

BOARD OF ZONING APPEAL

FOR THE

CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, MAY 9, 2013

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Member

Janet Green, Member

Mahmood R. Firouzbakht, Associate Member

Douglas Myers, Associate, Member

Kevin Casey McAvey, Associate Member

Maria Pacheco, Zoning Secretary

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PROCEEDINGS

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Janet Green, Douglas Myers, Mahmood Firouzbakht, Kevin Casey McAvey.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And as is our custom, we're going to start with the continued cases. And the first case I'm going to call is case No. 10414, 15-17 West Street.

Is there anyone here wishing to be heard on this matter? Are you the Petitioner? Please come forward, yes. And whoever else wants to speak. And give your name and address to the stenographer.

JON CARLISLE: Jon Carlisle,
J-o-n.

JOHN CARLISLE: John Carlisle,

J-o-h-n.

CONSTANTINE ALEXANDER: The floor is yours, sir.

JON CARLISLE: What we're hoping to do is to do what we're calling a second floor addition over an existing kitchen and a bathroom trying to get an extra bedroom. I had to move back to the 17 West Street four years ago. My wife passed away. It's only a two bedroom. I have two other children with me.

CONSTANTINE ALEXANDER: So it's your unit.

JON CARLISLE: It's my parents' unit. I'm living in it.

CONSTANTINE ALEXANDER: Okay. Is it a family house or is it a separate house?

JOHN CARLISLE: It's a

two-family house.

JON CARLISLE: It's a row house.

CONSTANTINE ALEXANDER: A row house.

JON CARLISLE: It was one main house that was split between 15 and 13 West Street, and then from what we can gather, it was like two separate servant quarters or so.

CONSTANTINE ALEXANDER: Okay.

JON CARLISLE: So it's basically it's my parents' half of the main house and my house.

CONSTANTINE ALEXANDER:
Bringing in the big guns.

JON CARLISLE: Yeah.

ATTORNEY JAMES RAFFERTY: Say nothing.

JOHN CARLISLE: Oh, I didn't see

you.

JON CARLISLE: It's existing right now. Existing two bedroom.

CONSTANTINE ALEXANDER: Tell me the, describe the house now as it is and what you want to add -- what you're going to do by adding the second story.

JON CARLISLE: Well, what we're doing is I'm getting an extra bedroom.

CONSTANTINE ALEXANDER: Right.

JON CARLISLE: A small study maybe closet because there's no -- it's an 1840 house. There's no closets in the house. And additional bathroom. The original bathroom's right off of the kitchen. It doesn't make any sense. It's very difficult. Also, the second floor, the existing second floor now, the ceilings are six foot, about four feet.

So I can't put on a shirt without hitting the top of the ceiling. So it's trying to get a little space.

CONSTANTINE ALEXANDER: So basically your hardship is, we have to find a substantial hardship owing to special conditions. The hardship is you need more living space.

JON CARLISLE: Right. Right now my daughter is living in my old bedroom with my parents next-door. So for four years she hasn't been living with me. It's to gain an extra bedroom so that we can have that.

The basement's not liveable. It's not a finished basement so that wasn't an option. So this was, you know, the only realistic way to get that extra room in there.

CONSTANTINE ALEXANDER: Okay.

And the reason you're here tonight and the reason why you just can't do it as of right is because it's an non-conforming structure. And right now, just I need to put this on the record. Don't get alarmed. The FAR, the floor area ratio is 0.82. And you're going to want to go to 0.96. And the district only permits up to 0.75. So you're over now and you're going to go over more. And also you have setback issues. As I see from the plans, you're not further encroaching the setbacks. You're too close now and you're going to be more massing in your encroached setback.

JON CARLISLE: We're going up.

ATTORNEY JAMES RAFFERTY:

Mr. Chair, for the record, James

Rafferty. Article 8 does provide for second floor additions notwithstanding conformity with the setbacks if they were in the footprint of the existing building.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: I didn't prepare the application, and it's a generic Variance. But the hardship is very much related to the structure, and the exceptionally low slope to the roof now. So it really doesn't function as a practical two-story house. And the reason the numbers changed from the original submission is when the architect measured it, we found that there were portions -- significant portion of the second floor height is below five feet, and we had a discussion as to whether that

second floor is an attic floor. And the conclusion with the Building Department is that it is an attic. So, so when the roof gets raised, the space that was previously below five feet is now above five feet, and it's square footage, it's the square footage. So it's not so much that the footprint expands at all, it's just as the roof gets raised, that's the hardship.

CONSTANTINE ALEXANDER: Thank you. At this point in questions from members of the Board?

MAHMOOD FIROUZBAKHT: Can I see the file, please.

Mr. Rafferty, that provision of Article 8 would apply to the extent that there isn't a further violation and FAR violation; is that right?

CONSTANTINE ALEXANDER: No.

ATTORNEY JAMES RAFFERTY: Well, that's correct. So you can -- you don't need to get the setback relief, but you couldn't proceed as of right, that's correct. For a conforming addition, which this would not be because we're already over the FAR.

MAHMOOD FIROUZBAKHT: Right.

ATTORNEY JAMES RAFFERTY: But on the limited question of the setback, I was pointing out that Article 8 does allow for --

MAHMOOD FIROUZBAKHT:
Understood.

ATTORNEY JAMES RAFFERTY: Yes.
You are correct.

CONSTANTINE ALEXANDER: Other questions while Mahmood is looking at the

file?

Mahmood, do you mind if I open this to public testimony?

MAHMOOD FIROUZBAKHT: No, go ahead.

CONSTANTINE ALEXANDER: I'm going to open this up to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that there's no one wishing to be heard. There are letters in the file. I don't have the file now. Take the plans out.

MAHMOOD FIROUZBAKHT: I'll just look at the plans.

CONSTANTINE ALEXANDER: I'll give it right back to you.

There is a letter in the file from City Councillor Timothy J. Toomey, Jr.

(Reading) I am writing to you in support of case 10414, submitted by Kathleen and John Carlisle. Kathleen and John are long-time Cambridge residents that have taken special care in the restoration of their home. John is an accomplished carpenter and takes great pride in his work. The restoration projects that he has performed in the past have stayed true to the home's original appearance and character. The application seeks to create new space that will make their home more liveable in the years ahead. I am in full support of their application. I hope you will -- I hope you find favor with this application and thank you for taking my comments under consideration.

And we also have something from the Cambridge Historical Commission with regard to this property. (Reading) The property is located in the Mid-Cambridge Neighborhood Conservation District where exterior alterations visible from a public way are subject to review and approval. The requested rear addition to the second floor was approved by the Mid-Cambridge Neighborhood Conservation District with the recommendation that the floor of the addition align with the existing floor choice.

I take it you plan to do that?

JOHN CARLISLE: Yes.

JON CARLISLE: Yes.

CONSTANTINE ALEXANDER: Okay.

And I think that's it with regard to the file. So, I will close public

testimony.

Any further commentary?

ATTORNEY JAMES RAFFERTY: No.

Anybody have any comments at this point?

DOUGLAS MYERS: I noticed that the, at least my by calculations, the increase in GFA is 17 percent. At least to a result where the premises as proposed would be 29 percent over the GFA, and the increase in FAR is also 17 percent at least to a result where the premises would be 28 percent over FAR. I know that, or at least I believe that cases shouldn't be decided on only the numbers, and I've reviewed the entire file, but the results of the increase in FAR are -- make me wonder about what the mass of this building is going to be like on West

Street and a building -- how it's going to affect the appearance of the street on a lot that's already very -- it's already congested and 10 percent already over FAR. So I would just appreciate any comments you have on those observations.

ATTORNEY JAMES RAFFERTY: Thank you. If I may, Mr. Chairman. There happens to be in the file, I don't know if all Board members had a chance to see it, somewhat of an illustrative photo of a model. But I think it's very effective in understanding the mass. Because the mass is located at the rear of the property. It was an important consideration at the Mid-Cambridge Conservation District that the scale and context of the front remain untouched. So whereas in another approach one might

have thought about distributing the mass more equitably and putting some of the mass in the front, and some in the back. The objective in the direction given to the applicant was to leave the scale of the front roof unchanged, not change that slope, because there have been some discussion about a more equally balanced. And the adjoining property has a similar second floor addition, so there is some precedent and some compatibility with this. But I understand -- and the percentages are true, but of course when we're dealing with such a small house, percentages of even a hundred feet or so, all of a sudden become larger percentages than if we put a hundred square feet on a house in West Cambridge that was already in 3500 square feet. So in some ways a

small home owner would be prejudiced if the analysis were limited strictly to a percentage.

DOUGLAS MYERS: Although the increase is over 300 square feet.

ATTORNEY JAMES RAFFERTY: It is. And as I said, one of the reasons that it is is that the changing in the sloping of the roof is now taking area that's already there and being used but would be used incredibly inefficiently. So areas of the second floor that are currently below five feet get raised. So it's, it's -- I often advise clients that not all GFA is equal. If you're putting an addition on to an existing structure and you're adding a couple hundred square feet, you're putting new mass in square footage. In this case the changing of

the slope of the roof can be consistent with the abutting structure has a GFA impact. So that's why I think, as you correctly noted, the numbers don't always tell the full story. And I would suggest in this case that this house is perhaps an example of that, because the mass does increase, but the mass is only increased as a result of the raising of the roof.

DOUGLAS MYERS: Could you or the applicants comment on how the cantilever on the rear portion as proposed would correspond to if it does, any cantilevered section on the property immediately adjacent.

ATTORNEY JAMES RAFFERTY: It's my understanding from this and from my own viewing of it that it has a similar condition.

JOHN CARLISLE: 15 West Street.

ATTORNEY JAMES RAFFERTY: 15

West. Which as you know, this is a row house configuration and it really then gets to the point that one should, you begin to look at programatically what's happening here, pushing this back. One of the suggestions at the Conservation Commission was why not bring the floor of this first floor up? That's very disruptive to the existing condition and it's a more extensive project. It does have this cantilevered effect. But the adjoining property has a nearly identical condition.

CONSTANTINE ALEXANDER: When was the structure built? Roughly when was the structure built roughly?

JOHN CARLISLE: In 1840. In the

40's. 1840's. My wife's family has lived there 100 years.

CONSTANTINE ALEXANDER: Okay.

JOHN CARLISLE: So we tried to get information from each family member how this property was there. In the book -- in the history book there it has it was built 1844. So there's really not a lot of information about it other than talking to people.

CONSTANTINE ALEXANDER: Very old, that we know.

JOHN CARLISLE: It's old.

CONSTANTINE ALEXANDER: Janet, you have a question?

JANET GREEN: Yes. It's actually more of a comment. I walked over around your home a few weeks ago when you were first coming in, and I happened

to see a neighbor who was behind and asked her a little bit about her neighborhood. And she was quite supportive of your project and didn't feel like it was going to be out of scale or out of the ordinary. So, it was, the you know, I don't believe that that was her letter in there, but it was just a comment that someone made.

JOHN CARLISLE: Very nice to hear that. Thank you.

CONSTANTINE ALEXANDER:
Mahmood, you all set with the file?

MAHMOOD FIROUZBAKHT: I'm good.

CONSTANTINE ALEXANDER: We have two pages of plans. These are the plans, right? Because last time we had a problem. You understand if we grant relief tonight, it's going to be tied to these plans. If you have to modify them,

you're going to have to come back here.
I want to make sure you know. You signed
off on them. You're comfortable.

JOHN CARLISLE: Yes.

ATTORNEY JAMES RAFFERTY: These
would be plans dated, Mr. Chair, 4/11/13?

CONSTANTINE ALEXANDER: Yes.
A201 and A202.

ATTORNEY JAMES RAFFERTY: All
right.

CONSTANTINE ALEXANDER: Further
comments or questions from Members of the
Board?

(No Response.)

CONSTANTINE ALEXANDER: Okay,
now we get to the part where I become a
Druid priest and I mumble magic
incantations and after which you get to
do what you want to do.

The Chair moves that we 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 that the structure is a very old structure. It's undersized in terms of being able to be used by a contemporary family, and that additional space is necessary particularly on the second floor given the height of the attic or the head space in the attic.

The hardship is owing to circumstances relating to the shape of the structure.

It is again, an old structure, non-conforming in a number of respects, and so any kind of modification requires a Zoning relieve.

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

In this regard the Chair would note there appears to be no neighborhood opposition. There was some oral support as reported by Janet Green. There was also a letter from the -- a letter of support from a City Councillor. The Cambridge Historical seems to be satisfied.

On the basis of all of these findings, the Chair moves that we grant a Variance to allow you to do the work that you request on the condition that the work proceed in accordance with these plans submitted by the Petitioner. They are

numbered A-201 and A-202. They're both dated 4/11/13 and both of which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

(Alexander, Green, Myers, Firouzbakht, McAvey.)

* * * * *

(7:15 p.m.)

(Sitting Members: Constantine Alexander, Janet Green, Douglas Myers,

Kevin Casey McAvey.)

CONSTANTINE ALEXANDER: The
Chair will call case No. 10418, 8
Education Street.

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

Before we proceed, I have to read
your rights and maybe you're aware of it
anyway. This is what we call a case
heard. We spent sometime on this case
the last time around. And, therefore,
the five members who were here then have
to hear that case. We can't have another
member of the Board come in here. One of
the five members Tim Hughes is ill.
Cannot come tonight. And that's why we
only have four of us tonight. Now the
consequence of this is to get relief, you
need four votes, four -- there are five

of us, you can have one decenter and you'd still get relief. With four of us, you've got to get a unanimous vote. I'll leave it up to you. You can continue the case to another time when you'll have five or you can proceed tonight. It's your call. If you want time to think about it feel free or confer with your client or whatever.

ATTORNEY EMMA ROTHFELD YASHAR:

We have conferred because we noticed when we walked in the room that this was the case. I think absent an indication from the Board that our revised proposal meets with everybody here wishes and desires for a proposal, I would have to advise my client to request a continuance because the risk of a no vote or a vote --

CONSTANTINE ALEXANDER: That's

the risk. And on behalf of the City, I have to apologize. As I said, we couldn't avoid it.

ATTORNEY EMMA ROTHFELD YASHAR:

If we're moving forward, we would be doing some apologizing as well. So you certainly don't have to.

CONSTANTINE ALEXANDER: Well, you know, I can only speak for myself and I don't want to get into sort of a straw vote or advisory vote. You listened to us last time and it's clear, and you've come back with some very responsive application and proposal. But that's as far as I can go. So you'll have to -- if you want to continue it, it will have to be, you have to get the five of us. I can't be the next time. So it will be a month from now is the earliest we can hear

the case. Again, you should know that as well.

ATTORNEY EMMA ROTHFELD YASHAR:
Maybe have a minute to confer?

CONSTANTINE ALEXANDER: While you're doing that, I'll call one other case that we can get rid of very quickly.

We're going to recess this case.

(Case Recessed.)

* * * * *

(7:20 p.m.)

(Sitting Members: Constantine Alexander, Janet Green, Douglas Myers, Kevin Casey McAvey.)

CONSTANTINE ALEXANDER: The Chair will call 1-11 Marney Street, case No. 10424.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, members of the commission. For the record, attorney Sean Hope, Hope Legal Law Offices in Cambridge. I actually have the actual Petitioner coming here tonight as well. He's parking the car. But I did note that I know the Board didn't want us to show.

We can continue.

CONSTANTINE ALEXANDER: Well, we have no choice but to continue. You didn't update the sign.

ATTORNEY SEAN HOPE: Yes, that's right.

CONSTANTINE ALEXANDER: This case cannot go forward tonight. And I have to say, Sean, I don't mean to be a lecturer. As counsel, you have responsibility. You have responsibility not only -- not just to be here and to get -- make an oral argument. The first time around plans were not in accordance with our requirements and you know that. You should have told your clients that. This time around the signage has not been updated, but we specifically instructed that. Now,

again, I think you have the responsibility to counsel your client as to how important it is. It's so important that we're not going to hear the case tonight because we can't. So, I have to continue -- we have two strikes. I'll continue it one more time, but I don't think, don't expect further continuances.

ATTORNEY SEAN HOPE: No, I understand. And, you know, in hindsight as well as informing the client of the need to update the sign, I didn't check. I could have done other things to make sure that happened. It's a lesson learned. I do take responsibility. I did get a continuance by submitting a letter so I do respect the Board's time on that. It's not a lecture. I

appreciate the update, but we -- the sign is updated now, and whatever the next available hearing is we would like to take.

CONSTANTINE ALEXANDER: Maria.

MARIA PACHECO: We can do May 23rd. It's a case not heard.

CONSTANTINE ALEXANDER: Okay. It's a case not heard. I won't be here on the 23rd to your advantage. No more lectures.

ATTORNEY SEAN HOPE: I will go and update the sign myself so it will get done.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on May 23rd on the condition that this being a -- first being a case not heard. A waiver of time for

decision is in our file. But on the condition that -- sir, you listen closely. The sign that's on the building has got to be changed to change the new date, May 23rd. New time, seven p.m. It's got to be two changes. And that sign as changed has to be maintained for the requisite period under our Ordinance, 10 days I believe it is. So that's it.

JANET GREEN: So it's changed to what time?

CONSTANTINE ALEXANDER: To seven p.m.

ATTORNEY SEAN HOPE: Same sign.

CONSTANTINE ALEXANDER: Just get a magic marker. You can just ex out the old date and old time.

MARIA PACHECO: I can make a new one. That's fine.

CONSTANTINE ALEXANDER: Or get a new one from Maria. Whichever you prefer.

ATTORNEY SEAN HOPE: Okay.

CONSTANTINE ALEXANDER: And maintain it for the period of time.

NELSON OLIVERA: Sure.

CONSTANTINE ALEXANDER: All those in favor of continuing the case to May 23rd on seven p.m. on the condition that the sign be modified to reflect the new date and time, and that the sign as modified be maintained for the statutory period required under our Ordinance. All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor. We'll see you on the 23rd.

(Alexander, Green, Myers,

McAvey.)

* * * * *

(7:25 p.m.)

(Sitting Members: Constantine
Alexander, Janet Green, Douglas Myers,
Kevin Casey McAvey.)

(Case No. 10418 Resumed.)

CONSTANTINE ALEXANDER: What's your pleasure?

RICHARD McKINNON: My name is Rich McKinnon. I live at One Leighton Street in Cambridge. We thought hard about it, and we thought that when we got pretty clear instructions from the Board the last time, paid attention to the Ordinance itself to try to diminish the length between the Ordinance and the request, to ask only for as much as we absolutely felt that we needed, which is why we also offered to take down one of the signs of the existing buildings, that we've done our very best to comply. We noticed that school committeeman Fantini is here for the second time. Someone from Senator DiDomenico's office is here.

Representative from the East Cambridge Planning Team is here for the second time. So out of respect to all of those and out of, you know, hopes that our efforts are noticed, we're going to take the chance and ask the Board to hear us tonight.

CONSTANTINE ALEXANDER: You're rolling the dice.

RICHARD MCKINNON: We hope it's not rolling the dice because it's poor Martha's head on the line. It's hers more than mine.

CONSTANTINE ALEXANDER: If you want to go forward, that's perfectly fine. As I said, it's not our decision, it's yours.

RICHARD MCKINNON: I understand and we appreciate that, Mr. Chairman. I think Martha had a word if she could.

CONSTANTINE ALEXANDER: Okay.

So let's go forward and let's start -- actually with a procedural issue. The signage issue to maintain the sign. For the benefit of the other members of the Board or just for the record I should say, on Sunday, May 5th, I went, I happened to inspect the property and there was no sign.

