and what we're suggesting.

BRENDAN SULLIVAN: Well, except that looking down the road a little bit, the space is obviously vacant. When the next tenant goes in, they're going to come back to us and say well Pizzeria Uno had a sign here, let us put a sign back. And all of a sudden Walgreens has got another one there, too. So there is going to be somewhat of a duplication if you were the only tenant in the building --

DAMIAN SMITH: Right.

BRENDAN SULLIVAN: -- then I could, you know, endorse what you're saying. But I see that there's going to be additional requests coming once that starts to fill up.

But anyhow that's just aside.

TAD HEUER: And as a practical matter having lived also in this area, if you're coming up, if you're coming up -- if you're coming south on Mass. Ave. at that corner, I don't think I've ever gone through that light unabated to the remainder of Mass. Ave. You are almost always stopped at that light for some reason. Doesn't that give you enough opportunity to sit in your car saying where's the Walgreens? It's not as though you have to make the decision on the fly, I've got to take a left or stay on Mass. Ave. You generally have one, if not two light cycles at any part of the day to sit and ponder where that building is. And you'll identify it by saying it's not up as high as I thought it was. There it is on the first level. I mean, it's not necessarily driving it, you need to catch it on the fly because that's about the most congested artery of traffic in the entire

city I think.

DAMIAN SMITH: There's a lot of congested arteries.

ATTORNEY KATIE THOMASON: If you're coming south on Mass. Ave., the CVS building actually does obstruct the view of this, of this facade entirely.

TAD HEUER: Well --

ATTORNEY KATIE THOMASON: Because the CVS.

TAD HEUER: It's set at that far back?

ATTORNEY KATIE THOMASON: It's set significantly back.

DAMIAN SMITH: It is.

TAD HEUER: So you're saying in the Porter Square Shopping Center, those are all by Variance. Were those by a unified Variance? So when the shopping center was built, the a single Variance was for --

ATTORNEY KATIE THOMASON: I believe

that's the case.

TAD HEUER: Right. So, you know, it's not a case-by-case situation.

ATTORNEY KATIE THOMASON: The Variance of this is.

BRENDAN SULLIVAN: There was just a few years ago there was -- when CVS went in and we granted them some signage, there was a shopping center itself, there was a tremendous amount of relief. I think there's actually seven or possibly ten signs.

CONSTANTINE ALEXANDER: Yes, we also allowed Mathworks to put in a sign over CVS.

ATTORNEY KATIE THOMASON: There is a sign. There's a sign right here. It's not --

CONSTANTINE ALEXANDER: That's right. We did allow that.

BRENDAN SULLIVAN: There was a master plan for the shopping center which has

somewhat gone awry, but there was, I think, seven out ten sign variances that we granted because the -- in addressing the Planning Board they wanted somewhat cohesive which never happened.

TAD HEUER: Is that district is for --

CONSTANTINE ALEXANDER: Brendan's point is well taken. It's not going to happen. Signs beget signs. And as soon as one guy -- somebody puts a bigger sign -- we seen it in the banking cases in Harvard Square. You put a big sign up there, and then CVS is going to want to put a big sign up there. And whoever moves into the Uno space is going to want to put a big sign up there. And all of a sudden the streetscape is adversely impacted just because the kinds of things that our Zoning Ordinance says is prohibited. Too much signage, too much impact on the streetscape.

ATTORNEY KATIE THOMASON: I mean, there is already a sign on the second story on Somerville Ave. On the CVS building.

CONSTANTINE ALEXANDER: Yes, Health Works.

ATTORNEY KATIE THOMASON: I mean, I don't think that -- we don't think we're adding --

BRENDAN SULLIVAN: My own taste I think CVS is overly signed.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY KATIE THOMASON: Too large.