RICHARD MCKINNON: Yes.

CONSTANTINE ALEXANDER: And I reported that to Inspectional Services. And at my request they in turn advised you or your client. And we have a letter from you in the file saying that what happened was the sign had been maintained up until Friday, May 3rd, at which time the contractor Skanska was in the process of cleaning up the site, thought that

there's no reason to keep the sign up and removed the sign. When you were told on Monday morning that the sign was, there was no sign, I gather you went and put the sign back up.

RICHARD MCKINNON: Yes.

CONSTANTINE ALEXANDER: So you've been in compliance for the whole period except for the weekend basically. And it's been good faith effort on your part. It's not a matter that you ignored it. We've had this situation before where people in good faith tried to comply, but the third party -- third parties, in this case your contractor, tear it down, we've let the case go forward. I'm in favor of letting the case go forward. Other members feel the same?

JANET GREEN: Agreed.

KEVIN CASEY McAVEY: Yes.

CONSTANTINE ALEXANDER: It's
your proposal.

ATTORNEY EMMA ROTHFELD YASHAR:
I am happy to outline the hardships. I'm
happy to revised proposal.

CONSTANTINE ALEXANDER: Why
don't you start with the revised, what it
is you want us to approve.

ATTORNEY EMMA ROTHFELD YASHAR:
Sure.

CONSTANTINE ALEXANDER: And why
should we approve it in terms of the legal
analysis.

ATTORNEY EMMA ROTHFELD YASHAR:
Sure. So the proposal as it currently
stands is for two signs on the new
building at 8 Education Street. The

signs will be each of them --

CONSTANTINE ALEXANDER: Five feet by 34 feet.

ATTORNEY EMMA ROTHFELD YASHAR: Five feet by 34 feet or approximately 170 square feet which does exceed the 60 square feet per sign maximum requirement. If you take the signs together, it does not exceed any more than total square footage of signage permitted for the building which would be 341 feet and we're just below that.

They are obviously at the top of the building which exceeds the 20-foot height requirement, and that was kind of where we started because of the difficulty in approaching the building is that they had to be at the top to serve their function. They need to be larger because they're at

the top, and people further away have to see them. And then the letters EF that are part of the sign, because they're five feet tall, exceed the 30-inch internal illumination.

CONSTANTINE ALEXANDER: So those will be illuminated as well, the EF?

ATTORNEY EMMA ROTHFELD YASHAR:
Yes.

CONSTANTINE ALEXANDER: The application talks about the lettering on the sign. I was reading that to be the name of the company and not the EF which is basically the logo.

ATTORNEY EMMA ROTHFELD YASHAR:
The name of the company is actually EF, Education First. It involves Swedish words which I would defer to Martha to explain to you if that's okay.

MARTHA DOYLE: They're -- we're a Swedish company.

CONSTANTINE ALEXANDER: I didn't know that.

MARTHA DOYLE: And that's why we need everything.

ATTORNEY EMMA ROTHFELD YASHAR: The company name is EF, Education First.

CONSTANTINE ALEXANDER: Got it.

ATTORNEY EMMA ROTHFELD YASHAR: And all of those letters, the E, the F, the Education will be internally illuminated using the halo or the lighting or backlit.

CONSTANTINE ALEXANDER: Backlit. So there's no garish neon sign.

RICHARD McKINNON: That's right.

ATTORNEY EMMA ROTHFELD YASHAR: And the Education First is obviously 30

inches tall. It's the EF that are larger.

CONSTANTINE ALEXANDER: Now you proposed some conditions?

ATTORNEY EMMA ROTHFELD YASHAR: Yes. Thank you.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY EMMA ROTHFELD YASHAR: One of the comments that we had heard is because there is an existing building there with signage that was permitted by this Board, and when we looked at really trying to think hard about exactly what we need, we determined that we would be willing to remove the sign that faces Charlestown on the existing building.

CONSTANTINE ALEXANDER: So on One Education Street.

ATTORNEY EMMA ROTHFELD YASHAR:

One Education Street. And I think I gave the Variance case number for that in our application.

CONSTANTINE ALEXANDER: Yes, you did.

ATTORNEY EMMA ROTHFELD YASHAR: On the -- so as a condition to the approval of these new signs, we would be willing to remove the existing sign.

RICHARD McKINNON: That would be in perpetuity.

CONSTANTINE ALEXANDER: And that would be gone. You can never put a sign up without coming back to us.

ATTORNEY EMMA ROTHFELD YASHAR: So if you think about it, it's a net increase of one sign.

CONSTANTINE ALEXANDER: If you think about it that way.

Talk to me about the when the lights go out.

ATTORNEY EMMA ROTHFELD YASHAR:
Sure. So previously we have said -- well, let's not talk about previously. What we're committing to is that the lights on all of those signs will go out at nine o'clock.

CONSTANTINE ALEXANDER: You didn't tell me when they're going to go on.

ATTORNEY EMMA ROTHFELD YASHAR:
Well, I think they'll probably go on at dusk which that will change --

CONSTANTINE ALEXANDER: One of the conditions, I mean, will be that they can be turned on at dusk but they have to be off by nine p.m.

DOUGLAS MYERS: In other words,

interpreting that condition morning illumination or pre-dawn illumination will be precluded.

CONSTANTINE ALEXANDER: Yes.

RICHARD McKINNON: Yes, sir.

DOUGLAS MYERS: You couldn't turn it on at six o'clock.

MARTHA DOYLE: Yes, that is what we feel as well.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY EMMA ROTHFELD YASHAR: And EF did arrive at nine p.m. by evaluating the shifts of its employees who have been -- I cannot stress enough how much thought went into asking only for what EF needs.

CONSTANTINE ALEXANDER: Okay.

Now can you go through the requirements for a Variance, why you need

it.

ATTORNEY EMMA ROTHFELD YASHAR:

Sure.

So the hardship for this site is really a result of its kind of physical isolation. It's an area where there's a lot of transportation infrastructure, the Gilmore Bridge, the highway ramps, the elevated railroad trestles, even Monsignor O'Brien Highway that just make it difficult and navigate the approach to the building. And you don't -- until you go under that, under the railroad trestles and you're practically there, you can't really see the bottom of the building. You actually can if you've walked around the neighborhood, and I don't know if other Board Members have. You can see the top of the building above

some of the those structures. So it is our feeling that having the elevated signs does enable the site to be seen from a place where people can kind of conceptually figure out how do I get into this area? EF -- so that's No. 1.

It is still ten years after EF moved there, seagulls and trash heaps and all, a newly developed area of the city. I mean, I live in Cambridge. There's a beautiful park over there that I never knew about until I started working with EF. So, I think that the quality that this Board saw back in 1999 when they looked at this is still the case. It's still an area that many people in Cambridge are not very familiar with.

And I think, I mean those are kind of the two key components. It's really

the physical separation, the obstructions, and the sort of psychological barriers that are there about this area of Cambridge that people don't know very well.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY EMMA ROTHFELD YASHAR:

We obviously have a lot of support from our neighbors. We feel like the signage is serving a function consistent with the objectives of the Zoning Code. There has been a really, to call it robust, I think is an understatement public process for this building including for the sign. And so we feel like it's something that could be granted without any sort of detriment to the community, our neighbors, or the objectives of the Zoning Ordinance.

CONSTANTINE ALEXANDER: Okay.
Questions from members of the Board at
this point?

(No Response.)

CONSTANTINE ALEXANDER: I'm
going to open this matter up to public
testimony. Is there anyone here wishing
to be heard on this matter? If you take
the time to come down you might as well
speak.

CHARLES MARQUARDT: Thank you,
Mr. Chair. Charlie Marquardt, 10 Rogers
Street. First of all, since you know
that I like to speak, I have spoken
against signs a lot because I just didn't
find that they used any value. This sign
thought is different. I actually
support this sign. This is an addition
to being as Emma mentioned, a beautiful

building. I think it's going to be a real landmark out there. There's lot of things going on around there that aren't just in need of being able to find it for their employees. You have a skate park right next-door that's going to support and help the youths not only in Cambridge, but Charlestown and parts of Boston, parts of Somerville, and this will be a nice way for them to find their way there without honestly having to, you know, ride around on their bike trying to get a GPS --

CONSTANTINE ALEXANDER: We should support the sign to encourage skateboarding in Cambridge?

MARTHA DOYLE: There's a park going in there.

CHARLES MARQUARDT: There's a

multimillion dollar skate park going in there.

JANET GREEN: When is that going to be there?

CHARLES MARQUARDT:

Construction starts so, yeah, it's a big deal. It's all part of the mitigation from the Big Dig. And also, I think, you know, the signs are going to help bring a lot of people there. I don't know how many people were there at the ground breaking of this Board, but there were a couple thousand people there that wouldn't know how to get there but for a sign. And my hope is that DCR and others will be able to program that park and bring even more people there by pointing to those signs and say, go find that sign, whether they're lit or not, they can see

what's happening there. And to see 2,000 people there with all the food trucks and Passion Pit playing which apparently is a real hot local band, but it's really exciting and I'm looking forward to more of that. I think the signs will actually help get people there more safely than they otherwise would have.

CONSTANTINE ALEXANDER: Thank you.

CHARLES MARQUARDT: Thank you.

ALFRED FANTINI: Fred Fantini, I'm a member of the Cambridge School Committee for 30 years now.

CONSTANTINE ALEXANDER: You have my sympathy.

ALFRED FANTINI: And I live across the street practically from EF and practically walk by it everyday as I walk

the river for my daily exercise. EF has been there for I think for about 15 years. They've been, you know, they're a large corporation that really has a neighborhood heart to them. Fifteen years ago they were very generous to our neighborhoods sending kids for free travel. For ten years, kids that never would have been able to see a foreign country. They've been great partners to the Cambridge public schools, especially the Fletcher-Maynard School. They did this wonderful global challenge with our high school which ended up with ten of our children going to Costa Rica for an environ -- where they met Al Gore and they participated in global, they talked about, you know, science and the environment. But even more than that,

even more than that, they're like a big corporation that's like a neighborhood store. You see the EF people like at places like the East End House at Thanksgiving time help filling baskets up. You see them attending funerals of residents that they know passed away in East Cambridge. They've become a very special member and valued member of our community, and I really feel like, you know, I don't come here that much, so I do want to just emphasize how much, you know, how many good things that EF does. And so, and there was one other point, but I may actually have forgot. I talk too much. But they're really just very great people. And actually my last point is, when I -- and I talk about EF a lot because they're so good to the residents of

Cambridge and especially to the schools. And I tell people that EF has done this and that. And everyone always says to me, Well, where is that place? Well, where is EF? And I say, Well, it's across the street from the Museum of Science. Well, where exactly is that place? They may regret that they have a sign up there because I'm sending a lot of people to them. But they are really, they're a corporate -- a corporate -- a large corporate operation with really a big heart. And to have them in Cambridge, they're North American headquarters is just very special for all of us.

CONSTANTINE ALEXANDER: Thank you very much.

JIM HENRY: Thank you. My name is Jim Henry. I'm from the office of Sal

DiDomenico. He sends his regrets, couldn't make it tonight. But I'm also a lifelong member of the Cambridge community, and I'm so impressed with the way EF conducts their business. They truly are, the employees are so enthusiastic. It's the kind of company that you want to be in Cambridge. It's the kind of company that you want to be interacting with our youth. And, you know, I agree with everything the previous speakers have said, but the Senator wanted to give 100 percent support to EF. You know, they're a great community partner and glad to have them here.

CONSTANTINE ALEXANDER: Thank you, thank you very much.

Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one else wishes to be heard. We are, as the Petitioner has indicated, in receipt of a number of letters. All of them actually related to the prior plans that you've revised so I'm not going to read them directly into the file. I will summarize them to say that the Planning Board is supportive of the two signs. Originally you had three, now you have two, so you made the Planning Board happy.

And the East Cambridge Planning Team also supported with certain conditions including that the lights go out at eleven p.m., and you've got them one set better, you're going to put them out at nine p.m. And they also wanted that sign on One

Education Street removed and which you've proposed to do. And I saw no letters of opposition even to the other proposal.

So with that I'm going to close public testimony.

Anything further you would like to add at this point?

ATTORNEY EMMA ROTHFELD YASHAR:

No.

CONSTANTINE ALEXANDER: By the way, when we grant relief or make a motion for relief, we tie it to special plans and simulations. I'm going to tie them to these three sheets here.

ATTORNEY EMMA ROTHFELD YASHAR:

Perfect.

CONSTANTINE ALEXANDER: I mean, that's it. If you have to change, you'll have to see us again. Maybe we'll have

five members if you come see us again.

Okay. Comments from members of the Board?

KEVIN CASEY McAVEY: Again, I want to thank you guys for choosing to stay in Cambridge. I was the soul member possibly that was okay with the prior plans. I think it's a great thing in Cambridge to show what phenomenon businesses we have here, and Education First I think stands heads and tails above many.

RICHARD McKINNON: Thank you.

CONSTANTINE ALEXANDER: Thank you.

Okay, I'm going to make a motion.

The Chair moves that we make the following findings -- this Board makes the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being because of the location of the building distant from Main Streets and public transportation and the natural features of the area and the manmade structures between the public ways and the building itself. The hardship would be that the building cannot be easily identified and travelled to.

The hardship is owing to the location of the structure, set back without again a well traveled street grid, and the surrounding structures and topography make it a bit unusual. It's not like it's in the middle of East Cambridge. It's in an area that's

somewhat remote, at least today, maybe not in the future particularly there will be a lot of skateboarders.

RICHARD McKINNON: Soon.

CONSTANTINE ALEXANDER: The Board moves that we grant relief, we can grant relief without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of the Ordinance.

In this regard the Chair would note that our Ordinance with respect to signs and business areas 7.11.1g states: That the public interest is served by the use of signs of businesses to identify their premises. And the signs as modified are intended to identify the premises. The notions of corporate advertising seems to

have reseeded into the background which is good.

That there's -- further, that there's widespread community support. As I've indicated, the Planning Board and the East Cambridge Planning Team is on board and we have the speakers tonight who are also supportive. And I think allowing this project to go forward with the signage will further develop the surrounding area which is an area that's going to be developed over the next decade or so, and this will further that goal of the city which is an important area of the city.

So on the basis of these findings, the Chair moves that we grant a Variance to proceed with the signage you requested on the condition, the conditions that,

one, that the work proceed in accordance with the plan initialed by the Chair. And be consistent with drawings also initialed by the Chair. That's three pages. That's condition 1.

Condition that the lighting on the structure, the illumination, since you need relief for that, will be a soft silhouette backlighting with lighting casts against the wall of the building so they cast a shadow along the lettering. That's the type of lighting that you're requesting and which we're permitting. And that the lights will go on as dusk and go off at nine p.m.

And lastly that the sign that we permitted in a Variance granted a number of years ago at One Education Street in 1999 will be removed. And so that

Variance is gone. The only signage will be the ones you've sought tonight and which we're going to approve.

On the basis of these findings --

ATTORNEY EMMA ROTHFELD YASHAR:
Just to clarify.

CONSTANTINE ALEXANDER: Yes,
sure.

ATTORNEY EMMA ROTHFELD YASHAR:
There are two signs on the existing building at One Education Street. It's the one in the rear that will be removed.

CONSTANTINE ALEXANDER: That's right.

DOUGLAS MYERS: On the north side?

ATTORNEY EMMA ROTHFELD YASHAR:
Correct.

CONSTANTINE ALEXANDER: The sign

to be removed is the one on the north side?

DOUGLAS MYERS: Faces I-93.

ATTORNEY EMMA ROTHFELD YASHAR:

Yes.

CONSTANTINE ALEXANDER: On the
basis --

DOUGLAS MYERS: Was there any
mention made of illumination in the
provision about dusk? Because that was
not in any of the materials filed,
illumination commencing at dusk.

CONSTANTINE ALEXANDER: The only
comments we got was when they wanted the
lighting to go off.

DOUGLAS MYERS: Correct.

CONSTANTINE ALEXANDER: We have
to put a time when it goes on and I'm
suggesting dusk.

DOUGLAS MYERS: That's the part

of the conditions.

CONSTANTINE ALEXANDER: Yes.

On the basis of this motion and subject to the conditions that I've enumerated, I move that we grant the Variance.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Green, Scott, Myers, McAvey.)

CONSTANTINE ALEXANDER: I congratulate you on your revised submission. Thank you very much.

* * * * *

(7:45 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Kevin Casey McAvey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10428, 57 JFK Street.

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

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the

Board. For the record, James Rafferty on behalf of the Applicant. Seated to my immediate right is Mr. Lou DeAngelis, D-e-A-n-g-e-l-i-s director of construction and facilities for Shake Shack. And seated to Mr. DeAngelis's right is Zac Koff, K-o-f-f. And Mr. Koff is the Vice President of Operations for Shake Shack.

CONSTANTINE ALEXANDER: Before you start I want to commend you. Last time you were here you represented a donut shop and a pizza parlor. Before you represented -- you were here Qdoba for Mexican food, and now you've got a burger shack. You've hit the grand slam of fast order food establishments. That's a compliment.

ATTORNEY JAMES RAFFERTY: I'm

even more flattered that you remembered me and all my cases. But, thank you, yes. And that's an interesting segue because I do think that one of the shortcomings I might suggest in our Ordinance is it's written in 1979, it paints a rather broad brush of what constitutes fast food. And when I first met with the operators of Shake Shack with their rich culinary history from their founder Danny Myer, a well-renowned chef in New York City, really a leader in the hospitality industry with restaurants like the Union Square Cafe, Gramercy Tavern, this concept, the notion that they would be going through the same process that a McDonald's would be going through is frankly a little upsetting to them. But I explained our statute, our Ordinance,

and particularly the criteria that designates something as fast food. And in reviewing that criteria it would appear that the one requirement that they don't meet is the provision of non-disposable plates, cups, and utensils.

Shake Shack is really quite an extraordinary success story. It is a restaurant by anyone's definition of restaurant. In this particular location it will have a two-story facility. It will have seating for 110 or 115 guests. They have acquired the alcoholic beverage license of the prior operator, so they will serve wine and beer here as they do in all of their other locations. So it is a restaurant, but if you were to dine at Shake Shack and were to go there, you'd

have to wait a few minutes probably to get a table. So the fast in fast food isn't particularly irrelevant here, but that's part of the experience. Mr. Myer has trademarked a concept called enlightened hospitality, and these gentlemen can tell you, the whole concept starts with the experience provided. And it's the experience from the moment you walk in and what you experience and how you experience it. But when you finally do get your food, if you're dining in, you will be given a tray and then you take that tray to your table and then you consume your food. But the food will be contained in a disposable container that the hamburger's in and a few other things. And it's part of the aesthetic, if you will of the shack. It's a conscious

decision to Shake Shack, the name. And if you've had an opportunity to review some of the materials we filed, it harkens back to a different era, and one might say well, you know, it's not as if there aren't places to get burgers in Harvard Square. And we know that that isn't the test. If that were the case, we wouldn't have Dunkin' Donuts and Starbucks and Pete's Coffee. It really goes to --

CONSTANTINE ALEXANDER: You're baiting me.

ATTORNEY JAMES RAFFERTY: Well, see, I'm an optimist and I continue to believe that logic can prevail. In interpreting this Ordinance in a way that would deprive Harvard Square of a destination restaurant like this, something that your friends will be

saluting you for, your children and grandchildren. You can -- this could be one of those legacy cases for members of this Board to say you know what --

CONSTANTINE ALEXANDER: We have Bartley's, we have Mr. Bartley's and Burger Cottage.

ATTORNEY JAMES RAFFERTY: A wonderful establishment and Shake Shack would only serve to complement that.

I can tell you that as they looked at locations in the Greater Boston area, I've come to learn from both Mr. Koff and Mr. DeAngelis that Harvard Square became a very exciting destination for them. And it reminded me back in 1992 when I first met Isaac Tigrett who founded the Hard Rock Cafe and came to the Boston with the notion of opening the House of Blues.

And I had no idea what the House of Blues was. And he had concluded that the first House of blues was going to be in Harvard Square. It just so happens to be the structure right next-door tot here.

And in the intervening years House of Blues unfortunately left and is now in Boston and all that. But Winthrop Street has never looked better. It's become a fabulous dining destination with Upstairs on the Square and Red House. It's part of that success that Shake Shack seeks to join. Not as a fast food, but as a destination restaurant where people come and stay. The demographics here are families, multigenerational, students, retirees, and it really is they recently opened in Chestnut Hill, you may have heard about it or seen about it, and

they've enjoyed the same high level of demand and support in that location.

So with that setup, this at the end of the day comes down to a need for a Special Permit for a fast order food establishment primarily because of that question. The other issues here I think they meet with, particularly on the biodegradable side. The company has a strong commitment to sustainability and green operations. They operate, I believe, currently 20 plus locations? How many locations do you currently have?

LOU DeANGELIS: U.S. Yes.

ATTORNEY JAMES RAFFERTY: And a very effective and proven track record on execution. And they would tell you that what distinguishes them from everything else, isn't just the product which is

essentially high quality, but the whole environment. And their view of the environment isn't limited to the footprint of the premises. One of the things that's attractive here is they're going to be able to have table seating on Winthrop Street. After eleven a.m. Winthrop Street is a pedestrian-only zone. It fronts onto Winthrop Park. They've already spoke with the trustees of Winthrop Park which has a (inaudible) about participating in the maintenance and upkeep. They want that place to look as good today -- in the future as it does today. So, it's a high level of interest in fitting in with the community. It's part of their profile. They partner with local charities in every community they are in. So they want to be part of

Cambridge.

There's a couple of letters from City Councillors that have learned about this and have encouraged them to be here. And so I could go on and on.

The building itself has a physical alteration included which is the addition of a vestibule. It's well within the allowable FAR. It's a two-story building. But it did get reviewed by the Historical Commission. And one of the criteria is 11.200 is the physical compatibility of the structure. I would suggest that the determination by the Historical Commission would meet that criteria.

CONSTANTINE ALEXANDER: Can you comment on the signage? I notice you didn't seek any relief.

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: But I see that sign complies with our Ordinance?

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: It's not going to be illuminated?

LOU DeANGELIS: It's going to be externally illuminated.

ATTORNEY JAMES RAFFERTY: Permitted. There's no relief associated with the sign.

CONSTANTINE ALEXANDER: Just making sure.

ATTORNEY JAMES RAFFERTY: And if you do really analyze the Ordinance and recall the history of the Ordinance, I was around when the Ordinance came about and

what was behind it, and it's really, I think it's not, it's not insignificant that the top four things that the Board is told to look at in these applications is whether there are traffic problems, produce double parking. It's all related to people pulling in and running in and getting something. And that isn't this operation and anything close to it. So it's the first, it's the first thing you're asked to look at is is there going to be traffic problems? Is the public safety in the street going to be affected? I mean, they meet all those things.

Now we do know that there's this paragraph C which I know the Chair has a unique perspective on. The language there suggests a need in the neighborhood or the city. So I think for one to say

that other parts of the city -- I'll leave it at that. Other than to say that Shake Shack is excited to be here and is really looking forward to the opportunity to take a location here and really enhance Harvard Square in a meaningful and positive way.

So I'll conclude with that other than noting that I'm aware of a couple letters of support --

CONSTANTINE ALEXANDER: I'll read them at the appropriate time.

ATTORNEY JAMES RAFFERTY: -- and as I said, the Historic Commission finding with regard to the facade.

CONSTANTINE ALEXANDER:
Questions from members of the Board at this time?

DOUGLAS MYERS: You mentioned,

you referred to takeout or the absence of takeout. Under what conditions of operation will any takeout be permitted or be part of the ordinary service of food in the restaurant?

ATTORNEY JAMES RAFFERTY: Oh, no, there's definitely takeout. I didn't mean to suggest that. I said if you dine in, you get a tray. The standard in the Ordinance is -- and it's rather hard to assess. It says that if 20 percent of the -- I want to be precise here. The definition, it's that, you know, we call that 80/20 rule. If more than -- pardon me.

CONSTANTINE ALEXANDER: I know what you're referring to.

ATTORNEY JAMES RAFFERTY: It's No. 4 and Section 2 under definitions.

At least 80 percent of the revenues is attributable to food consumed on the premises. So I asked them to look at that and do a projection, and they think it's quite frankly rather close. And to be candid there are locations that for reasons -- Panera doesn't have a fast food. They've got three locations; Porter Square, they just opened another. I'm never quite sure -- it kind of suggests, you know, there's been talk about -- there's some aspects of this Ordinance that are hard to envision. If it just came down to the 80/20, and you said, well, you know, and it doesn't say food product and it says revenues. You've got revenue from beer and wine that obviously doesn't go out the door. And maybe -- but it's clear that when you, the

way it's written, the one obvious provision is non-disposable cups, plates, and utensils. Now my understanding is Panera satisfies that.

DOUGLAS MYERS: I mean, I can, I recall, my question is somewhat inarticulate. So let me be just to be more clear. For example, the beer and wine. You said it doesn't go out the door. Is it going to be served in containers such that like glass containers or hard plastic containers that have some value such that there will be a disincentive to take it outside? Or will it be in containers that can readily be removed from the premises?

ATTORNEY JAMES RAFFERTY: Well, first of all, you absolutely can't take it outside. No pouring establishment

can take it outside, beyond the patio, I mean. So, as to the actual containers that the wine and beer is served in, I don't know if they are disposable.

ZAC KOFF: The beer is in plastic cup. The wine glass is actually intend to be a recyclable, take-home piece. It's reusable, actual wine glass. Not one to be rewashed and reused for ourself. We will we encourage the guest to reuse.

DOUGLAS MYERS: I didn't hear the last part.

ZAC KOFF: One we will encourage the guest to reuse.

DOUGLAS MYERS: And as far as the service of takeout food, is there going to be a takeout counter or takeout window or is the takeout food order interchangeable when people order their

food or go through a cafeteria line?

ATTORNEY JAMES RAFFERTY:

Mr. Koff is head of operations.

ZAC KOFF: Certainly. The last question the cashier would ask the guest if they would want their food for dining in or takeout. So the guest experience is the same waiting for --

DOUGLAS MYERS: Cafeteria line manner of service?

ZAC KOFF: It's a line to get to the register certainly. And the same for whether they want to take it home or eat it in the dining room.

LOU DeANGELIS: So every item is made to order. So unlike a you go to let's say a McDonald's where they stack the burgers and they pull them off the chef as you order, here you go to the

counter, place your order, get the burger, fries, or shake or hot dog is made to order and you're given a buzzer. So much of the experience as you might encounter in a sit-down restaurant, and you may wait five, ten minutes for your order to come. So it's not, inherently it's not fast food. And then when the buzzer goes off, and you have the option to eat in or you can take it out. So it's a very different operating model for fast food environment.

BRENDAN SULLIVAN: Are you going to offer delivery?

ZAC KOFF: Typically not.
Typically not.

BRENDAN SULLIVAN: People can call up for takeout?

ZAC KOFF: We do -- we don't take

call ahead orders typically. We have been in when there's sort of a community event where they're saying can we get 20, 30 burgers for our group, we might accept that, because that's a rare exception that someone couldn't actually wait in line for that opportunity. So it's rare that that happens.

BRENDAN SULLIVAN: So if somebody who lived on Larch Road wanted to come in and grab a large order who wanted to call ahead for a rather large burger order, they'd have to schlep down to Harvard Square and everything?

ZAC KOFF: That's right.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Other questions?

I'll open it to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that there is no one here wishing to be heard. I'm sorry, sir, I didn't see you.

PETER AHN: No problem.

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

PETER AHN: Hi, my name is Peter Aahn, P-e-t-e-r A-a-h-n. I'm one of the owners of Bon Chon, same building, located at 78 JFK Street. I'm in the lower level. Just want to pretty much come and say that Shake Shack will probably be a great addition to the Harvard Square location. I myself am a

big fan of Shake Shack. As you can see, I love to eat. I've been to the one in New York. I've also been to the one recently in Chestnut Hill location. And, again, they have great food. Great service. Everything else is up to par and to my standards and I love it. So I think an addition of Shake Shack in Harvard Square would be a great alternative for other people who may not want to have Bon Chon chicken every night. They may have, you know, Shake Shack or other restaurants located nearby. And also it brings other people that may not know where I am in the basement that hey, there's Bon Chon here located in this building. So that kind of gives me the opportunity for other people to come and see my establishment as well. So I just

think that, again, Shake Shack would be a great addition to the community as well as to my myself as well. That's it.

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

Is there anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: There appears to be nobody else.

We are in receipt of letters as Mr. Rafferty indicated, which I'll read into the record.

We have a letter from the Harvard Square Advisory Committee from Liza Paden, P-a-d-e-n on behalf of the committee. (Reading) I polled the advisory committee members. There were no comments or objections to the fast

order food establishment Special Permit.

We have a letter from City Councillor Kenneth Reeves. (Reading) I wish to express my support for the application of Shake Shack Harvard Square Boston, LLC, for a fast order food Special Permit at 57 JFK Street. Shake Shack, the proposed restaurant, is only a fast food operation by definition of our Zoning Ordinance, not in spirit and appearance. The proposed floor plan for the space includes seating on both floors and an outdoor patio on Winthrop Square. The classic American menu is driven by premium ingredients often locally sourced. Shake Shack has proposed a destination restaurant, serving people updated classics renowned for their quality. In every way this restaurant

encourages diners to sit down and enjoy a well-crafted meal on-site. As such, I urge the Board to act favorably on this application.

We have a letter from David Maher, also City Councillor. (Reading) I'm writing to voice my support for the Special Permit application submitted by Shake Shack for a new location in Harvard Square. The Union Square Hospitality Group that operates Shake Shack has a proven track record of operating high quality restaurants. Shake Shack has already earned a reputation as such an establishment. As you may know, Shake Shack recently opened a restaurant in Chestnut Hill which has already proven to be a popular dining option in the area. Serving as a destination location due to

its reputation for quality and unique family-friendly concept, Shake Shack will draw both locals and tourists to Harvard Square. I'm confident that Shake Shack will add to the already vibrant restaurant scene and thrive in this proposed location. I encourage the Board to approve their application.

We have an e-mail from the general manager of Wagamama Daniel Drugee, D-r-u-g-e-e. (Reading) I would like to lend my support for Shake Shack in tonight's meeting. They have an excellent reputation in our industry. I believe this will create jobs for our city, add attraction to Harvard Square, and spur economic growth. Please see my attachment. And there is -- in the attachment there's a number of these

people who signed these attachments. They're basically in support. I'm not going to read it. This is signed by Mr. Drugee as he indicated.

We have one signed by Jim McKellar, M-c-K-e-l-l-a-r, the general manager of Harvard Student Agencies.

We have one from Douglas Cho. Is that you, sir?

PETER AHN: No.

CONSTANTINE ALEXANDER: It doesn't say who he is. Oh, I am righting to you as the perspective landlord of Shake Shack and seeking your support. I'm sure he is. As pertaining the Zoning Board of Appeals.

And Mr. Rafferty also indicated, we have a letter or a memo from the Cambridge Historic Commission which says that the

fast food use of this property is not subject to Historic Commission review. And that's all she wrote.

By the way one thing I forgot to ask you, Mr. Rafferty --

ATTORNEY JAMES RAFFERTY: Just to complete the record, though.

CONSTANTINE ALEXANDER: Yes, go ahead.

ATTORNEY JAMES RAFFERTY: The memo does note that a Certificate of Appropriateness was approved for the --

CONSTANTINE ALEXANDER: Oh, yes, it does. It does. But it's not something -- how could they give a Certificate of Appropriateness if they don't do a review?

ATTORNEY JAMES RAFFERTY: No, no. They do a review on the physical

alteration. What she's saying is they don't comment on the issue before the Board which is in regard to fast food.

CONSTANTINE ALEXANDER: Okay, got it.

ATTORNEY JAMES RAFFERTY: But that any exterior alteration to a facade in the Harvard Square Historic Overlay District requires a Certificate of Appropriateness. So we were on the other side of that wall last Thursday night, presented this and received a Certificate of Appropriateness and this memo is a reflection of that.

CONSTANTINE ALEXANDER: Thank you for correcting me on that.

The other thing to touch on, you comply with the all state and local requirements applicable to ingress,

egress, and use for the facilities of handicapped and disabled persons?

ATTORNEY JAMES RAFFERTY: The floor plan's been reviewed and submitted.

CONSTANTINE ALEXANDER: Part of the record. Okay.

And the plans you've shown to us and which we're reviewing are these two pages? Two pages.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Plans, sketches.

ATTORNEY JAMES RAFFERTY: Elevations.

CONSTANTINE ALEXANDER: Seating and the like including the patio.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: All

right.

ATTORNEY JAMES RAFFERTY: I apologize, the use -- the common victualer license and the alcohol license will be the subject of a proceeding at the License Commission.

CONSTANTINE ALEXANDER: Oh, yes.

ATTORNEY JAMES RAFFERTY: We have obviously gone there and we've learned the outcome.

CONSTANTINE ALEXANDER: Doug.

DOUGLAS MYERS: You mentioned that the establishment will open up at eleven o'clock a.m., is that what you anticipate? What about closing time?

ZAC KOFF: Probably eleven p.m., perhaps twelve on Friday and Saturday night.

CONSTANTINE ALEXANDER: I hope

you have better luck than OM, the restaurant that was there before in terms of the people who patronized and the disturbance in the neighborhood. They took away -- their license was suspended. It's the same premises that the restaurant --

ATTORNEY JAMES RAFFERTY: I'm not familiar. I do know that in the back of the room their counsel is present this evening. Mr. Hope represented them, but I don't --

CONSTANTINE ALEXANDER: There was a problem. It's not your premises, the neighboring premise.

ATTORNEY JAMES RAFFERTY: Right. I would say that was very much a nightclub/restaurant --

CONSTANTINE ALEXANDER: Yes, it

was.

ATTORNEY JAMES

RAFFERTY: -- with dancing and entertainment. Very different.

CONSTANTINE ALEXANDER: In any event, that's Licensing Commission's concern not ours.

ATTORNEY JAMES RAFFERTY: Yes. Very different operation.

CONSTANTINE ALEXANDER: Yes, I would acknowledge that.

DOUGLAS MYERS: One more question.

CONSTANTINE ALEXANDER: Sure.

DOUGLAS MYERS: I know this is an often disputed point, but since the Ordinance requires that the Board, before it grants Special Permit, determine that the establishment fulfills a need for

such a service, etcetera, as has already been stated. I'd be interested in hearing the applicant's position, views, on how it does meet that requirement of the Ordinance.

ATTORNEY JAMES RAFFERTY: Well, we've discussed that in the need, the establishment feels a need for such a service in the neighborhood or the city. And the service that's provided here I think is a destination that is high quality, high caliber, somewhat unique, and I think that the track record they have in other locations, the success they have, would suggest that the marketplace has responded favorably to it. And I think the assertions contained in the letters from the two elected officials, that obviously are in a regular

communication with their constituents, would suggest that there is a need for this experience. This is this -- this will contribute to the ability of life in Harvard Square. I don't think one needs to say that there's no other place to get a hamburger, but I think this criteria gets looked at in the sense of a -- it does exist in Harvard Square. Vibrant.

There's a need to have vibrant to accommodate the tourist industry. It's one of the most heavily visited locations in the Commonwealth. So to have a high caliber quality restaurant that can accommodate people this way, you could make the case the prior operator didn't particularly meet the need of a large segment of Cambridge and Harvard Square community in the way that this would.

DOUGLAS MYERS: Is it -- are you saying -- is it your position or is it your argument that the type of restaurant here that distinguishes it from more unusual fast food restaurants and that is what meets the need?

ATTORNEY JAMES RAFFERTY: Well, I think that's an element. Since the adoption of the Ordinance, the commission -- the commission, the Board has probably approved hundreds of fast food Special Permits. So there certainly is precedent on part of the Board of recognizing that need for certain establishments does exist. So I do think that is a piece of it in terms of what is the service that this restaurant is being provided. In the Ordinance is the need for a service. And

the service here is that this would be a unique dining experience and it would join the ranks of many other experiences that are favorable. But there is a need for that service in the greater Cambridge area.

DOUGLAS MYERS: And if that is one leading element you said, what would be another, what would be another primary paramount element in addition to that one?

ATTORNEY JAMES RAFFERTY: Well, I mean I would say the quality and caliber of the food. Perhaps the price point. The fact that one can go here with a family of four and have an enjoyable dining experience and not spend as much as you might in other locations. I think they're financial and economic needs.

There are families that are served by restaurants of this caliber. So I do think it runs the spectrum of different uses. I mean, in the sense that the service isn't simply about getting sustenance or food. It's the whole environment. It's the whole -- it provides opportunity. It will provide jobs. It will allow younger people to get into the food business. It will bring an experienced food operation business here and have a trickle down effect. You saw from a fellow restaurant operator, not coming here and saying no, no, I don't want the competition, but saying no, this is the type of use that will enhance my own business. So I think that's another service that's provided by this.

KEVIN CASEY McAVEY: It is a destination restaurant. I've frequented the one in DC, and I mean, there's frequently a line out the door at mealtime during the day and also on weekends. So it will likely attract a lot of people to this area. And I mean, in terms of providing a service to the neighborhood or the city, they will provide a differentiated product that is currently being provided, and they are obviously making a significant capital investment having shown this elsewhere, and so I do believe that they will be fulfilling a need. That is, that currently exists in Cambridge.

CONSTANTINE ALEXANDER: All set?

DOUGLAS MYERS: No more questions.

CONSTANTINE ALEXANDER: Any further questions by members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: Unless you have some final comments.

ATTORNEY JAMES RAFFERTY: No, thank you.

CONSTANTINE ALEXANDER: Okay, I think we're ready for a motion. We have to make a number of findings because it's a fast order food establishment.

The Chair moves that this Board make the following findings:

That the operation of your proposed establishment will not create traffic problems, reduce available parking, threaten the public safety in the streets and sidewalks, or encourage to produce

double parking on the adjacent public streets.

In this regard as pointed out by the Petitioner, the fast order food establishment will be located facing a public park on a pedestrian-only street and so there should be none of these issues that I've identified.

That the design will be compatible with and sensitive to the visual and physical characteristics of other buildings, public spaces, and uses in a particular location.

The plans as submitted by the Petitioner demonstrate this, particularly since it's part of a larger building and although nicely designed, it's not terribly different than the rest of the building in terms of its exterior

appearance.

That the establishment fulfills a need for such a service in the neighborhood or in the city.

That the establishment will attract patrons primarily from walk-in trade as opposed to driving or automobile related trade. In this regard the Chair would note that we're talking about Harvard Square, that people don't drive. Will not be driving to this restaurant particularly since it's located on a pedestrian mall, if you will, across from the public park. That people may drive but they're not going to be parking in front of the fast order food establishment. Or otherwise cluttering the parking of Harvard Square. Not that it could be cluttered any more than it is.