BRENDAN SULLIVAN: Well, it's to me it's too much. But, you know, they obviously want, you know -- anyhow they have neon signs if we let them. But the only thing working I think in the favor of this is the location of the building, which I think is at somewhat of a disadvantage and especially if you're coming with your back to Arlington. And

you're coming down, you're at a higher elevation on Mass. Avenue by Christopher's than you are, in fact, I think probably -- and I think it would be a nice exercise, I think, not to critique, but I think if I were a presenter I would have done an elevation of where you are at Christopher's and where the sign is and the elevation of that, because it would not be all that much different. The sign would be higher obviously, but I think that what works in your favor, in my view, is that the location of the building which I agree is set back. There's somewhat of a plaza in front of that, which I think is also going to be occupied. And I think the city wants to get this outdoor stuff going which is also, I think, going to distract the cumbersome to anything going on in there. The elevation of Mass. Avenue in relationship to this, if I were Mr. Walgreen, I would say that the sign at that level probably would not

work. Obviously the one higher does.

CVS is a different location. It's more prominent. It's right on the sidewalk. You can't miss the damn CVS.

ATTORNEY KATIE THOMASON: It's also, as I said, a high traffic area. Lots of pedestrians going back and forth distracting from the signage.

BRENDAN SULLIVAN: That gets outdoor seating, yadda, yadda, yadda. And I also think it's also going to beget some kind of a post with arrows and bells and whistles and stuff like that going forward to identify what's going on in that building, because the building screams at needing some stability to it because there is an awful lot of comings and goings. The building has never really worked very well right from the beginning.

CONSTANTINE ALEXANDER: That's true.

BRENDAN SULLIVAN: But as you can

see from the changeover.

ATTORNEY KATIE THOMASON: To that point there also has been -- the sign variances that have been granted on this building have almost uniformly referred to the setback as the hardship. It's been recognized as an issue on this building before. Planning Board recognized as well.

TAD HEUER: What are the intended hours of operation?

DAMIAN SMITH: Right now we're looking at either six or seven to midnight.

TAD HEUER: Okay. Would the sign be turned off in your non-open hours or would it be kept on?

DAMIAN SMITH: We would turn it off.

BRENDAN SULLIVAN: Is Walgreens a -- how do I phrase this? A point of source for medications for a group -- I know that you may have lost some health plans recently, but is it not a source of medication for certain

health plans or something like that? In other words, if somebody has to find a Walgreens rather than going up to Arlington or something --

TAD HEUER: Are you a PBM for various health plans?

BRENDAN SULLIVAN: Yes, that's what I'm trying to say.

TAD HEUER: As far as the benefit manager?

DAMIAN SMITH: You mean where they can only come to Walgreens?

BRENDAN SULLIVAN: Yes.

TAD HEUER: Yes.

DAMIAN SMITH: Well, yes and no. There are certain contracts that we are in the process of negotiating with. And, in fact, in Cambridge with the Cambridge Healthcare -- health centers where we would contract with them on a 340-B basis to allow their patients to come to our pharmacies.

BRENDAN SULLIVAN: Right.

DAMIAN SMITH: And so in an instance like that, they would only be coming to Walgreens. They could go to a pharmacy within the Cambridge health system.

BRENDAN SULLIVAN: Right. But the alternative is obviously --

DAMIAN SMITH: The alternative would be Walgreens; right.

BRENDAN SULLIVAN: And the alternative would be Arlington?

TIMOTHY HUGHES: Somerville Avenue.

DAMIAN SMITH: Or go to Somerville Ave. as well.

CONSTANTINE ALEXANDER: Right.

TAD HEUER: So you're contracted for providers disproportionate to certain hospitals?

DAMIAN SMITH: No, it's only --

TAD HEUER: It's 340B.

DAMIAN SMITH: 340B through the

health center.

TAD HEUER: Okay.

TIMOTHY HUGHES: What about the possibility of putting the conforming sign size on the second floor spot?

DAMIAN SMITH: I think our challenge there that has come up is that the Walgreens script logo, Walgreens is a longer name obviously than CVS. So that's what --

CONSTANTINE ALEXANDER: We can agree to that.