The establishment will, to the greatest extent feasible, utilize biodegradable materials. I would emphasize to the greatest extent feasible. I think we can let it go at that.

That you're going to provide convenient, suitable, and well-marked waste receptacles. This will be inside the restaurant.

ATTORNEY JAMES RAFFERTY: Both inside and out.

CONSTANTINE ALEXANDER: You'll have them outside as well?

That the establishment, as been represented, will comply with all state and local requirements relating to handicapped and disabled persons.

The Chair would make the further

findings as required by our Ordinance -- well, some of these we've already touched on. That what you propose will not cause congestion, hazard, or substantial change in established neighborhood character. I've already touched on that before in a different part of the statute.

That the continued operation of adjacent uses will not be adversely affected by the nature of what is being proposed. In fact, based on the testimony we've heard, you will promote -- you'll be beneficially affecting the neighboring business uses.

No nuisance or hazard will be created to the detriment of the health, safety, and welfare of the occupant or the citizens of the city.

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

On the basis of these findings, the Chair moves that this Board grant this Special Permit to the Petitioner as requested on the condition that the work or the setting up of the fast order food establishment will be consistent with the plans submitted by the Petitioner. They're two pages in length, both of which -- not in length. Two pages in number, both of which have been initialed by the Chair.

All those in favor of granting the Special Permit say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Sullivan, Green, Myers, McAvey.

CONSTANTINE ALEXANDER: I'm abstaining.

ATTORNEY JAMES RAFFERTY: Thank you very much.

CONSTANTINE ALEXANDER: Thank you. Thank you, good luck.

* * * * *

(8:20 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Kevin Casey McAvey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10429, 820 Somerville Avenue, unit 4.

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

ATTORNEY CRISTINA SERRANO: Good evening. Members of the Board, Cristina Serrano. I'm here on behalf of Potbelly Sandwich Shop. We are seeking a fast order food establishment at 820 Somerville Ave. in Cambridge. I'm here with -- we are bringing some menus for your perusal that are incidentally

attached to some of the cookies that are served at the store.

CONSTANTINE ALEXANDER: We can't accept these. It's conflict of interest laws.

ATTORNEY CRISTINA SERRANO: It's okay.

BRENDAN SULLIVAN: As long as it doesn't cost \$50. But thank you very much.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY CRISTINA SERRANO: They came like that. I didn't know what to do.

Do you want to introduce yourselves?

ERIC ANDRUANI: I'm Eric Andruani. I'm the market manager for Potbelly's in Massachusetts New England

area.

CONSTANTINE ALEXANDER: Is this a franchise operation or is this going to be a company-owned store?

ATTORNEY CRISTINA SERRANO:
Company owned.

CHRIS MARSALEK: Chris Marsalek, district manager Boston market.

CONSTANTINE ALEXANDER: You heard all about the Shake Shack and Douglas Myers and whatever.

ATTORNEY CRISTINA SERRANO: We did, and I'm pretty sure he saw my outline before we came up here, so I will try not be too repetitive. But before we launch into sort of the specific need, one of the reasons for the menu is what we serve and the way it's served and the atmosphere of the store very much ties into the need for

this particular establishment.

So as some of the history, Potbelly's started as actually not food related but as an antique shop. A couple was running an antique shop and then expanded into serving lunch. They expanded into serving toasted sandwiches which were outrageously popular and then continued to serve in-homemade desserts, and that has slowly but surely expanded. That operation is similar to what Potbelly still runs today. Each Potbelly location is unique. No two Potbellies look the same. Every Potbelly's designs and decorates their stores with the input of the neighborhood to reflect the values of the community and the history of the community. Actually we met with the Porter Square

Neighborhood Association and Eric was sharing with them Potbelly just opened a location in Government Center, and he was saying how one of the customers came in and actually found himself in a picture that they had on the wall that was, you know, it was an antique. It was something that they had picked up.

CHRIS MARSALEK: It was an old Harvard football team, black and white.

ATTORNEY CRISTINA SERRANO: So it is Potbelly's mission to go out of its way to connect with the neighborhood. So it's not just a cookie cutter. You know, you're not going to walk into one -- for example, you know, in Burlington it's not going to look the same as it does in Cambridge. And we, like I said, we actually did meet with the Porter Square

Neighborhood Association a few weeks ago, and had I think about an hour long discussion with them to kind of get not only the vibe of the neighborhood, but to hear those concerns as well.

So to address the major concerns, what we heard from the neighborhood association, the biggest push, the biggest push is always with the neighborhood associations in my experience, trash concerns. So the way that Potbelly food is served is, you know, it you do go through a line, but it is a toasted sandwich so it takes a little bit longer. But over 80 percent of the food is consumed on premises. The point is that you're getting warm, toasted subs. The point is not to take it and walk for 20 minutes. So even though you're eating

on premises, it's served in a basket, but there is wax paper for just sanitary purposes so you don't get --

CONSTANTINE ALEXANDER: You're going to have a little patio out front like the Uno's.

ATTORNEY CRISTINA SERRANO: We are, yes.

CONSTANTINE ALEXANDER: What about someone disposing the trash sitting at the table and gets up and throws it in the street.

ATTORNEY CRISTINA SERRANO: Sure. So there is a particular -- I think we call them the front of the house guys?

CHRIS MARSALEK: Fronter, yes. Correct.

ATTORNEY CRISTINA SERRANO: That

pays attention to those issues. A busboy, if you will, though it's not a waitress restaurant. But their sole goal is to go outside, keep an eye on everything. You know, we had a lot of discussions with the Building Commissioner about, you know, do we change this? Do we try to serve on plates to get rid of the wax paper, but then the concern is well, it's too much water use because we've got too many dishes. It's a constant tradeoff as to what we're trying to minimize. So we have been talking about ways to tinker with the service, to minimize the amount of paper that goes out with every order. For now the plan is to still have that piece of wax paper so you don't get your sandwich meshed into the basket that creates its

own exciting issues.

We're not seeking any sort of alcohol permitting. It's sandwiches, salads, soups, beverages, cookies. I think shakes.

CHRIS MARSALEK: Shakes, yep.

ATTORNEY CRISTINA SERRANO:

There's a lot of interesting shakes. So we can talk more about that if anyone is particularly interested.

CONSTANTINE ALEXANDER: What's the signage? I see voluminous plans. I don't see anything --

ATTORNEY CRISTINA SERRANO:

Sure. Actually signage was already approved.

CONSTANTINE ALEXANDER: Could we see that?

ATTORNEY CRISTINA SERRANO:

Sure. I've got the actual signage plans and then I've got the signed permit.

CONSTANTINE ALEXANDER: So you will have a sign over the front door on the first floor, is that what I'm seeing here?

CHRIS MARSALEK: That one is an interior sign inside the windows, internally with an internal light, more of a glow versus an external projected light. And it looks like there's the one blade sign over the front of the actual building.

CONSTANTINE ALEXANDER: And you say you've gone through Community Development and they've approved the signage?

ATTORNEY CRISTINA SERRANO:
We've talked to the Porter Square

Neighborhood Association. For the signage, we just went to the Building Commissioner and that was approved because there was no sort of Zoning restrictions on that.

BRENDAN SULLIVAN: As-of-right sign.

CONSTANTINE ALEXANDER: Sorry?

BRENDAN SULLIVAN: It's an as-of-right sign.

CONSTANTINE ALEXANDER: Yes. That's what I wanted to get at.

JANET GREEN: Where is it on the building?

ATTORNEY CRISTINA SERRANO: It's right on the corner. Do we have actually the bigger signs? I know there were some photo submitted with the packet. Mine are black and white. If you have the

photos, that's helpful.

JANET GREEN: I sort of see what your sign looks like. I just don't see where it is. Oh, here. Is this the front?

CHRIS MARSALEK: That is, that I believe is to the front, left. I think there's -- if you were actually looking at the front of the building, there's the ATM machine on the left side of where that Potbelly logo is.

DOUGLAS MYERS: You mentioned your interest in making sure your physical design --

CONSTANTINE ALEXANDER: Can we keep that copy?

CHRIS MARSALEK: Sure.

DOUGLAS MYERS: -- is compatible

with community interest and so on. In reviewing your detailed plans, I could only -- not the signage materials, but the detailed plans, I could only find one plan in there, A3.0 which depicted the exterior of the establishment.

ATTORNEY CRISTINA SERRANO:

Well, there aren't going to be any changes to the exterior.

DOUGLAS MYERS: That was my conclusion, that in fact your -- it seemed to me that in terms of the physical design, you're preserving the existing physical design except for the signage.

ATTORNEY CRISTINA SERRANO: Yes, and it actually takes up -- so it's in the old Uno's space, but it takes up far less space because Uno used to be the first floor and the second floor. Potbelly is

only on the first floor and it's actually not the entire space that Uno used to be on the first floor. So it's entire square footage. It's not only changing, we're not expanding, we're sort of shrinking from what was there before. So nothing on the outside is changing on the building. The signage obviously is actually going up.

DOUGLAS MYERS: You say not the cladding, not the color?

ATTORNEY CRISTINA SERRANO: That is my understanding. I, I mean that is the design plans that I've seen, you know, we're not there to make changes to the building itself. You know, we're obviously redoing the interior of it, but no, there's no. There should be no external changes. We haven't submitted

for any changes, so I know that we're not going to receive any permits because we haven't asked for any.

DOUGLAS MYERS: I interrupted. Relevant to the exact point, but maybe later some questions but go ahead.

ATTORNEY CRISTINA SERRANO: Sure. Just sort of building off of I guess the unique atmosphere of the restaurant. We're also going to be seeking a live entertainment license from the Licensing Board, and this is -- let me use my words carefully here. It is a non-amplified acoustic music. The goal is to bring in live musicians to play for one to two hours during lunch. It's just to sort of create more of a welcoming atmosphere. You know, the idea is to be able to plug into the community as many

ways as possible. And one of the ways is to give people a place to come, you know, you can sign up to play music. We talked to the neighbors. Like I said, no amplification so there's no sound issues.

DOUGLAS MYERS: So no sound will be emitted to the exterior of the building?

ATTORNEY CRISTINA SERRANO: Correct. So we're talking about a guy sitting down with an acoustic guitar.

DOUGLAS MYERS: Inside?

ATTORNEY CRISTINA SERRANO: Correct.

CHRIS MARSALEK: It's part of the original antique store that started in 1977 was the Hastings who opened it up in downtown Chicago also had live music. He played the guitar. So many times when he

had his friends and family in buying knick-knacks and antiques, he had music in there. And that evolved in bringing in local musicians that could actually play their music in the downtown suburbs of Chicago. And true today we and stay true to that so that the local neighborhood musicians will have a place to come and play and promotes that. And it gives a little bit softer feel inside the restaurant. It is a goal that we want the neighborhood community to kind of feel that it's their shop. It's little local musicians and it's just something added a little bit more of a comfort from us to the consumer.

CONSTANTINE ALEXANDER: Too bad Tim's not here tonight.

ATTORNEY CRISTINA SERRANO: Did

we miss a good one?

CONSTANTINE ALEXANDER: One of the regular members of the Board is a musician and plays in a local nightclub from time to time.

ATTORNEY CRISTINA SERRANO: You will have to tell him to come and sign up then. We'll reserve an opening.

CONSTANTINE ALEXANDER: I will. I will.

ATTORNEY CRISTINA SERRANO: Like I said, we did -- one of the big concerns that we did speak with the neighbors about is trash. One of the big questions is to be able to coordinate and speak with the owner of Anna's Taqueria because we will be sharing the same space for trash disposal, and to contact the city to see if we could just get more frequent

pickups. Potbelly doesn't have a lot of trash. There's no frying. There's no grease. The whole point is that we're serving something that's very simple, fresh product so there's actually not a lot going outside. But considering there is obviously going to be some volume increase, we did already talk about having to coordinate something to make sure that not only we're not increasing, but that we could potentially decrease any sort of, you know, odor or rodent problems. We are fairly close to some residential units. So that was their big concern. We are going to have trash cans both inside and outside because we do have the patio. And the patio is always a cause for concern. You know, napkins, what have you. Someone's Kleenex from

their purse, you know, anything can go flying around. There's going to be constant vigilance on the porch as far as that goes as well as just trash cans actually outside so people can dispose and not have to go back in and, you know, seek somewhere to throw their trash.

CONSTANTINE ALEXANDER: What about product deliveries, suppliers, because this is a -- it's a busy area as you know.

CHRIS MARSALEK: We predominantly only use one supplier. They come two days a week.

CONSTANTINE ALEXANDER: Two days a week.

CHRIS MARSALEK: And use the receiving dock on the back end of that building. So there's, I think Coke is

the only other provider aside from our one main which Coke owns the distribution rights to that. So that's really about it.

ATTORNEY CRISTINA SERRANO: And actually addressing any other traffic concerns, we submitted a parking plan with our application. There's an existing parking plan for that entire shopping area. So we don't anticipate any sort of an increase. Most of the patrons of the store, we anticipate to be foot traffic coming in from inside the mall or from the surrounding areas so there shouldn't be any issues with that.

CONSTANTINE ALEXANDER:

Anything further at this point or can I open it to public testimony?

ATTORNEY CRISTINA SERRANO: I

can go on forever and ever.

CONSTANTINE ALEXANDER: Please don't.

ATTORNEY CRISTINA SERRANO: I haven't eaten. You haven't eaten. I'll try keep it to a minimum.

CONSTANTINE ALEXANDER: Eat a cookie.

ATTORNEY CRISTINA SERRANO: I'm eating the rest in the bag, don't you worry. Just to point out as well, when we were looking at this location, I always scope out, you know, what's in the area? What's a potential competitor? There's always going to be questions of well, you know, why can't you just walk to the next Subway and get something? Or why can't you walk to Panera. This is not a Subway. And this is not, this particularly is not

a Panera. We do serve toasted sandwiches. If you want to make the argument, you could say you could get a toasted sandwich at home, but what we're selling here, what we're creating is a particular atmosphere not only because of the, you know, the unique product but because of the local music and because we're bringing in actual city artifacts. This isn't a cookie cutter shop. You know, they have, there's a location in Government Center, Braintree.

CHRIS MARSALEK: Yep, Braintree, Burlington, and the one the School Street shop. This would be the fifth one in the area.

ATTORNEY CRISTINA SERRANO:
Every single one, even though they're are in the same general area, every single one

looks different. Because every single one, the whole purpose is any time you walk in, you feel like oh, okay, I understand what this particular location is about. You're not walking into a sterile environment where, okay, everything looks the same and let me get my sandwich and go.

DOUGLAS MYERS: But will your operating protocol be that you ask people do you want your sandwich toasted or not?

CHRIS MARSALEK: Actually, it is not. All sandwiches come toasted. However, if you do not want it toasted, we will make it not toasted.

DOUGLAS MYERS: So the burden is completely on the customer to say I don't want my sandwich toasted?

CHRIS MARSALEK: Well, on the

menu itself it reads that all of our sandwiches are toasted. Which the way our system is it's very easy to adapt.

DOUGLAS MYERS: It seems to me you'd would want to avoid confusion to make the customers unhappy. That's not our department. That's your department.

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

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

NANCY BUTLER: I represent the ownership group for the building and just want to let you guys know that we're really excited to have Potbellies as a potential tenant.

CONSTANTINE ALEXANDER: Could you give your name and address?

NANCY BUTLER: I'm Nancy Butler at (inaudible) Partners, 130 Boston Street in Woburn. So, you know, we've been working with the Potbelly folks pretty closely. You know, as the landlord for the property, there's a lot of things here that we would share the same concerns that you guys would such as the trash and such as the deliveries and so on and so forth. And these are things that we get very involved in as well in order to protect the asset and in order to protect the surrounding community, and I think that Potbellies has done a really great job making sure that all of these things have been itemized and that we've worked them out. So I just want to say that we're really excited to bring, you know, some more people in. I agree it's

going to be mostly foot traffic. You know, it's an awfully busy area. And we've got Walgreens moving in shortly, so I think that whole combination, that dynamic is going to bring a lot of new business to the community.

CONSTANTINE ALEXANDER: Thank you.

NANCY BUTLER: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

MICHAEL BRANDON: Hello. I'm Michael Brandon, B-r-a-n-d-o-n. I live at 27 Seven Pines Avenue in North Cambridge. And I'm the clerk for the North Cambridge Stabilization Committee which is the neighborhood association for all of North Cambridge as opposed to just Porter Square which is a separate

association. Greetings to the two new members or the newer members who I haven't spoken to before and thank you for volunteering and I wish you well.

CONSTANTINE ALEXANDER: They'll get to know you, Mr. Brandon, over time.

MICHAEL BRANDON: I don't come as often as I used to.

CONSTANTINE ALEXANDER: No comment.

MICHAEL BRANDON: But, I did want to acknowledge Potbellies -- I received an e-mail earlier this week. Was that from you?

ATTORNEY CRISTINA SERRANO: That was me.

MICHAEL BRANDON: Sorry for not responding. Basically she had mentioned -- I'm sorry, what's your name?

ATTORNEY CRISTINA SERRANO:

Cristina.

MICHAEL BRANDON: Cristina,
right.

I had mentioned that they were before the Porter Square group and they're willing to come before our group as well. But because of the scheduling because we've figured that the concerns that would have been raised would have been similar and that this Board is familiar with issues around fast food operations, and we didn't need to call a special meeting. But we do appreciate you reaching out.

I came in a little late, I just had a couple of questions. You're not seeking a wine and beer license?

ATTORNEY CRISTINA SERRANO:

Correct, no alcohol.

MICHAEL BRANDON: And might have been an option in the future, do you think?

ATTORNEY CRISTINA SERRANO: No, not to my understanding.

CHRIS MARSALEK: No, as a concept we do not carry alcohol in any of our shops.

MICHAEL BRANDON: Okay. And what were the hours again?

CHRIS MARSALEK: This shop we are looking for or ideally would be Monday through Friday seven a.m. until nine p.m. And on Saturday and Sundays eleven to nine p.m.

CONSTANTINE ALEXANDER: You have a breakfast menu if you're opening at seven a.m.?

CHRIS MARSALEK: We do have a breakfast menu, yes. There are menus from another shop that doesn't serve breakfast.

DOUGLAS MYERS: Would you just mind repeating your weekend hours? I'm sorry.

CHRIS MARSALEK: Sure. Eleven to nine.

DOUGLAS MYERS: Eleven to nine on Saturday. Thank you.

CHRIS MARSALEK: No problem.

MICHAEL BRANDON: And then, I'm sorry if you were finished.

CONSTANTINE ALEXANDER: Go ahead.

MICHAEL BRANDON: What percentage do you estimate of your sales are takeout?

ATTORNEY CRISTINA SERRANO: Less than 20 percent. We did actually -- we did quite a bit of research into that, and over 80 percent of the sales are consumed on premises. So less than 20 percent. And that includes -- I think it's not done by product, it's done by sales, and so that includes someone to go in and gets a shake to go, but the vast majority of the food is consumed on premises because it is served hot, so we want the consumer to be able to enjoy the product while it's served in the form it was meant to be consumed.

MICHAEL BRANDON: I'm not extremely familiar with what the parking situation is on Somerville Ave.

ATTORNEY CRISTINA SERRANO:
There's a parking lot that actually goes

with the structure.

MICHAEL BRANDON: Back behind.

I guess what my concern is or that you think about, people driving and running in to get pick-up, takeout or even order and, you know, perhaps parking, double parking illegally whether that's a potential issue and something you might need to police.

ATTORNEY CRISTINA SERRANO:

Sure, sure. And I know we had -- we had talked about after we open if there's the need, if there's the desire in the neighborhood to do, you know, large order catering for someone to deliver.

Typically people don't call in to run in and pick up. I mean, I live very close to a Starbucks and in the mornings the bane of my existence and people park and

run in to get their coffee, it is a traffic nightmare. But I think because they are, they're also toasted sandwiches, it's a process. You're supposed to go and sit down. So there aren't a whole lot of people that run in and go.

MICHAEL BRANDON: We'll see how Anna's operates.

ATTORNEY CRISTINA SERRANO:
Sure, we'll certainly keep an eye on it.

MICHAEL BRANDON: I suspect they will get more because you can go and get something really quick.

And my last question is if someone comes in with a potbelly, do you get a discount?

ATTORNEY CRISTINA SERRANO: I don't know if it's in the official regs, but I will certainly discuss the option.

DOUGLAS MYERS: They have a sizer
by the front door.

ATTORNEY CRISTINA SERRANO:
There will be strict requirements that
must be met. Thanks for asking that.

MICHAEL BRANDON: Thank you.

CONSTANTINE ALEXANDER: Thank
you, Mr. Brandon.

Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The
Chair notes no one else is wishing to be
heard. We don't appear to be in
possession of any letters of one way other
another. I'm going to close public
testimony.

Any final comments?

ATTORNEY CRISTINA SERRANO: I
will say I did reached out to the City

Councillors as well, but I didn't hear back from them which is good. At least you don't have negative letters in the record. And then we did get the Historical Commission to sign off an approval as well because there is no exterior change to the building.

KEVIN CASEY McAVEY: The first one is this 80 percent. What qualifies you as a fast food establishment?

ATTORNEY CRISTINA SERRANO:
Because, this is an interesting conversation with the Building Commissioner. Because people don't sit down and have their orders taken because they do go through a line when they place their order, as well as the fact when we serve the, food the baskets are not disposable, the cups are. And so because

you had the actual service, I'm sorry, the service products were disposable, that knocked us out. So when we broke it down, we met something like three out of four requirements to be a sit-down restaurant. And he said the three out of four wasn't good enough. We had to meet four out of four, but because they were disposable products, that was a huge concern so we had to seek the relief.

KEVIN CASEY McAVEY: Well, to me on the opposite side of that it almost brings up a more of a concern for parking if it's going to be a sit-down restaurant. Can you talk a little bit more about the parking that you are arranging for this?

ATTORNEY CRISTINA SERRANO:
Sure. Like I said, I think I don't know if you've seen the application.

KEVIN CASEY McAVEY: Yes.

ATTORNEY CRISTINA SERRANO:

There is the existing parking spot for that, but the vast majority of people that we imagine will be frequenting because it's such a hot lunch spot because we don't have particularly long hours, we imagine people are coming from the middle of the day from the local businesses in local areas so most of that is just walk in. As far as parking does actually go, we plan on utilizing the parking spot and just monitoring as we go to see if there need to be any adjustments made to accommodate parking flow.

KEVIN CASEY McAVEY: Okay, and this parking spot is where in relation to? I apologize if I missed this.

ATTORNEY CRISTINA SERRANO: No

problem.

BRENDAN SULLIVAN: It's two story.

CONSTANTINE ALEXANDER: Back of the building and you walk around.

NANCY BUTLER: There's 80 parking spots in that structure.

CONSTANTINE ALEXANDER: There are a lot of other people using the parking areas. It's not exactly dedicated to --

ATTORNEY CRISTINA SERRANO: Sure, it's the building lot. And I know it's in here also.

KEVIN CASEY McAVEY: That satisfied my question.

And the last question, is this a franchise or company owned?

ATTORNEY CRISTINA SERRANO:

Company owned.

KEVIN CASEY McAVEY: Thank you.

CONSTANTINE ALEXANDER: Further questions? Ready for a vote?

Okay. I have to make a number of findings so bear with me, please.

The Chair moves that this Board make the following findings with regard to the application by Potbelly Sandwich Shop to operate a fast order food establishment at the 820 Somerville Avenue, Unit 4.

That the operation of the establishment will not create traffic problems, reduce available parking, threaten the public safety in the streets, or encourage and produce double parking. With regard to this it's been noted that there is parking provided on the premises, although the parking is not

dedicated just to this establishment, and people who want to use that have to share that with the other establishments in the building, including at least one other fast food enterprise. But that the nature of this area is that most of your traffic is going to be walk-in. You're in a busy commercial area adjoining a shopping center.

And further the nature of the menu is such that people don't drive -- no offense, but people don't drive to Potbelly to get a sandwich. They'll get it if they're walking by and hunger pains strike and they'll get a sandwich.

That the physical design of the establishment can be compatible with and sensitive to the visual and physical characteristics of other buildings,

public spaces and other uses in this particular location.

The Petitioner has shown to us detailed plans which indicate that essentially the appearance of the fast order food establishment signage aside will be consistent and similar to what was there before when Uno occupied the premises.

That the establishment will attract patrons primarily from walk-in trade as opposed to drive-in for automobile related trade. And I've already touched on the reason why we believe that. I believe we should make a finding that that will be the case.

That the establishment fulfills a need for such a service in the neighborhood or in the city. And that

you said that you will to the greatest extent feasible, utilize biodegradable materials and packaging your food and utensils and other items provided for consumption.

Can you confirm that?

ATTORNEY CRISTINA SERRANO:

Correct.

CONSTANTINE ALEXANDER: You're going to provide convenient, suitable and well-marked waste receptacles both inside and outside the premises.

ATTORNEY CRISTINA SERRANO:

Numerous.

CONSTANTINE ALEXANDER: On the patio as well as inside.

And that, we didn't touch upon this, and that you confirmed that this establishment will comply with all state

and local requirements regarding handicap access and disabled persons.

ATTORNEY CRISTINA SERRANO: Yes. And I believe it's in our statement submitted with our application as well.

CONSTANTINE ALEXANDER: It's all one level in any event. There's no ramps necessary and the like.

ATTORNEY CRISTINA SERRANO: Correct.

CONSTANTINE ALEXANDER: We have to make some further findings, some of which we've already touched on. But the continued operation of or development of adjacent uses will not, will not be adversely affected by the nature of the proposed use except for maybe Anna's Taqueria, that may be affected, but otherwise it's not going to affect the

other commercial establishments in the building or the neighboring shopping center.

And that no nuisance or hazard will be created to the detriment of the health, safety, or welfare of the occupant or the citizens of the city. Again, we would note that we're talking about a -- this is not a fat rendering plant or an auto body shop. We're talking about a restaurant operation.

And that the proposed use will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance. In this regard we're talking about a commercial area that has a number of eating establishments and you'll add one more to that list.

So on the basis of these findings the Chair moves that the Petitioner be granted a Special Permit request.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

(Alexander, Sullivan, Green, Myers, McAvey.)

ATTORNEY CRISTINA SERRANO:
Thank you.

* * * * *

(8:50 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet

Green, Douglas Myers, Kevin Casey
McAvey.)

CONSTANTINE ALEXANDER: The
Chair will call case No. 10430, 115 Harvey
Street. Is there anyone here wishing to
be heard on this matter?

ATTORNEY SEAN HOPE: Good
evening, Mr. Chair, Members of the Board.
For the record, attorney Sean Hope, Hope
Legal Offices in Cambridge. I'm here
tonight with the owners of 115 Harvey
Street. We have TJ Jensen and Amelia
Westmark. Do you want to just introduce
yourselves?

HAROLD JENSEN: Sure, it's
officially Harold Jensen, H-a-r-o-l-d
J-e-n-s-e-n.

AMELIA WESTMARK: And my name is
Amelia Westmark, A-m-e-l-i-a

W-e-s-t-m-a-r-k.

ATTORNEY SEAN HOPE: Yes. So this is an application requesting Variance relief to instruct a three-family dwelling with two enclosed parking spaces. This was an application that was approved by the Board in January 2012 of last year. I think there were a few members of the Board who were on the case. Just by way of background, that application that was approved, that was to demolish portions of an existing three-family structure. Specifically it was to demolish the two-story addition at the rear. The application also called for the roof to be raised. There was a shed roof at the current time, and there were portions of that third floor that were an attic that weren't habitable

space. So the Board approved actually to raise the roof and have a flat roof. Also the two-story addition was encroaching on the side yard, and so part of the application called for the addition to be rebuilt, to no longer encroach the side yard, and also bringing that side yard setback into greater conformance even though it was still in the side yard setback. And overall there was a reduction in the overall FAR. This was a non-conforming structure. And part of the relief that was granted due to the deteriorating conditions of the structure, this was a structure, specifically the rear, that the applicants knew was in extremely rough shape interior, but also the foundation itself was unstable. What we know now is

that, and during the demolition of the actual front structure, was also in extreme condition. I just want to -- before we get into the actual elements of this application, last Thursday we were before the Historical Commission on the demolition review, and part of the reason why we're here tonight is that during the demolition of this structure and consistent with the plans, the building permit set of plans, the building -- the demolition exceeded the scope of the permitted demolition. And I think it's important to actually look at the scope of the demolition. As I said, the rear addition was to be torn down and what was supposed to be left were three sides; the two side facades as well as the front. Part of the challenge was

how to rip off the top roof as well as to leave the existing structure. I brought pictures of what was presented to the Historical Commission because I think it's important for the Board to see and it's also in the file --

CONSTANTINE ALEXANDER: If anybody wants to see the pictures he's submitting, feel free to come up and look at them.

ATTORNEY SEAN HOPE: So part of the remedy of the Historical Commission is when an applicant exceeds the scope of demolition, the Commission can impose a two-year moratorium on building of a Building Permit. So we went before the Commission and Mr. David Barsky, he's the project supervisor, he couldn't be here tonight, but we actually have these

pictures and we have an Affidavit if there's any specific details as to what happened.

But essentially the structure was not connected to the foundation. There was no anchors into the joists. And so at the time of the demolition, when the rear structure was torn off, the structure was in descent shape. And then when the roof was torn off, the actual structure started to waiver. Part of in preparation for the demolition, Mr. Barsky as he testified went and brought a civil engineer to look at the foundation, and really felt that the -- he would be able to achieve the demolition plan as proposed. One of the arguments that we made to the Historical Commission, the main reason why we kept

the two sides and the front facade which was aggressive demolition, was because we wanted to maintain the existing GFA.

This was a non-conforming structure, and there was a point of which if the property was demolished to the extent, it would lose its non-conforming status as a protected structure. So I think

this -- we want to distinguish this from a case where you leave a facade because it has some historic value or aesthetic benefit where the Historical Commission would limit the demolition. This was specifically proposed to keep as much of the existing GFA as possible.

So during the during demolition the structure started to waiver, and there was a call that was made for health and safety. Mr. Barsky called all of the

workers off the site, and the actually essentially helped the building fall into the middle as it was. This exceeded the scope of demolition. ISD had gotten involved. Michael Grover came out to the site, I believe it was the next day, and, you know, he said what did you do? You messed up and you exceeded the scope of demolition.

So if you go to the site now, you see just the site is completely clear and you see a first floor slabs. That wasn't the condition when they stopped demolition. I think if you look at the page No. 2 and I would point -- excuse me, photo No. 3, that middle photo. It actually shows what it looked like after demolition. And as you can see there, there are pieces of the side wall that were there. And

part of cleaning the site up was to move it to exactly what you see today.

So much of the same hardship that was here a year ago was that it was due to the odd shape of the lot. It was due to the deteriorating structure. So we're here tonight because it's kind of odd, we're here to approve what the Board approved last year. We're not proposing any changes.

CONSTANTINE ALEXANDER: That's one of the questions I was going to ask you. These are the exact same plans we saw last time?

ATTORNEY SEAN HOPE: That's correct.

CONSTANTINE ALEXANDER: It will be a completely new structure.

ATTORNEY SEAN HOPE: Right.

And we did actually at the Historical Commission there was one member that thought well now that the structure's down, you know, is this what you want to build? And, you know, from our point of view we don't want to avoid, even though my clients weren't the ones who were doing the construction, there's no intent to reward bad behavior. This is what the Board approved. This is what the community was noticed on, and all we want to do was reconstruct what was there. I'd also point to the Board that the demolition to the rear was approved and that was -- that doesn't need relief, but obviously the Board approved a set of plans. There's no way to half approve -- because there was a question should we be applying for the whole, the

thing as a whole or a partial? And so I think the most complete application would be to essentially submit the whole plans and have the Board reapprove what they approved in January.

CONSTANTINE ALEXANDER: When we granted relief the last time, we had a condition that you had to get limited access easement. And did you get that and that's recorded?

AMELIA WESTMARK: We did.

ATTORNEY SEAN HOPE: And so --

BRENDAN SULLIVAN: I have a real hard time connecting the dots here. And I have read this for the last two weeks half a dozen times. And I guess the thought that keeps going through my head is this is a case, and I don't mean to, you know, question anybody's motives, is

this a question of asking for forgiveness and not for permission beforehand?

Second of all, you've hired I would assume a responsible demolition person and he made the call to take the whole building down as opposed to let's stop what we're doing, let's call Inspectional Service, have them come out here, show them what we have, and let them agree that the building has to come down. Because in my way of thinking once you have demolished that building, you have forfeited the protection of an existing pre-existing legal pre-existing legal non-conforming structure and use.

ATTORNEY SEAN HOPE: And to your point, I think that's what we were at the Historical Commission about. And Mr. Barsky gave a 20 minute

presentation --

BRENDAN SULLIVAN: And Historical -- I read it and read it. They have not answered my questions either.

ATTORNEY SEAN HOPE: Yes. And specifically what they found is that we didn't meet the definition of demolition in the Ordinance. And specifically it was -- and I brought, I actually have the actual language, but there is an intent portion of the demolition Ordinance. It's to commence demolition. Let me actually read it correctly because I think it is important that this was part of their finding. So, Section 2.708, the act of pulling down, destroying, removing or raising a building or commencing the work of total or substantial destruction with the intent of completing the same.

And what they found was that we started demolition but we did not have the intent to complete the same. That we weren't intending to demolish the building. And the remedy for, that they found that we did have the intent, that we went there to demolish the whole structure in consistent with the plans that we imposed. The remedy for them was to impose a two-year moratorium on the Building Permit.

BRENDAN SULLIVAN: But if the instructions to the demolition contractor were to take down -- well, to preserve three walls, then that's the first thing they do is secure those three walls and not go tearing into a building and all of a sudden say, well, guys we're beyond the halfway point now, let's take

the rest of it down. But again at some point somebody made a call, and in my mind it was a very bad call, to not have called Inspectional Services and at some point say this is our situation here.

ATTORNEY SEAN HOPE: And I would --

BRENDAN SULLIVAN: And so now, again, once that building comes down, I think you have lost the protection of the pre-existing non-conforming structure and use.

ATTORNEY SEAN HOPE: Well, I think that analysis is what Inspectional Services also agreed with which is why we're applying for the Variance today. But I would also say that with Historical Commission, Charlie Sullivan and members of the Commission also said that a

judgment call was made. There was also testimony from the Commission that many of the Commission members felt that they may have made the same call. What didn't happen was the site wasn't cleared clean and then they called Inspectional Services. And I wanted to point to photo No. 3, because they really -- the building caved in on itself. What they didn't do is let's say start in the front, start in the sides. I think that it --

BRENDAN SULLIVAN: Okay, I'm not convinced.

CONSTANTINE ALEXANDER: I think you're absolutely right.

BRENDAN SULLIVAN: I'm not convinced.

CONSTANTINE ALEXANDER: We're going to distinguish, though, this case

has -- despite how the advertisement was written, this case has got to be looked at as a building was demolished, it's gone, and now you're seeking permission to build a non-conforming structure.

BRENDAN SULLIVAN: To me it's a blank piece of paper.

CONSTANTINE ALEXANDER: Blank piece of paper. I think that's exactly the analysis. The question with Historical is are we going to be subject to a two-year moratorium before we can come and build this new non-conforming structure and Historical said no, no, you're okay because of reasons --

ATTORNEY SEAN HOPE: But I think there is a distinction. They didn't say that you're okay -- they actually said that you didn't meet the definition of

demolition because you didn't have the intent. And I think if we did have the intent, they could have still decided not to impose the moratorium maybe based on the hardship of the Petitioner.

CONSTANTINE ALEXANDER: But those are two separate issues, and that's what Brendan's getting at and I absolutely agree with him.

Your issue about whether you demolished the structure for purposes of Historical and the consequences of that is one issue. You've gotten by that issue because of lack of intent. But a completely separate issue is a Zoning issue, and you've got a blank piece of paper. For whatever reason that building was demolished; good faith, bad faith, whatever. Now you have to get

relief from us to build a new structure, new for our Zoning purposes, and it's a structure that will not be conforming by definition. And your argument it seems to me, is that if we're going to build the same structure in terms of footprint, in other words, it was going to be there before, the same argument for why we allowed you to do what you did before should apply here. At the end of the day the consequences are going to be no different if we grant you relief than it would have been if you had this unfortunate quasi-demolition occur. We had a case like this, slightly different facts, on Cushing Street just the last year where someone wanted to have a non -- wanted to tear down a non-conforming building on a

non-conforming lot because they had foundation problems, and we allowed them to build a new structure, but we were very specific that the new structure couldn't exceed the footprint of the old structure or be larger in size. And I take it based on what you said before, your representation to us now is same footprint, no bigger building than before? And it's all been -- the only reason you're here is because of the -- quasi-demolition that occurred, and I have to agree with Brendan, it was bad judgment, not on your part necessarily, you had a problem with your contractor who should have called you or first called Inspectional Services rather than willy-nilly taking the sledge hammer and taking down the building.

ATTORNEY SEAN HOPE: And I would only say, I actually highlighted a portion of the Affidavit from Mr. Barsky. But I do think that maybe taking a sledge hammer to the building is not what we represented to the Historical Commission --

CONSTANTINE ALEXANDER: Well, those are my words.

ATTORNEY SEAN HOPE: No, but I do understand your point. That if you're reckless with your demolition, you know, in terms of having a blank piece of paper. But I do think there are relating defects that weren't known at the time, that if they were known, that they could have been other remedies. One remedy could have been to amend the demolition plan to something that would have allowed the

walls to remain. I --

BRENDAN SULLIVAN: Should have secured the three walls to remain, and taken those precautions.

ATTORNEY SEAN HOPE: Agreed.

BRENDAN SULLIVAN: And if their instructions were to save those three walls because we are under a relief from the Zoning Board, those three walls have to stay, the back addition comes down and the roof comes off, then the onus is on the demolition person to do that. Because anything exceeding that puts the homeowner in a very precarious situation which is why they're here tonight.

ATTORNEY SEAN HOPE: I agree.

BRENDAN SULLIVAN: And reading the dimensional form, and again, I take great exception to existing, existing,

existing as if the house is still there. There is no existing. There is no existing at all.

ATTORNEY SEAN HOPE: Right.

BRENDAN SULLIVAN: As far as the existing, again we're starting with a blank piece of paper, and the question before me is whether or not on a blank lot we would approve that house.

CONSTANTINE ALEXANDER: Yes, my view --

BRENDAN SULLIVAN: That is a very, very high hurdle for me.

CONSTANTINE ALEXANDER: My view, for whatever it's worth, if there truly was a blank piece of paper, I think you have a very tough case. I think there are special circumstances here because of the fact that we as a Board blessed the

building, a structure of the kind that you want to build. You want to get there by addition and modification to an existing structure for reasons that we don't need to get into because that structure is not there anymore. It would seem to me we should go back to the reasoning that we did when we granted the Variance the first time. If we could live with it then, we should be able to --

BRENDAN SULLIVAN: But you were dealing with, you were dealing with an existing envelope then.