DAMIAN SMITH: That's what creates the problem. And then if you shrink the sign this way, it gets to be a little too difficult to read. You know, it's just too narrow, you know. If you look at all your names, we've done it a certain way so people can read them. If it was too narrow.

TIMOTHY HUGHES: Can you read it better now?

DAMIAN SMITH: Yes, I can.

BRENDAN SULLIVAN: Okay.

TAD HEUER: Conversely a larger sign but below the second story window?

ATTORNEY KATIE THOMASON: Again, we're facing the issue of the traffic and the plaza and coming out of the T stop and the elevation issue.

BRENDAN SULLIVAN: Okay. Gus, anything else at this point?

CONSTANTINE ALEXANDER: I have nothing more to add. You know my views.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: No. I mean, I personally think that the sign, you know, where the Pier 1 sign is located would work just as well. That's just my opinion.

BRENDAN SULLIVAN: Okay. Tim, anything else at this point?

TIMOTHY HUGHES: Yes, I wanted to know if the close proximity to CVS if the competition is going to bring down the price

of Gillette Fusion Razor Blades?

DAMIAN SMITH: I would hope so.

TIMOTHY HUGHES: Me, too. Those things are out of line.

DAMIAN SMITH: You know, I think that obviously competition always makes everybody ramp up their game a little bit. I've heard that from a lot of people.

BRENDAN SULLIVAN: Let me open it to public comment at this point.

Let me read the letter, Michael, from the Planning Board. The Board is in receipt of correspondence from the Planning Board. (Reading) The Planning Board reviewed the Sign Variance request for the Walgreens signage. The Planning Board does not support any sign located above the second floor windows. However, the Planning Board notes that this storefront is set back from Somerville Avenue, so that an internally illuminated sign slightly larger than

allowed might be more appropriate. Overall, the building would benefit from a coordinated sign program with the building owner and operator. This program with a sign conforming and coherent signage allocation on the building facades, as well as the freestanding sign in the plaza area on the corner. The existing method of leaving tenants to create their own signs leads to visually chaotic storefronts. It also does not address retail tenants who do not have street frontage.

Okay, Mr. Brandon.

MICHAEL BRANDON: Thank you, Mr. Chairman. I'm Michael Brandon, B-r-a-n-d-o-n, 27 Seven Pines Avenue in North Cambridge. Thank you to the members of the Board for the chance to address you. The last time I was here I got to wish you Happy Valentine's Day. And now I can wish you a happy premature summer.

I think the Board members' questions stole most of my thunder because I share your concern, but I did compress my remarks and I guess I'll just go through.

I'm here to urge you to heed the advice of the Planning Board by denying the current overreaching application. In my view the sign is obtrusive and would dominate its surroundings, needlessly add to the visual clutter of Porter Square, and continue a bad precedent of allowing the spread of oversized lighted signs above the first story buildings throughout the square.

Granting the petition, I believe, would create an unfair competitive advantage by in running regulations that were adopted to create a level playing field for all merchants and preserve the aesthetic quality of the urban environment.

Just last year the Board will recall a citizens' petition drive convinced the City

Council to rescind a new Zoning Amendment that allowed similar inappropriate corporate branding efforts in other parts of the city.

There's no hardship here in my view to justify nullifying the Ordinance for the benefit of a giant drugstore chain.

I'll share with you the question that I asked the Petitioners and never really got a satisfactory answer, why can't Walgreens simply replace the Pier 1 Import signs with comparable ones in the same locations?

The CVS Pharmacy directly across White Street from Walgreens' site makes do with street level signs. Granted, a little oversized. Not to my taste. But they do it with signs at the ground level, and I believe that customers will have no difficulty finding or distinguishing between these two stores. By the way, on -- just on in passing on the issue of the CVS being shorter than Walgreens, as I pointed out to Damian, the

sign says CVS Pharmacy. So it wouldn't be -- yeah, I think that's not a strong argument.