CONSTANTINE ALEXANDER: Yes, yes. As long as new envelope is no different than the existing envelope, and given this other special circumstances, speaking only for myself, I don't get to -- I'm sympathetic to what you want to

do.

ATTORNEY SEAN HOPE: And I'm not here trying to justify what the contractor did at all. And, you know, I think part of --

CONSTANTINE ALEXANDER: You can't.

ATTORNEY SEAN HOPE: Yes. Can't and wouldn't. And look, the owners are -- have been through a nightmare. I mean, in terms of the amount of time they've taken to get to this point and really facing the fact that they may not have a home to be able to live in. Right now they're renting in Medford. But I do think part of what we, why we submitted the same plans and even the dimensional form, and I understand to your point, it could all be zero because there is nothing

there, was to really focus our application to be exactly what the Board approved and not try to even change anything. I think remember at one point there was a pitched roof and dormers and there was some analysis and they got to use a flat roof and that's what was approved. But I think to the Chair's point, what we're really trying to do is we feel that this was supported by the neighbors. It was vetted by the Board. It was something that would be built but for a mistake by the contractors.

BRENDAN SULLIVAN: I mean, I would even go further to say that the application is defective because they really need to ask for more relief from the Ordinance than what they're asking for there now. But we can get into that

later.

CONSTANTINE ALEXANDER: Okay.

It's not readily apparent to me that's the case, but I want to hear you out. We'll get to that.

Keep going. Anything further?

ATTORNEY SEAN HOPE: Yes, I would just want to point out so the hardship and the previous case, which I think exists today, is the odd shape of the lot. The fact that you had a lot, and it was based on the non-conforming structures thereon. I think the fact is that to be able to build the structure that was approved, that structure was in a deteriorating condition, and it needed full renovation to bring it up to modern standards. I think they achieved that with that plan. And I actually think now

the front structure in the back of the building fell down. Also the pictures that are there they're showing that the structure (inaudible) as well, and deteriorating condition. And I really would say but for this, I guess grave mistake by this contractor, you know, the Petitioners really wouldn't be suffering this hardship. There's been a financial hardship. There's been obviously a personal hardship not being able to live in their house. And I do think that the plans as approved as well as the neighborhood support that you will hear from the neighbors really speak to the fact that the plans that we have there are really the best plans that really for this lot and for the Petitioner.

KEVIN CASEY McAVEY: Yes, I think

you bring up a really interesting point which I wanted you to expand upon if you will. That's the issue of time. When was this case first heard?

ATTORNEY SEAN HOPE: So there was multiple hearings, right?

KEVIN CASEY McAVEY: When was it approved?

HAROLD JENSEN: Amelia and I represented ourselves in October.

CONSTANTINE ALEXANDER: I'll tell you in a second. Hold on. It was approved -- well, the decision was filed on March 14, 2012.

KEVIN CASEY McAVEY: Okay, so well over a year. Well over a year ago. So can you please walk me through just the timeline of what happened and when you hired this contractor, whether the

contractor was clear about what you were, what you were aiming to do, and then when the building actually fell down or was knocked down and then -- I mean, give me those dates if you can or to the best of your recollection.

HAROLD JENSEN: Yeah, absolutely. How far back would you like me to start?

KEVIN CASEY McAVEY: As soon as you feel it's relevant to us.

HAROLD JENSEN: Okay. Amelia and I represented ourselves in -- last October 2011. We came to the Board with our plans. They asked us to change a few things. We originally came with --

KEVIN CASEY McAVEY: Okay. So it was approved in March?

HAROLD JENSEN: Right. We came

to a meeting. It was the very last weekend of January. And it was approved with the condition that we, we had an easement with the lumber yard, next-door lumber yard project. Getting that easement took us almost nine months. We had to hire a lawyer. So they misrepresented what they were going to give us. And through hiring a lawyer, we then finally got that easement nine months later. So our project was on hold for nine months while trying to get that easement. It was a condition of your guy's approval. Once we got that, we took our construction drawings out for bid by different contractors. It just so happens that the contractor that's working around us in the lumber yard, he very much wanted the project, and gave us

a very good a good bid. And then also said it would happen much more quicker than the other contractors, which was of utmost importance to us because we already wasted nine months.

So we hired him right around the last week of November with a turnkey, you know, turnkey contract that we would finish the house all the way through. It was very clear, very clear, because Amelia and I had come up with the plans and we hired an architect to do the construction, Jai Khalsa. And it very clearly spelled out the demolition plan. We spoke to them about the demolition plan. We talked about the challenges. They walked through the house -- and he mentions I think in his Affidavit, that he walked through the house prior to, and had a plan

for shoring up the structure and had a demolition plan for how he would do it. Peter Lee was very sensitive to the fact that it took him -- Peter Lee is the contractor, and David Barsky is kind of his supervisor. Peter is very sensitive to the fact that it took him six months to demo the building next-door to us for his project. And so, we talked multiple times on, you know, how that demo would occur and those buildings, those walls had to remain. And so, it took him, it took David -- he was in charge of the project. It took him until I think the end of April. The demo and --

AMELIA WESTMARK: End of March.

HAROLD JENSEN: End of March.

End of -- 20th of March I think. It was on a Wednesday. And that's when David,

you know, made the call that the building was unstable and finished his demolition. He brought the house in on itself and left it at that point and said that he would take care of the rest of it.

KEVIN CASEY McAVEY: So you got the call in March from them, and how long was it when until the demolition was done, was it done?

HAROLD JENSEN: So it was one day. It was one day. I showed up. I had just flown in on a five a.m. flight. I showed up at noon and the back half was gone. I talked to the demolition crew and it was not -- I mean, I talked at them about their plan to demolish the building and they did, nowhere near did they say anything about taking down the whole building. They talked about how to take

the roof off and worked their way through the house. And we already had taken a lot of the house, a lot of the insides, the guts of the house. And so at that point I had some work to do so, I left. And I came back halfway through, the house, the front part of the house being torn down at which point I stopped construction. Talked to David. And I asked him, this isn't in the plans. Basically what are you doing? And called Peter. Peter Lee. And so stopped demolition and, you know, kind of stopped it at that point when he explained to us why he was making the call. And I mean --

KEVIN CASEY McAVEY: He made the call without your input?

HAROLD JENSEN: Right. He's the contractor. So I wasn't around. I

mean, I'm not -- we were involved in the plans, but we hired him to do the project. And so, it was -- he consulted Peter and they then brought the house down and taken care of it since.

DOUGLAS MYERS: At what point in this chronology was the Inspectional Services Department first contacted?

HAROLD JENSEN: I can't -- I don't know that. I don't know that.

ATTORNEY SEAN HOPE: Part of what was mentioned at the Historical meeting was that the next day -- so, the structure was essentially caved in on itself because of the demolition. They didn't clear the site. It was just down and it was no longer wavering and they half demolished the site. Michael Grover called Mr. Barsky and they met out at the

site, and he said, you know, what have you done? You know, you exceeded the demolition. And so then he got permission from Michael Grover to then clear the site, because at that point --

CONSTANTINE ALEXANDER: How did Michael Grover know to call Michael Barsky?

ATTORNEY SEAN HOPE: I'm not sure exactly how it was. But they stopped --

DOUGLAS MYERS: We still don't have an answer to the question at what point was the Inspectional Services first called?

ATTORNEY SEAN HOPE: So I know they were -- they called them the next day. Sometime during the day of demolition they must have been called, because the next day David and Michael

went out to the site and so he didn't -- so I don't think Michael knew the extent of the demolition. He was obviously called. Maybe it was a neighbor or an abutter. And so when they went out to the site the next day, they found out they made this grave mistake, gave him his rationale. I think a couple days after that Inspectional Services gave him the okay to clear the site to keep it from this hazardous condition.

CONSTANTINE ALEXANDER: Further questions?

KEVIN CASEY McAVEY: No.

CONSTANTINE ALEXANDER: You want anything further? You'll have a chance to wrap up. I'm going to go to public testimony if it's okay with you.

ATTORNEY SEAN HOPE: I would just

say, you know, that outside of the hardship dealing with the shape of the lot, I really do think that, you know, this is a case where this is a personal hardship to the owners of the property that is very significant. And, you know, I -- there should be a mechanism to hold the contractor responsible and there is outside of this process.

CONSTANTINE ALEXANDER: There certainly is.

ATTORNEY SEAN HOPE: But that is actually not going to --

CONSTANTINE ALEXANDER: He didn't improve the acoustics.

DOUGLAS MYERS: Speak up.

ATTORNEY SEAN HOPE: But I do think the proposal that you see before you to build this is not -- definitely rises

to the level of hardship. And I think that the Petitioners and the plan you have presented, even though it is a blend, I still think you do have a footprint. I think you also do have what was approved by the Board and by the neighbors in terms of what should be on that site. And I do think that there's some relevance to the Board approving it for some of the same reasons that you have today. But to Mr. Sullivan, your point, that building is gone. And so, I think that to -- as a deterrent, people often destroy a building to build something back new.

BRENDAN SULLIVAN: Can we agree, though, that you have lost protection for the non-conforming?

ATTORNEY SEAN HOPE: I believe we have lost at least the approval of the

application that we couldn't go ahead because we can't build in conformance with those plans because those walls are gone.

BRENDAN SULLIVAN: Well, I would take it a step further and say that you have lost the protection of a legal non-conforming status in your pleadings under hardship. That's one of your claims is that you're saying that it would be a hardship without the protection of the pre-existing non-conforming status. The Petitioner would be precluded from reconstructing the proposed building as through Case No. 10160. My contention is that you have forfeited that protection.

ATTORNEY SEAN HOPE: I definitely agree that we put it in jeopardy. I definitely know we can't

build in conformance with those plans because we no longer have those walls to be able to do that. Basically we have the footprint in place and maybe I'm parsing words.

DOUGLAS MYERS: I have one other question on a different topic. You mentioned in the first part of your presentation that not in one area, this has to do with the side setback, that you had increased the setback. Did you say that?

ATTORNEY SEAN HOPE: Yes, so the two-story addition actually encroached on the neighbor's lot. So the plans that the Board approved actually --

DOUGLAS MYERS: On which side is that, left side from the street or right side?

ATTORNEY SEAN HOPE: It's on the right side.

DOUGLAS MYERS: On the right-hand side.

ATTORNEY SEAN HOPE: If you're facing the building, on the right side.

HAROLD JENSEN: It very clearly shows that it might answer your question, one of the drawings I saw you looking at just a moment --

CONSTANTINE ALEXANDER: The old case or the new case?

DOUGLAS MYERS: What is going to be your greatest intrusion into the setback on the right-hand side? I say that because the plan at one -- the plan -- that site plan seems to show that we're going to be less than four feet back from the -- on the right-hand side, three

feet, eleven, eight, three feet, eleven inches. Am I mistaken in that understanding?

ATTORNEY SEAN HOPE: In terms of the proposed building on the right-hand side?

DOUGLAS MYERS: Yes.

ATTORNEY SEAN HOPE: So I know the side setback is seven feet, seven-and-a-half feet. And we're not going to comply with that. I think there's a function of trying to keep similar, a similar size addition that was pre-existing but shifting it over.

DOUGLAS MYERS: What will be your greatest intrusion into the setback? How close will you be to the line at the closest point on the right-hand side?

HAROLD JENSEN: With what we're

proposing?

DOUGLAS MYERS: Yes. In terms of the structure you're proposing to build.

HAROLD JENSEN: In the old one.

BRENDAN SULLIVAN: It should be on the dimensional form.

DOUGLAS MYERS: That's my question.

ATTORNEY SEAN HOPE: It's five feet.

HAROLD JENSEN: Is it there?

CONSTANTINE ALEXANDER: Here's the dimensional form.

HAROLD JENSEN: Where was it?

ATTORNEY SEAN HOPE: Are you comparing it to the site plan?

DOUGLAS MYERS: I'm comparing it to the plan of what you propose to build.

HAROLD JENSEN: I think this is it. This might be what you're looking for, before and after setbacks.

CONSTANTINE ALEXANDER: Yes.

HAROLD JENSEN: So it's a before on the left, I believe, and the right's an after. And as you can see, you can see how we encroached over the property line.

JANET GREEN: You found out you were over the property line, right?

HAROLD JENSEN: We were over the property line, right.

CONSTANTINE ALEXANDER: Keep it in the file.

DOUGLAS MYERS: I would just appreciate your comment on this document. If that, if that figure of three feet, eleven inches on the right-hand side shown on the right line relates to any

part of the structure that's going to be that distance from the right side line.

HAROLD JENSEN: The three feet, eleven inches on the right-hand side. And your question is?

DOUGLAS MYERS: Is any part of the structure going to be located at that point?

HAROLD JENSEN: Yes. So, that's the side setback on that new rear addition. So that is, that is the setback of that rear part of that, of the new building. So that building was -- there were two parts to the first approval. The rear part was deemed completely -- well, first it was over that side and then it was, there was nothing standing. There wasn't even a foundation. The foundation was laid

brick, it was falling apart. And so we were granted to completely demolish that and rebuild that. And so what you see here is the new structure that they approved. That was approved a year ago. That was the setback that was approved then.

DOUGLAS MYERS: Because the directional information sheet says -- it led me to believe that there's going to be a setback of at least four feet, five inches.

HAROLD JENSEN: Four feet, five inches on the --

DOUGLAS MYERS: At the closest point. And yet it seems that we -- again, correct me if I'm wrong. But it just seems to me that you're going to have a structure there that's five or six inches

closer.

ATTORNEY SEAN HOPE: Closer than what was existing?

DOUGLAS MYERS: No, closer than is shown in the directional informational sheet.

HAROLD JENSEN: There's a discrepancy between the dimensional form and this drawing.

DOUGLAS MYERS: Yes.

CONSTANTINE ALEXANDER: That's essentially right. On the right side you're going to be four feet, five inches from the lot line. And what Doug is pointing out is that the plans show a less than four feet, five inches.

HAROLD JENSEN: That was the installation, right. So, that's right. That was, um, when I --

DOUGLAS MYERS: I'm not saying it's fatal. I just want to make sure my understanding is correct.

HAROLD JENSEN: Absolutely.
The reason that --

DOUGLAS MYERS: It's not unimportant. We really expect the directional informational sheet to comply with the structure that's going to be built. That's important to us in general. But....

HAROLD JENSEN: These are drawings that I came up with. And the difference between those two dimensions is six inches.

DOUGLAS MYERS: I understand.

HAROLD JENSEN: And that six inches is what I thought that we were allowed to use because it would be just

insulation. There's the section of the code that says that the outer six inches of a new building doesn't count for your side setbacks. And so when I worked with Sean O'Grady early on about, you know, because one of my main goals on this was to put as much insulation on this, as much as possible to try to make it approach a zero energy house, that was a discrepancy between those two. So that was the issue.

DOUGLAS MYERS: Thank you.

ATTORNEY SEAN HOPE: I would just like to add one last piece. So, I would just like to remind the Board of 45 Foster Street. This was a case where the Board granted a Variance. It was very similar to this case where there was a demolition. And the Board allowed, I believe it was,

there was a Variance granted to add an additional 900 square feet back to the structure. I'm not sure --

CONSTANTINE ALEXANDER: This is the old funeral home?

ATTORNEY SEAN HOPE: John Greenup.

CONSTANTINE ALEXANDER: Yes. A rather controversial case.

ATTORNEY SEAN HOPE: Right. And it went on for litigation. There is some precedence for when the demolition exceeds essentially the exceeded scope for the Board to grant based on the specific facts and the hardship involved. Obviously the details of what happened, the details of the history come into play, but I would just like to remind the Board that there has been a case and there is

some precedent for the Board based on the specific findings to be able to allow for the rebuilding even once you may have lost what was protected by an existing structure.

CONSTANTINE ALEXANDER: My recollection, and it may be faulty, the issue in the case was there demolition? And there was a debate between the neighbors and the Petitioner and we came out -- I don't know, we came out to allow the project to go forward. But I think the issue was a little bit different there regarding demolition. Because there's no definition of demolition in our Zoning Ordinance. And I think your facts here are much more attractive frankly, than the -- than Foster Street. There they were trying to take advantage of what they

could take advantage to build what they wanted to build. Here the case you're making is that hey, we acted in good faith, something --

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE

ALEXANDER: -- something bad happened and we just want to do what -- you told us we could do before, but we need to get relief to do it. I think, too, in a nutshell that's your case.

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Which I think puts it in a different light as you can tell my views on this. We'll get to that later. I didn't mean to interrupt you.

ATTORNEY SEAN HOPE: That's the last point.

CONSTANTINE ALEXANDER: Let me open to public testimony. Anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that there appears to be no one -- oh, I always miss people. I'm sorry.

LISA GOULD: So my name is Lisa Gould. And I've been following this. I live at 102 Harvey Street which is at the corner of Montgomery and Harvey. And can I ask the question? Are you all familiar with Harvey Street? I mean do you know enough?

CONSTANTINE ALEXANDER: I've seen the property. I've driven by. I'm sure most of the other members have.

LISA GOULD: You have. Since it

was demolished?

CONSTANTINE ALEXANDER: Yes.

LISA GOULD: So we're here because this is really a serious situation for the neighbors, you know? They lost a house, you know? And this was not something that you could have possibly have imagined. Okay? So I mean I would like to support that something be built. I'm so glad that the Historical Commission did not put a two-year moratorium on that. That would have been really disastrous for all concerned. I mean, that really would have been bad. But fast forward because it's getting late. I haven't had dinner. You don't need to put that in there.

So, I -- but I want to show you some things about what I consider to be really

important. This is -- I was talking about this neighbor up in the neighborhood. I said I need a high level view of this project. It's a Google map which is about as high level as you can get.

Here we have the project before there was anything. There were trees there. There are all kinds of -- that house is an 1873 structure, 140 years old, that was built, surrounded by all kinds of vegetation there. There's, you know, the railroad was there. There was, down the street there were the little worker cottages which were -- that housed, you know, French-Canadians and all that stuff. And so -- and then across the street in 1922 my house was built, which has a flat roof. There are two others in

the neighborhood that have flat roofs. So -- and so we are now faced with -- fast forward. We've got new developments here, okay? They all have peaks. And the reason they all have peaks is that we have this house right in the center of that which is no longer, it's that cute little thing right there, okay? That, I'm sure that's one of the things that you guys fell in love with, you know, the fact that it was really, you know, sweet. And so we actually asked them, the lumber yard project, Jai, to build in relation to those other houses similar to the cornerstone project that was all the way at the end of the street. So fast forward, there's a few other pictures, and I apologize for this. I did this on the fly here. But that's the

streetscape. Peak, peaks, all the way down, you know. And they're all just this lovely little thing to match that which is gone. And, you know, I heard somebody mention here the best plans for the neighborhood. You know, and we want obviously Amelia and TJ to have the best house that they can have. And within the GFR -- GFA, and, you know, the footprint if at all possible. You know, we support them being here and being part of. And so, I don't know what you can do, but I really hope you'll make a consideration for building something that looks in conformity with the architectural, the details, the articulation that, you know, that you could put in here.

CONSTANTINE ALEXANDER: Have you seen the plans by the way?

LISA GOULD: I have. And I actually don't know what happened, but I didn't get -- I never saw that until very recently. So, I don't know.

CONSTANTINE ALEXANDER: What's your reaction to what you see on here?

LISA GOULD: It's disappointing frankly.

CONSTANTINE ALEXANDER: Are you opposed to relief because of it? How strong is your disappointment?

LISA GOULD: No, no, I'm not opposed to relief on that. Not in the least. I'm very glad you asked that question. I'm here to say that I support something being there.

CONSTANTINE ALEXANDER: Okay.

LISA GOULD: I'll be quiet now. I just want to, you know, I just want to

say that there could be something that could be so much better than that. And that meets their needs which, you know -- and I understand, too. I understand you're put in a hard place right now and I hope I have not jeopardized anything. I just want something that, you know, is best for all concerned. That's it. Thank you.

CONSTANTINE ALEXANDER: Thank you very much.

There was another hand up I know. Sir.

RICHARD CLARY: I'm Richard Clary. I'm Acting Chair of the North Cambridge Stabilization Committee. When this project, the lumber yard project first bloomed in 2011, the entire rancor of the neighborhood was focussed

on the barracks-like Fort Benning proposal, and the neighborhood rose up against the Fawcett proposal adjacent. And Mr. Jai and his colleagues did reduce their proposal to basically conform to the vision petition which was strictly more importantly concerned with Fawcett, but also with this one. It was never any -- there was always support in the neighborhood for the applicants who found themselves surrounded by this giant project, and the community's attention was not drawn to this house because it was agreed that, as Ms. Gould just said, that the house was going to be reproduced in its essential appearance with a peaked roof. As Ms. Gould said, there are hardly any flat roofs on this street except for the couple that are

immediately across the street. There are probably 50 peaked roofs on the north side which are the themselves in some degree the product of a lot of work and all that stuff. And even the -- Mr. Jai's proposal has canted roofs. And so a few weeks ago we saw this flat roof, we were quite surprised. No one attended your hearing back in February of 2012 because we assumed that what the community had approved would be approved. And we understand that it was a suggestion of a flat roof from this Board would be better. A flat roof's quite an unpleasant a surprise to us. But we are convinced that the applicants were innocent victims of the skullduggery. It's the skullduggery that we are concerned with.

And last week at the Historic Commission Ms. Ouellette of the Historic Commission said why is it that we have to punish the innocent in order to render the correct result in this case.

Our suggestion is that you could approve this proposal and still punish the guilty under the new amendment to the Zoning Code that allows a civil action be brought against the wrongdoer.

CONSTANTINE ALEXANDER: We don't get involved in that. The -- a civil action must be brought by these folks over here.

RICHARD CLARY: I understand that. So whoever we should talk to about that. I imagine that's Ranjit. This has happened so many times in the past; Churchill Street, Blanchard Street, all

these other streets. Montgomery, that you're going to pick up in a short time. It's happened four or five times in the past, and we now have a tool, I think, to deal with it, with this civil find and we hope that that will be applied in the future.

CONSTANTINE ALEXANDER: Thank you.

RICHARD CLARY: And I think as to this project --

CONSTANTINE ALEXANDER: Support it?

RICHARD CLARY: -- we support with the understanding that Mr. Hope doesn't want anything to hold this up and we don't want anything to hold this up either, but that the Board might consider not imposing that flat roof or not

opposing any tweaks to that roof that had been talked about favorably by everyone. Some articulation of the roofs will look like all the other houses on the north side of Harvey Street.

CONSTANTINE ALEXANDER: If, if we're going to approve this petition tonight, it will be subject to these plans. So if you want --

RICHARD CLARY: That's what Mr. Hope tells us.

CONSTANTINE ALEXANDER: -- if you want the plans and the Petitioners are obviously amenable.

RICHARD CLARY: Every detail of the plan?

CONSTANTINE ALEXANDER: Yes.

RICHARD CLARY: Wooden stairs?

CONSTANTINE ALEXANDER: No, not

every detail, but basically it's a dimensional thing. But the roof, we don't want the roof changed.

RICHARD CLARY: We're not talking about -- oh, okay. Mr. Hope did tell us that that's a more essential problem.

CONSTANTINE ALEXANDER: The Petitioners want to continue this case and come back with new plans that show a different roof, that's their prerogative. But if they don't, we'll go forward these plans and either we'll vote for it or against it. But I would suggest that I don't think that our vote will turn on the nature of the roof. It will turn on the issues that Brendan has identified and I've identified as well. Okay?

RICHARD CLARY: Well, one

interesting historical note on the shape of this lot is that the lot is run on a 1703 line from the common, whereas the street is not perpendicular. So their lot is not perpendicular to the street which is laid out it's 100 years later. That's one hardship that caused that encroachment.

CONSTANTINE ALEXANDER: Thank you. Thank you, sir.

JAI SINGH KHALSA: I'm Jai Singh Khalsa. Khalsa Design. I've got a couple of different turbans on tonight --

CONSTANTINE ALEXANDER: These are your plans?

JAI SINGH KHALSA: I did those drawings, but my name's been invoked in a couple different manners. So I would like to say on behalf of Mr. Lee who owns

the property that abuts this on three sides, that he's in support of this petition, No. 1.

No. 2, is as the architect, I'll put a different turban on now, a different color. For the architects were TJ and Amelia, on these plans, the Board did specifically come back and request that we did something that had a more appropriate aesthetic. This was the plan that we did come up with with that aesthetic. Now, I do want to say that there's more than one or two buildings in the neighborhood with flat roofs. One of the buildings on Mr. Lee's site does have a flat roof. And additionally, there's a direct abutter which is a brick building which is a mixed use building which also has a flat roof on it which is a very large

building directly abutting it. So there are a quite a few examples of flat roofs, more than two available in the neighborhood to be seen. So the context of this is not out of character with the proposal.

And, again, on Mr. Lee's behalf I'd like to say that he's the most directly affected abutter and he supports this.

CONSTANTINE ALEXANDER: Thank you, sir.

Is there anyone else wishing to be heard? Mr. Brandon. Brief, please. Be brief, please.

MICHAEL BRANDON: Okay. Michael Brandon, 27 Seven Pines Avenue. My concern, my big concern is the demolition not in accordance with the demo permit. And this is not an isolated

issue. You have another very similar case coming up tonight. In North Cambridge we saw this happen on 56 Church Hill Ave. I don't know if that ultimately came to you. Recently in the city, you mentioned Cushing Street. There's also 8 Blanchard Road where sometimes going before the Historical Commission, sometimes not, demolition starts, and somehow along the way inadvertently, accidentally, without intention the whole building comes down. What the Ordinance provides for demolition delay ordinance is actually an automatic two-year moratorium. And that, the Historical Commission does not actually have the power to lift that. Although they've done it in the past, they now realized that they can recommend to

it Ranjit, you know, to not impose it. I also sympathize with these home owners who I think, you know, they have, they have a hardship. But the problem that I see is that, and the Historical Commission, also for the sake of the other neighbors rather than having a bigger lot until it's cleared up with a fence, it's an attractive nuisance, you know, that punishment or disincentive for just going in and knocking it down, often that seems to be the best way to redevelop the site rather than build around (Inaudible). Just so you understand the section that Mr. Clary referred to a new section of the --

CONSTANTINE ALEXANDER: I don't want to get into that, Mr. Brandon. That's a civil -- that's not our job

tonight. We're not going to get involved in that. If there's relief in the Zoning Code or General Laws by a land owner against someone who does something improper with regard to demolition, that's not our, that's outside of the --

MICHAEL BRANDON: If I could just clarify the section is 9.16. It's not so -- I mean, they -- I would think have a civil suit against somebody here.

CONSTANTINE ALEXANDER: Right.

MICHAEL BRANDON: But this is for Ranjit, for the Inspectional Services, and you know, and the Board could be appealed to, to enforce non-criminally violations of the Zoning Ordinance by -- rather than having to go to court and having continued this thing, he can have a hearing and can impose fines. And

I would suggest that this may be a case --

CONSTANTINE ALEXANDER: But that's not our case tonight. Thank you, Mr. Brandon. Thank you. I think we're all set. Mr. Brandon, thank you very much.

MICHAEL BRANDON: Okay, I'll cut it short. Thank you.

CONSTANTINE ALEXANDER: Ma'am.

LINDA McJANNETT: Thank you very much. My name is Linda McJannett, M-c-J-a-n-n-e-t-t. And I'm an abutter with my Michael O'Shea at 95-93 Harvey Street. I want to correct -- an impression was taken when we were talking with Jai about the bigger project, that somehow the existing house was key to the neighbor's feelings. That is certainly not the case for me and it's not my memory

of those discussions. We objected to the density of the project and to the fact of trash removal and traffic and fire and all kinds of things, and we were happy that the design was fine. It was changed in several ways. It became a smaller project, and that's the one we supported in the neighborhood as far as I can recall. So I certainly would not support the view that somehow the design of your house was the key to approving the design of this project. So I wanted to make that point.

Thank you very much.

CONSTANTINE ALEXANDER: Thank you.

Is there anyone else wishes to be heard.

MICHAEL O'SHEA: My name is

Michael O'Shea, O-'-S-h-e-a and 95-93
Harvey Street. We have a flat roof on our
building. It's a large flat roof.

Mr. Clary told us it looked like a chicken
coop on top of an Iraqi prison, but we
built it nonetheless and we think it looks
pretty well. We are sure that this
circumstance was not done on purpose.

There's no gain. God knows when I wanted
to make a change with our building and it
was just an awful time to do that -- I
never should have brought those -- made
any changes. So I'm sure this is not, you
know, for that purpose. I certainly
recognize the idea that once there's been
a change here now it's a new circumstance
entirely. I get that entirely. But I
think that since the proposal is just to
do what was already approved, that I think

that it does -- there is a hardship here and that's what I think. And I, I'm in favor of this proposal going forward and relief being granted.

CONSTANTINE ALEXANDER: Thank you, Mr. O'Shea.

MICHAEL O'SHEA: You're welcome.

RICHARD CLARY: May I respond to having been --

CONSTANTINE ALEXANDER: Well, now, please, let's not have a debate about the flat roof and the like. That's not our issue tonight anyway. Anyway, sir.

NATHAN RAINES: Hi. My name is Nathan Raines, R-a-i-n-e-s and I own the house on -- not too far from their house, 137 Harvey Street. I guess since we're talking about roofs, we have a mansard roof so you want to call it flat, pointed

or whatever, it's a little bit of everything. I definitely support their project. I think -- I feel bad. I heard what happened. They were devastated. And I just couldn't imagine that this could happen to somebody. But I definitely support them with their project and wish them the best.

CONSTANTINE ALEXANDER: Is there anyone else wishing to be heard?

RICARD CLARY: May I briefly respond?

CONSTANTINE ALEXANDER: To what?

RICHARD CLARY: To the reference by Mr. O'Shea to me.

CONSTANTINE ALEXANDER: No. You're out of order, sir. And I don't --

RICHARD CLARY: At the time I made a statement --

CONSTANTINE ALEXANDER: Please sit down.

RICHARD CLARY: -- if I made a statement --

CONSTANTINE ALEXANDER: Please sit down.

RICHARD CLARY: -- the Iraqi war was a glimpse in Don -- Dick Cheney's eyes.

CONSTANTINE ALEXANDER: Do you want me to call the police?

RICHARD CLARY: It was long before the Iraqi war. I never said anything like that.

CONSTANTINE ALEXANDER: Thank you, Mr. Clary.

Is there anyone else wishing to be heard? Going once, going twice, and not you.

(No Response.)

CONSTANTINE ALEXANDER: No more public comments. We do have some letters, written communications in our file which I'm going to put in the public record. I think the first I wanted to read is the Affidavit that was submitted tonight from David B. Barsky, B-a-r-s-k-y, the acting construction supervisor on behalf of Young Construction Company. It's a little bit long, but I think it's very important to the record.

(Reading) Due to the fact that I am unable to participate in the hearing on the matter before the Board regarding the demolition of the per existing structure located at 115 Harvey Street, due to an urgent family matter, I have prepared the

following statement:

I am an architect by profession with over 20 years' experience in various aspects of design and construction, including hands-on experience in the renovation and restoration of historical buildings. Earlier in my career in Montreal, Canada, and later here in Boston and particularly in Charlestown Navy Yard (the Basilica) and on Beacon Hill. Prior to embarking upon the intended scope of demolition of the building located as per above address, I recommended to the general contractor that we have the structure inspected by a structural engineer with specific experience in the field of older buildings. This was done at the expense of the general contractor. Whereas is

what -- I think it's supposed be
it -- whereas it was immediately
recognized that the building was in
considerable disrepair, it was
determined that a strategy to mitigate
the damage in inadequate support,
particularly at the basement level, could
be devised. He makes reference to a
photo sheet which is not attached.

(Reading) this would include
underpinning the existing support
structure and replacing it with new
beams, columns, and footings. It was
agreed that this would be done during the
construction phase of the project. The
overall appearance of the building prior
to demolition, in particularly the fact
that there was no immediate evidence that
the build was unsound, another reference

to a photo sheet that's not attached.

ATTORNEY SEAN HOPE: These are the photos.

CONSTANTINE ALEXANDER: Oh, okay. You submitted them so I don't have to go back to them.

(Reading) No sagging walls, roof line appeared relatively true. This rendered us initially confident that no special precautions would be required. Following this we then proceeded to hire a professional to execute the demolition in accordance with the prescribed scope of work. The demolition process began with the removal of the rear portion of the building. This was completed without incident. We then proceeded to remove the roof of the main structure. During this process the existing wood

structure became unstable to the point where concerns for the safety of the crew, as well as public safety, superseded considerations regarding the original intended scope of the demolition. This occurred well before we were able to begin work on the lower portion of the building. As the building wavered on the foundation, a decision was made to execute a controlled collapse of the building then and there rather than risk some more unpredictable outcome. Once the building had been raised -- it's spelled raised -- I think he means raised. Once the building had been raised, we were able to determine why the building was so unstable. The first unknown fact was that the building was not attached to its foundation. There were no anchors

fastening the rim joists to the foundation wall. The perimeter wall studs were also not fastened back into the face plate of the perimeter wall.

Something else we discovered during the course of the Historical Commission review of May 8, 2013, was that the building had actually been moved from its original location, which in some part explains why the building was not soundly attached to the foundation. It would appear that during this process it was simply laid on the new foundation without any anchors. We never suspected this condition at the outset. We also found that all four corner posts, together with a lateral bracing, typical of this type of balloon frame construction were completely rotted away. We also

discovered that the damage -- that the structure had fallen victim to extensive termite damage. This was not discovered when the building was inspected by the professional pest control expert as it required part of the demolition permitting process. In the final analysis we discovered, after the fact, that due to the highly compromised condition of a concealed structural elements of the building, the original demolition plan was not feasible. Given the fact that the structure was hidden behind existing interior wallboard and exterior cedar shingles, the extent of the damage to the structure was not evident to us prior to commencement of the demolition process.

We have also a number of letters from

a number of abutters. It's the same letter. I will read the letter and then I will identify who has signed it because there are multiple copies. It's addressed to this Board dated April 20, 2013: (Reading) I support Amelia Westmark's most recent 4/22/2013 appeal for 115 Harvey Street. I understand that the original approved plan, March 2012, was to leave the stud walls and joists on the first and second floors on the front half of the house. I'm also aware that during the demolition, the general contractor's site supervisor made the decision to remove the stud walls and second floor joists leaving only the main foundation and first floor joists thus violating the approved demolition plan. Given this information, I still support

that the house be built to match the dimensions approved on the original BZA proposal last year and that she be allowed to rebuild the house regardless of how much of the original structure remains. Thank you.

And this letter that I just read has been signed by Julie Mantia, M-a-n-t-i-a at 116 Harvey Street; Nora and Noel Jackson who reside apparently at 106 Harvey Street; Michael O'Shea who has spoken tonight and who resides at 95 Harvey Street; John Grant and Nathan Raines, R-a-i-n-e-s who reside at 137 Harvey Street who spoke earlier; and Anthony Mantia, M-a-n-t-i-a at 114 Harvey Street. We also have an e-mail from T.J. Jensen.

HAROLD JENSEN: It was a forward.

It was from the -- if you read below, it's Jones.

CONSTANTINE ALEXANDER: Oh, I see. Thank you. Thank you. No need to read that.

HAROLD JENSEN: They had some specific writing in that e-mail.

CONSTANTINE ALEXANDER: But I don't have an address for Mr. Jensen.

HAROLD JENSEN: I'm Mr. Jensen. I forwarded their e-mail --

CONSTANTINE ALEXANDER: Oh, I'm sorry.

HAROLD JENSEN: -- and I printed it. They signed the letter and they also supplemented it with their e-mail.

CONSTANTINE ALEXANDER: Okay. As they say, we fully support your construction plans addressed to you, and

have no concerns whatsoever about the change in the demolition project. In fact, we are really pleased with the new developments in our neighborhood. Other neighbors may disagree. Attached you will find a signed copy of the Zoning Board letter. We wish you best of luck.

And then there is the communication from the Cambridge Historical Commission that's been much discussed tonight where the Historical decided that at a hearing on May 2, 2013, the Commission voted to find that the demolition ordinance had not been violated due to the lack of evidence of intent to complete the demolition.

And there's an attached memorandum which is short so I'll briefly read the important parts of it. (Reading) It is

the Commission's recommendation to -- this is the letter, by the way, this is a memo is addressed to the Ranjit Singanayagam -- it is the Commission's recommendation that you not impose a two-year moratorium on demolition and allow the construction to presume for a building that conforms to the design shown in the plans dated June 15, 2012, on file with the Building Permit. And then they instruct Ranjit to forward this communication to us, the Board of Zoning Appeal.

And that appears to be all the written communications in the file. We've heard certainly oral communications. I'm going to close public testimony.

Any further comment, Mr. Hope?

ATTORNEY SEAN HOPE: I would only like to just recommend to the Board that you really view the site, not necessarily as a blank slate, but you really view it in the context of the existing structure primarily because of the hardship to the Petitioners. I really think that this is a non-conforming lot, and so it's not as if that you could build something substantially close to this if the Board decided to not grant relief. I think the Board has the discretion and the authority to be able to look at the hardship, look at these specific circumstances and be able to grant the relief that's requested. I think it is necessary that -- we submitted plans that were identical. I think we, there is a deterrence for people to whether in good

faith or not to be able to make this type of mistake and somehow advantage themselves from it. I think we made sure that we hadn't done that, and that's why even a different structure or not we actually kept the same because that was legally what was approved and advertised. So I really think in equity -- and I'd also like to say to Mr. Sullivan's point, a little enforcement of the Ordinance would probably preclude them from being able to build this, you know, whether it's Chapter 40-A or the fact that they lost their protection. So, I think this does speak to the element of a hardship, because if you literally enforce the Ordinance, they wouldn't be able to go back and build it. So I think we need to know the elements of the hardship. I

think the personal hardship to the Petitioners is significant and I think the Board has the authority and hopefully the discretion to be able to grant the requested relief.

KEVIN CASEY McAVEY: I wanted to say a few things. What Mr. Sullivan brought up before, and actually the one thing you said before, really troubles me about this and this goes to the idea of precedent. You brought up the idea of the funeral home across the street. And I'm thinking a year from now when someone comes in and asks for or -- even a month from now, comes in and asks for a demolition to the latter part of their house, the rear part of their house, and then they get it. And then the contractor just demolishes the whole

thing, because at that point they didn't find it structurally sound and then they use this case as a precedent for building a whole new structure. So that's where I'm coming from. And I completely understand your hardship. I'm in awe of you for being able to purchase this house, and I would love for you to be able to build a three-story house, but that's kind of the context that I'm looking at. But I'm thinking about, like, what you do, what you could do to qualify this as a really specific circumstance -- one other thing is troubling me that comes from some of the cases that were heard last year. One of the continuing cases in particular. Going to the actual -- I'm going to quote here from the actual transcript. It's page 51 of one of the

sessions, and it talks about the house and it's Harold Jensen. And you mention in here there's a three main parts to the remodel. The first is the rear addition, the foundation is quite poor. The whole rear addition is actually in bad condition, rotted, rotted. You know, beams and framing, and the foundation itself doesn't have a footing. Much of the structure is fistulate in the concrete but it's rotting. Some joists are being replaced, so that in itself is in bad condition.