So in short, the proposed sign does not meet substantial hardship criterion or other legal standards for granting a Zoning Ordinance. I'd leave it at that, but I would be happy to address any of the specific written arguments that Katie didn't go through entirely, but I think all of them could be refuted if the Board wants to go even later tonight.

And so in summary I would just say that I do agree with the Planning Board comments that a comprehensive assessment of the building signs would make sense. The precedent here, as the Board has pointed out, would create major problems down the line. The prominent sign is not necessary here, and many buildings are set back from Mass. Ave. would make the same argument.

It's not fair to other businesses the seller of this building and the side building, and it's not justifiable in the Zoning Ordinance or the Chapter 40-F.

Thank you very much for considering my thoughts.

BRENDAN SULLIVAN: Thank you. That would conclude public comment.

Okay, anything else to add?

ATTORNEY KATIE THOMASON: We did actually -- I wanted to point out that we did meet twice with the Porter Square Neighborhood Association. Came back a second time at Mr. Brandon's request. The neighborhood association as a whole said that the proposed signs size and height above the second story windows were acceptable to them. And the fact that -- given the fact that it was set back from the street, and they decided not to oppose or support the Variance and take no action.

MICHAEL BRANDON: I would take issue with that characterization.

ATTORNEY KATIE THOMASON: I have the minutes from the meeting that the president of the association supplied to me.

MICHAEL BRANDON: I would suggest you submit those to the Board.

ATTORNEY KATIE THOMASON: I'm happy to do so. I have a copy.

BRENDAN SULLIVAN: Mr. Brandon, in reading the Planning Board, unless I'm missing something. However, the Planning Board notes that this storefront is set back from Somerville Avenue so that in internally illuminated sign, slightly larger than allowed, might be more appropriate.

I'm reading that they feel that this sign may be appropriate. Am I reading it different?

TAD HEUER: I believe they're saying it would be appropriate at the first level.

THOMAS SCOTT: At the lower elevation.

TAD HEUER: I'm more willing to consider than a large sign at the second level. I can see, you know, a larger internally illuminated sign below the window. I think that's what they're saying.

BRENDAN SULLIVAN: An internally illuminated sign slightly larger than allowed might be more appropriate.

TAD HEUER: Right. No sign above the second floor window area. Period. Whatever.

BRENDAN SULLIVAN: I think they're saying that in general. In other words, that the Planning Board does not support any sign located above the second floor windows. Or they're saying that this particular sign, because it is -- they would not support it because it is above the second floor window.

TAD HEUER: I would find it very

difficult to believe the Planning Board is saying we don't support any sign above the second story window, I but if you do decide to sport a sign over the second story window make it even bigger than it is now. That wouldn't logically make sense to me.

BRENDAN SULLIVAN: All right. Maybe I'm reading more into it than what they're saying.

THOMAS SCOTT: I think you're right.

BRENDAN SULLIVAN: All right.

MICHAEL BRANDON: Since you started to address that to me, Mr. Chairman, just if I may, I would agree with the Planning Board even that, you know, perhaps a small Variance possibly could be justified.

CONSTANTINE ALEXANDER:

Mr. Chairman, you've ended public testimony.

MICHAEL BRANDON: Thank you.

Sorry.

BRENDAN SULLIVAN: Yes.

Okay. Gus, what are your thoughts?

CONSTANTINE ALEXANDER: You don't know them yet? I'm opposed. I mean, I just -- there's a perfectly adequate solution is putting the sign where the Pier 1 Imports was. It will accomplish everything you need in terms of letting people know where you are. And the idea of an illuminated sign of this size, overly large on the second floor does destroy and clutter the streetscape. I strongly -- I'm in favor of a sign, but not this sign.

BRENDAN SULLIVAN: Okay. Tom?

THOMAS SCOTT: I guess I'm in favor of their option two, and I would agree that if they wanted to make it slightly larger, at that level, that would be okay with me, too.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: I've been outspoken about the Sign Ordinance, this one size fits all kind of policy. Because of

architecture of buildings, you sometimes you have to put signs higher. But I'm afraid this building is the size that it fits. The one size does fit. And I don't see any need to put this one on the second floor. But I'd be happy to see it a little bigger if that was necessary, but I don't think it needs to be on the second floor.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: I agree that there's need for signage. I think the signage on the first story -- I would support I think a Variance to see what it would look like. But to support a Variance of a slightly larger internally illuminated sign at the first story, I think the amount of signage, if it were by-right in terms of size, would make it a bit small for that space, it would be undersized. And I think you can accomplish the desire to offset the hardship of being set back from the street by having a slightly

larger sign. I agree with that. But I think the slightly larger sign at the first story would accomplish that task and would adequately remedy the setback which creates the hardship.

BRENDAN SULLIVAN: So the 20 feet is somewhat of a do not pass zone?

TAD HEUER: There are certainly situations in which we granted them.

BRENDAN SULLIVAN: Because of the architecture of the building.

TAD HEUER: Because of architecture of the building.

BRENDAN SULLIVAN: This does not lend itself.

TAD HEUER: It doesn't. And I voted against the sign up and away across the street at 2500 Mass. Ave. for precisely that reason. That there was an architecturally appropriate place for it to be placed on 2500 Mass. Ave. And (inaudible) the second story

window. I mean, the other thing is that, you know, to the extent that we have been interpreting the Sign Ordinance for many years, there is the situation in which we have had the City Council vote to change the Sign Ordinance and then vote to change it back. And in terms of legislative history, certainly something that was passed decades ago and was never touched, I think we have a bit more latitude than where the city has expressly said we actually affirmatively refer to what we had before. I think we have to give that some deference, maybe not complete deference, but at least some, because it's an affirmative action within the last 18 months saying we really meant what we said, at least legally we really meant what we said.

BRENDAN SULLIVAN: Okay.

Would it be in order, then, because it appears that option 1 is not an option.

That option 2 may be, but that it would exceed the Ordinance requirements, that you may want to relook at option 2 and come back with another --

ATTORNEY KATIE THOMASON: Actually if we can --

TAD HEUER: Option 2 is by right; correct?

ATTORNEY KATIE THOMASON: Right.

TIMOTHY HUGHES: So if you wanted to make option 3 --

TAD HEUER: I would be in favor of option 2 with a slightly larger sign requiring a Variance. But I just don't see what that is. I mean, it's just not physically in front of us is all I'm saying.

CONSTANTINE ALEXANDER: And I would support that same thing. I could go for option -- the option on the street level even if it's a little larger than our Zoning Ordinance.

ATTORNEY KATIE THOMASON: Well, before you take a vote, could you give us just -- could we take, you know, two or three minutes to discuss?

BRENDAN SULLIVAN: Sure. You can huddle if you want, sure, absolutely.

CONSTANTINE ALEXANDER: Just, you know, you haven't appeared before us before. Often people when faced with this situation, ask for a continuance and you can come back with revised plans.

BRENDAN SULLIVAN: Yes, don't feel as if you have to shut the door tonight. But anyhow why don't you huddle. And if you want, we can continue this to another night also.

(A short recess was taken.)

BRENDAN SULLIVAN: Okay.

ATTORNEY KATIE THOMASON: So, here's what we'd like to do I think. And we think that we can do this. We'd like to

withdraw our request to put the sign above the second story windows and proceed with the current application but with the modification that the sign is now proposed below the second story windows on the sign band below.

TAD HEUER: You want a by-right sign?

ATTORNEY KATIE THOMASON: No. We want a sign the same size as we've already proposed, just moved down to the lower sign. So this exact same sign, just right here.

TAD HEUER: So you want the option 1 in the location of option 2?

ATTORNEY KATIE THOMASON: Exactly.

TAD HEUER: And placement-wise is that physically where you want it on the building? Is that going to be your front doors? I mean --

ATTORNEY KATIE THOMASON: There are front doors -- yeah, there's a --

TAD HEUER: I can't tell what exactly in those alcoves.

DAMIAN SMITH: There will be front doors.

ATTORNEY KATIE THOMASON: It's going to be a new entrance. It's on the plans.

TAD HEUER: So when I'm looking at the option 2 by-right, it seems -- the only reason I ask because it seems offset, and I didn't know if those are your doors.

DAMIAN SMITH: There will be doors right there.

TAD HEUER: So you essentially want to center the sign over wherever your entryway is.

ATTORNEY KATIE THOMASON: We'll take it exactly where it is and just move it down. As the plans show.

BRENDAN SULLIVAN: So what you're proposing is a sign that will be 49.93 square

feet. The dimensions will be 14-foot, eleven, three-quarter by three-foot, four and be internally illuminated.

ATTORNEY KATIE THOMASON: Correct.

BRENDAN SULLIVAN: Okay. And the height from the ground to the top of the sign will -- we don't know the actual number.

ATTORNEY KATIE THOMASON: Right.

BRENDAN SULLIVAN: But it will be below the sill of the second floor window.

ATTORNEY KATIE THOMASON: Correct.

BRENDAN SULLIVAN: And that should define it enough.

TAD HEUER: And you would be able to provide a revised photo sim and a revised height for the file?

ATTORNEY KATIE THOMASON: Sure.

BRENDAN SULLIVAN: It's really the height, I think, is what I'm looking for.

ATTORNEY KATIE THOMASON: Just get a number for the height.

BRENDAN SULLIVAN: Is the numbers. Because I'll tell you the inspectors will get crazy and then it's just going to cause --

TAD HEUER: This is just a new elevation that just shows grade.

BRENDAN SULLIVAN: And it's really the height. So that it's tied. Because they go by measurements and you don't want a sign guy to get out there and all of a sudden the inspector say, you know, that's not what I thought. You know --

DAMIAN SMITH: Yes.

THOMAS SCOTT: So for point of clarification then. The option 2 sign is a 30-inch high sign.

ATTORNEY KATIE THOMASON: Yes.

THOMAS SCOTT: And the option 1 sign is a 40-inch high sign?

ATTORNEY KATIE THOMASON: Correct.

BRENDAN SULLIVAN: I just want to add the proposed wall sign was 49.93 square

feet. Which that won't change.

ATTORNEY KATIE THOMASON: Right.

TAD HEUER: Right.

BRENDAN SULLIVAN: The dimension is going to be 14, 11 and three-quarter long by three-foot, four high.

ATTORNEY KATIE THOMASON:
Three-foot, four.

THOMAS SCOTT: That's 40 inches.

BRENDAN SULLIVAN: And what did you say 30? I'm sorry.

THOMAS SCOTT: No. The option 1 shows a 30-inch sign.

Option 2. I'm sorry.

ATTORNEY KATIE THOMASON: Right. So what we're proposing is option 2 but bigger.

CONSTANTINE ALEXANDER: A little bigger sign.

THOMAS SCOTT: But it's not a little bigger, it's a lot bigger. It's 10

inches -- it's 10 inches taller.

CONSTANTINE ALEXANDER: That's a fair point.

THOMAS SCOTT: And it's -- and it's on a narrower band of the building.

TIMOTHY HUGHES: I just kind of scaled that and looked at it. I think the bands are similar. They look -- the one at Pizzeria Uno is narrower than the lower ban.

CONSTANTINE ALEXANDER:
Mr. Chairman, who really needs --

THOMAS SCOTT: I would like to see a simulation.

CONSTANTINE ALEXANDER: I would like to see a photo simulation before I sign off on this. It won't take you that long to prepare. We can squeeze it into a nearby session. I'm very uncomfortable approving this without seeing a photo simulation of what we're approving.

THOMAS SCOTT: I mean, that extra 10

inches may make that sign, you know, almost touch the sill and touch the bottom of that band, and it may look funny like it doesn't float properly.

CONSTANTINE ALEXANDER: I feel the same way.

THOMAS SCOTT: And the surroundings of it.

BRENDAN SULLIVAN: All right. Maybe we need to step back, get the photo sims, get the dimensions, and just sort of our vote is tied to an actual document. A precise document. Okay?

TAD HEUER: Can we do this at the next meeting?

BRENDAN SULLIVAN: We can do this at the very next meeting which is.

MARIA PACHECO: April 12th.

BRENDAN SULLIVAN: April 12th.

CONSTANTINE ALEXANDER: Does it give you enough time? And then, excuse me,

you need to get it in your files by the Monday before April 12th.

DAMIAN SMITH: She may be able to do it. She may not be able to.

ATTORNEY KATIE THOMASON: You can do it later.

BRENDAN SULLIVAN: April 26th?

DAMIAN SMITH: That's probably better.

BRENDAN SULLIVAN: Okay.

TIMOTHY HUGHES: That works for me.

BRENDAN SULLIVAN: All right. Let me make a motion, then, to continue this matter until April 26th at seven p.m. to allow the Petitioner sufficient time to produce some revised photo simulations and some dimensional information necessary for the placement of the sign, and for our evaluation of same.

On the condition that the posting sign be changed to reflect the new date of April

26th. So that's sort of important, at seven p.m. And that any submissions, changes, be in the file by the five p.m. on the Monday prior to the April 26th.

And, again, I would just add to that that that -- picking up what Tom said, that if that sign which you're moving down seems to be a bit large, you know, you can come back again with option 2A and 3A or whatever you want you know so bring whatever you need to have.

TIMOTHY HUGHES: You should have options so then we have options.

DAMIAN SMITH: We've learned that.

CONSTANTINE ALEXANDER: I think you forgot to mention you have to sign the waiver for time of decision.

BRENDAN SULLIVAN: And also on the condition that your counsel sign a waiver to statutory requirement for a hearing on the decision to be rendered thereof for the Board.

If you would sign that, too, representing the Petitioner.

Okay. All those in favor of continuing this matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(Whereupon, at 10:50 p.m., the Zoning Board of Appeals adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been delivered to Inspectional Services Department.

When the Errata Sheet has been completed and signed, a copy thereof should be delivered to each party of record and the **ORIGINAL** delivered to Inspectional Services Department, to whom the original transcript

was delivered.

INSTRUCTIONS

After reading this volume, indicate any corrections or changes and the reasons therefor on the Errata Sheet supplied to you and sign it. **DO NOT** make marks or notations on the transcript volume itself.

REPLACE THIS PAGE OF THE TRANSCRIPT WITH THE COMPLETED AND SIGNED ERRATA SHEET WHEN RECEIVED.

ATTACH TO ZONING BOARD OF APPEALS

DATE: 3/22/12

REP: CAZ

ERRATA SHEET

INSTRUCTIONS: After reading the transcript, note any changes or corrections and the reason therefor on this sheet. **DO NOT** make any marks or notations on the transcript volume itself. Sign and date

this sheet Refer to Page 268 of the transcript
for Errata Sheet distribution instructions.

PAGE	LINE	CHANGE :
_____	_____	CHANGE :
_____	_____	REASON:
_____	_____	CHANGE :
_____	_____	REASON:
_____	_____	CHANGE :
_____	_____	REASON:
_____	_____	CHANGE :
_____	_____	REASON: _____
_____	_____	CHANGE :
_____	_____	REASON:
_____	_____	CHANGE :
_____	_____	REASON:
_____	_____	CHANGE :
_____	_____	REASON:
_____	_____	CHANGE :
_____	_____	REASON:
_____	_____	CHANGE :
_____	_____	REASON:

I have read the foregoing transcript, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements 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:

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

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 11th day of April 2012.

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

My Commission Expires:
April 23, 2015

**THE FOREGOING CERTIFICATION OF THIS
TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION
OF THE SAME BY ANY MEANS UNLESS UNDER THE
DIRECT CONTROL AND/OR DIRECTION OF THE
CERTIFYING REPORTER.**