And then I want to refer to the, this actual Affidavit that Mr. Barsky submitted and it -- he says, the overall appearance of the building prior to the demolition, in particular to the fact that there was no immediate evidence that

the building was unsound. No sagging walls, roof line appeared relative true. This rendered us initially confident that no initial precautions were required.

And then I want to go to page 78 of the same transcript where Tad, our former colleague on the Board, actually brings up the fact that -- and this is I quote: The only question is whether at that point, and he's referring to the partial demolition of the house, you've just done a full demo of the lot. You're now back to a blank slate and you're on a 3,200 square foot lot. I mean at a certain point you've gone into full demo and there's no turning back. And he goes on later on on that page 79, at the bottom, if you were going to, if you were to go too much into demolition, you would end

up with a demolished house. At that point it would essentially be a lot with 3,200 square feet. And that's actually where we come today. I don't believe that there were no signs that this building -- that there were not structural issues with this building. And there were, there were warning signs. People brought up facts that I think really should have been considered. Walls should have been secured. And I have a really hard time thinking about the next case that comes up here that says our contractor started demolition, he found that the building was unstable and unsafe and just fulfilled demolition. In which case why are we ever granting partial demolitions going forward? This is very troublesome to me. I don't know how to

get around it because I do know this is a tremendous financial hard -- I can only imagine it's a hardship to you. And this is not -- I want to believe that this is not on you and on your decision making, but alas we are faced with the case before us and it's, it's something that I'm not sure how to directly address.

BRENDAN SULLIVAN: And you've got Fawcett Street that was mentioned to us earlier, and now Harvey Street also going forward to add to your point --

KEVIN CASEY McAVEY: Yes.

BRENDAN SULLIVAN: -- going to be raised to us in the future you have.

AMELIA WESTMARK: Can I make a comment or no?

KEVIN CASEY McAVEY: Go ahead.

HAROLD JENSEN: The comment you

quoted myself, I was speaking specifically to the rear foundation. Like I said, there were three parts to it. Remember I'm not a contractor, but the rear part was the part that was completely deteriorating and that's the part that we had approval to completely demo. So the words that you quoted me on were not in regards to the front part of the house. They were completely separate.

KEVIN CASEY McAVEY: So the front part of the house, the foundation, wasn't examined at all in all the plans?

HAROLD JENSEN: That's what was to remain. And even he said he went through it and had a structural plan. The issues that he brought up of why it was unsound were that he couldn't see them. The rot was on the outside of the

walls. It wasn't on the inside. And if you look at all the photos all the termite damage was on the outside of the walls. So we had people going through, numerous people -- the first thing we did when we bought the house in 2008, was I had Michael Grover come out and take a look and he recommended to me some things we could do. And he was the first person that said you should tear down the back half, you can't even keep it. And the front half looks good, you can keep it, but to keep your FAR, you're going to want to keep these walls. And we had other people look at the foundation and come through and even David had a plan to keep that. And everything indicated that that, that front part of the house would be sound and strong and secure. And in

fact, you know, it stood, it stood well as a whole, but I mean, I can't speak for David Barsky's call, but there was definitely a very big difference between those two. It was front part of the house was in good condition.

BRENDAN SULLIVAN: And this proposal before us, are you coming off the -- you're saying, this is existing footprint. Are you coming off the existing foundation or is that coming off and it's going to be a new foundation?

ATTORNEY SEAN HOPE: So I think the plan is to shore up the existing foundation but -- so I guess the idea coming off is not going to exceed it. It's going to stay within that. We're not going outside that existing footprint.

BRENDAN SULLIVAN: I think a determination will be made that the existing foundation is unstable and cannot support the new structure, and hence it's going to be determined that you're going to need a new concrete foundation, which then begets -- if you're going to do that, then that goes back to possibly shifting the footprint of the building and its impact on the -- I mean, I have other issues a little bit more serious than the location of it. I'm not opposed to a structure going here. I'm opposed to this particular one for a variety of reasons, but I guess my question is so you're coming off the existing foundation?

HAROLD JENSEN: David Barsky's plan, he does not wish -- what he told

me -- I wish he was here tonight to tell you. He does not wish to demo any more of the house. He has a plan to shore up the existing foundation and build straight up from it exactly as it stands.

BRENDAN SULLIVAN: I think you're going to find that existing foundation doesn't have a footing.

HAROLD JENSEN: It was a fieldstone foundation, but he has a plan to shore it up and build up as it is off of that foundation according to the same plans.

BRENDAN SULLIVAN: Okay.

ATTORNEY SEAN HOPE: I would like to address the idea of precedence. And so the precedence that I was referencing and the precedence that you have is obviously different than a legal

precedence. And so I think that the trouble that you're having is that, you know, as you know every case that comes before you has a particular set of circumstances, and so I think that you can distinguish this case from just other demo cases, like 7 Montgomery Street which will be coming before you, had to do with a disabled person and the fact they had a series of contractors and they couldn't monitor the construction. And that is one where the demolition delay wasn't warranted and that will I think come before you as well. So I would only say that if you found that these particular circumstances in totality, not just whether or not this contractor should have known this foundation was in poor condition, but if you actually look

at the Petitioner's -- the process they went through, the idea that they were doing a plan that was going to bring the property into greater conformance, they had an easement, an encroachment that was satisfied, I think they're unique pieces of this case. And I also I guess the overall living -- this is not like they're losing a back portion of their house. They're losing the complete house. I think this is pretty significant and pretty unique. I also think that when you quoted page, I believe it was 78, where Tad had talked about the fact that you're almost demoing the house. This was their, the pure reason why we had such a being what turned out to be a faulty but aggressive demolition plan. Because in order for those plans to be done, you

really had to nibble around the edges.
So I would just say that I don't --

KEVIN CASEY McAVEY: For those plans to be done and passed from this Board at that point, right?

ATTORNEY SEAN HOPE: In order to keep as much of the existing structure without essentially having a non-conforming lot where you wouldn't be able to build in this district even a single-family house because the minimum lot size is 5,000 square feet. So this is why the demo -- the point I'm trying to make is I think if you look at the specific factors of this case, I think you can distinguish these from future cases. I don't think we've quite seen a situation where there is now nothing left on the lot. And so as future cases come by, I

think the Board can look at these cases and look at what the potential hardship is to the Petitioner, look at the facts of this case. I think we did lay out, and I wish Mr. Barsky was here, but I do think this is more than reckless behavior. And I think his Affidavit, and also I think the significance of the presentation they made to the Historical Commission was compelling. And they didn't say that they are not imposing the demolition delay because they felt bad for us. It was really because they figured they found that there wasn't the intent necessary and I think that should be significant for the Board.

CONSTANTINE ALEXANDER: Okay.

Other members of the Board want to comment? I have comments but I'll wait

until the end. So -- or not. We've heard Brendan and we heard from you, Kevin. Further comments from either of you or from the two of you? Or not.

DOUGLAS MYERS: No, no, I --

CONSTANTINE ALEXANDER: No pressure.

DOUGLAS MYERS: I guess I feel that as long as we have the power and it's within our power to grant the Variance that's been requested, although I certainly have listened carefully to what other board members have said, we were prepared to do this and agreed do it in 2011 and to approve a certain structure being built there, but for the imbroglio that developed concerning the demolition. And I guess I feel that there's just not enough evidence of

intentional misconduct or subversion of the purposes of the Zoning Ordinance for us to retract our permission to build a structure of a certain size, dimension, and so on on this property. I just -- and if that's the case, if we have the power to do it, then I think that we ought to do it. And I just don't see what good comes from not doing it. As far as the foundation is concerned, that's a significant point. I would feel more comfortable taking that into consideration if there were more evidence. But in the absence of evidence, I would say I would just have to leave that where the permission process, where the permitting process, and where the engineering process all leave it. But on that basis I am prepared

to vote in favor.

CONSTANTINE ALEXANDER: Janet.

JANET GREEN: I think Doug speaks to the points that I would have spoken to as well. I think we do have the power to grant this. I think there was no bad intention here. I think that the neighborhood has spoken clearly that they would like to have these neighbors there so I would vote for it.

CONSTANTINE ALEXANDER: Thank you. Brendan.

BRENDAN SULLIVAN: Well, let me just get into a technical -- I mean I feel very strongly that they have forfeited their legal pre-existing non-conforming status. So hence we now have to look at whether or not this should be built on this particular lot. It is an undersized

lot. There are quite a number of violations. It runs the length and breadth of the Zoning Ordinance. The question that pops into my mind is would we allow a three-family on this particular lot, in this particular location, given the size of the lot, given the size of the building. And the violations that that all triggers? And, again, you know, in Section 1.30 and I say this is that one of our charges is to lessen congestion, overcrowding. And a three-family on this particular site, to me is overcrowding. So if we are, and I think that they haven't asked for relief from that. So they are permitted to have a single-family to go to a three, is an uptick and they have asked for relief from that. Because, again, I think they have

abandoned and forfeited their pre-existing. And they're only providing two parking spaces, hence, they would have to provide three. So they need relief from the parking requirement. So again that's a technical aspect. That's why I cannot support this plan or the application.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: And I think that granting relief without that requested relief is deficient.

ATTORNEY SEAN HOPE: I would like to speak that --

CONSTANTINE ALEXANDER: We're not in a debate stage anyway. You've made your point anyway.

ATTORNEY SEAN HOPE: Just to speak to the parking, that there is

adjacent parking across the street to satisfy the parking requirement.

BRENDAN SULLIVAN: Then, again, then there has to be -- there has to be, I think, relief, on-site parking relief for it requested. It is not -- and the uptick from one to three units is not being requested. So I think the granting of relief as per this application is deficient.

CONSTANTINE ALEXANDER: I am, I'll speak -- when I speak, I'll speak to that issue as well.

Kevin.

KEVIN CASEY McAVEY: I just have one other question for my board members, and I also want to apologize for everyone here tonight. I know that this is taking a little long, but I hope you know that

we're trying to figure something out in hope of granting relief on something which could be you at some point if not later tonight. But one question I have for my fellow board members, is like if a case like this comes forward again and someone is going to be -- in order to get relief, they're going to only be demolishing the rear of their home and they come back and they say, well, the contractor again saw that they had to demolish the entire home? I mean, what makes this different, this case different?

CONSTANTINE ALEXANDER: Well, I think -- if I can speak to it.

KEVIN CASEY McAVEY: Yes.

CONSTANTINE ALEXANDER: I think it's a facts and circumstances test. If

it looks like that the person who came before us and got the permission for the partial demolition knew or should have known that the whole building was going to have to be taken down, and this is what I call the salami approach, they were just trying to get us a little bit of the way to get the relief and then come back and say, like the proverbial orphan, that I killed my parents but I want mercy as an orphan, we wouldn't grant it. That's not this case. And the Historical Commission has made the finding that that's not this case. They have decided that this is circumstances or such that these problems were covered post-start of the demolition, and that you know the -- I find it to me significant, the Historical Commission did not impose a two-year

moratorium. They went out of their way to say no moratorium which says that they, they made a determination. It has to be ours. But they made the determination that this wasn't intentional and that would distinguish their case. Every case is different. But we have to test the circumstances at the time, what we believe the intentions of the parties and their contractor, and make a decision. I don't think this case, on this issue of demolition, commits us to approve future cases no matter what. We'll have the ability, in my judgment, to determine those cases based upon the facts of the cases as they come before us.

JANET GREEN: I agree with that.

KEVIN CASEY McAVEY: Thank you.

CONSTANTINE ALEXANDER: Let me,

I'll give you my views on this case.

First of all, Brendan is absolutely correct and you're not correct, Mr. Hope. This is a blank slate case. You've demolished the building for whatever reason and why and intention or not, therefore, you have a non-conforming lot and a blank slate. And you're coming before us to build a non-conforming structure. If this had been a blank, a yard, an empty lot and you were coming before us to build this structure, you wouldn't get my vote. And I'm sure you wouldn't get Brendan's vote either and probably other members of the Board. Because you wouldn't have a hardship. Your hardship is I'd like to build a building on this lot but the Zoning doesn't allow me to do it. This is

different. You have a distinct hardship. You came before us to modify and upgrade the structure. We approved that. We found that there was hardship. We found all the requisite requirements. We approved all the plans and then lo and behold, we all know what happened. For us to deny relief tonight and find there is no hardship, I think would be most unfair. It's just not what we should be doing as a Zoning Board. And I think what would be the result of all this? We have an empty lot. Who does that benefit? I know it doesn't benefit you, but you're not going to get your money out of it as much money as you put into it. I am in favor of granting the Variance. And Brendan raises two points that hadn't occurred to me and it hasn't been raised

since till right now whether you need relief for the three-family us and whether you need parking relief. We don't have to decide that tonight. I'm going to -- we can decide the Variance and either grant it or not. If we don't grant it, everything is moot. If we grant it, then you go before the -- Sean and Ranjit and persuade them or try to persuade them that you don't need further relief despite what Brendan says. If you can't convince them, we'll see you again. You'll have to make a new application and seek either a Special Permit or a Variance whatever you need to get to get the relief. But we don't have to defeat the Variance case tonight because you might have another problem. We haven't had a determination by Ranjit whether you've

got another problem. Brendan very well may be right, he usually is. But until Ranjit signs off on that we don't have the answer to that. We don't need to have the answer to decide the case tonight. So I would grant you the Variance and wish you best of luck, you need it, and see what comes after that. And hopefully you won't have to come before us, but you may very well have to. But it will be a different case and relief being sought. I'm in favor. But as you -- I think you know from the past you need four votes. That's the way the law works. And not a majority. It's got to be four out of five.

BRENDAN SULLIVAN: But, you know, in the past when we have found applications deficient and they need some

additional relief, we've sent them back and not kicked it upstairs to, you know, have them decide it. I think to me it's quite clear that they're in violation of going from a one to a three and also the parking.

CONSTANTINE ALEXANDER: I guess my rejoinder to that is --

BRENDAN SULLIVAN: And, again, there should be a structure here. Just that I don't think -- and it's not that I wouldn't approve --

CONSTANTINE ALEXANDER: Well, what would we gain? We'd have to continue the case. All these folks come down tonight --

BRENDAN SULLIVAN: Because I think I know better than what is being requested and I cannot in good conscious

vote for something that I feel is deficient.

CONSTANTINE ALEXANDER: Okay. Obviously that's your right to do.

Any further comments or should we put it to a vote?

KEVIN CASEY McAVEY: Well --

CONSTANTINE ALEXANDER: Okay. The Chair moves that this Board make the following findings with respect to the Variance being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that they would not be able to reconstruct the structure and would be left with an empty lot or a lot that's not developable.

That the hardship is owing to the

shape of the lot. It's a substandard lot in terms of dimension, non-conforming.

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

In this regard the relief would allow a structure to replace a structure that was once there.

That the findings of hardship, and we've once before, this Board, determined that to allow modification to the then structure satisfied the requirements for a Variance. And if they're going to build the same structure in terms of dimension as represented and we will condition our relief if we grant it, we are in the same position that we would

have been had the building -- had the foundation not -- or had the building not been demolished and you could have gone on your merry way pursuant to the relief we granted a year ago.

So on the basis of this the Chair moves that a Variance be granted the Petitioner on the grounds that the work proceed in accordance with the plans submitted by the Petitioner. They're many pages in length. The first page is A-000 prepared by Khalsa, K-h-a-l-s-a Design, Inc. I can't read the date. The first page of which is initialed.

It is the -- and the conditioning in this fashion it is the assumption and belief and further condition of this Board that the footprint of the structure and the FAR on the other dimensional

aspects of the structure are the same as would be the case as if you had reconstructed the building before as we approved a year ago of the Variance.

So you're not in any way increasing the size of the structure or relocating it in a different way to change other setback issues. So we're just talking about replacing albeit in a different shape, the same structure that was there before.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Green, Myers, McAvey.)

CONSTANTINE ALEXANDER: All

opposed?

(Sullivan Opposed.)

CONSTANTINE ALEXANDER: One
opposed. The motion carries. Variance
be granted and I hope we don't have to see
you again, but we very well might because
Brendan's very rarely wrong.

Thank you.

(10:15 p.m.)

(Sitting Members: Constantine
Alexander, Brendan Sullivan, Janet
Green, Douglas Myers, Kevin Casey
McAvey.)

CONSTANTINE ALEXANDER: The
Chair will call case No. 10431, 7 Phillips
Place. Is there anyone wishing to be
heard on this matter? I trust you'll be
brief. I mean, it's not exactly a
controversial case.

JONATHAN AUSTIN: Good evening.
My name is Jonathan Austin, of Austin
Architects. A-u-s-t-i-n.

JOHN GATELY: John Gately,
G-a-t-e-l-y.

LEVERING WHITE: I'm Levering
White, L-e-v-e-r-i-n-g. Last name is
White, and I'm the owner of the Lincoln
Institute of: Land Policy.

JONATHAN AUSTIN: Good evening,
I hope this will be a little simpler.
You've heard us before on this case and
you kindly granted us a Special Permit and
a Variance for the addition of a lift
enclosure and the modification of an
existing porch to the side of this
building back in early January. The
reason for us being back here this evening
is that in the course of review by the

Building Department the question was raised as to whether we would wish to have these two lots here be considered two or -- two lots as they are now or a joined lot. And in fact, the lots are legal conforming lots. They are beneath the FAR both in the existing and in the proposed condition. And so we have proceeded to make the application for a Building Permit assuming that they are two separate lots. And what that did was that it made the setback on this portion of the property a rear yard setback rather than a side yard setback. The side yard setback would have gone outside the building enclosure as you can see here by the orange line, it goes inside the enclosure.

So why is this relevant? It's

relevant because on the inside of the building we have -- we do have plans on the inside of the building here.

JOHN GATELY: Yes.

JONATHAN AUSTIN: In order to increase the public safety of this building we have had to introduce a revised stair arrangement into the back of the building and so that's a demolition of an existing stair here and the addition of a stair here. And that has changed the exterior appearance of the building. So if we go to the rear portion of the building here, we are changing the elevation from this which is the existing condition to this which is the new condition. Several windows are changed, a new door is inserted on this side. This is the portion, the side of the building

that faces the Sheraton Commander. The loading dock of the Sheraton Commander is over here. This is Phillips Place that's around the corner on this side. The Aiellos who have been closely following the development of this project has -- we've gone through various phases. We've consulted with on this, and I believe they wrote an e-mail to the Board with their view in support of it.

And so purely and simply that's it. We, we wish to make changes to the elevation on the side of the building that is really in the setback.

DOUGLAS MYERS: One question from me. Again, why are you enclosing the front entry vestibule on the west side? Why are you enclosing it?

JONATHAN AUSTIN: This is -- the

mass of it was reviewed last time.

DOUGLAS MYERS: Unfortunately I wasn't here.

JONATHAN AUSTIN: No, I'm sorry. Well, that's interesting. It is because we are going to install a small lift to make the first floor of this building handicapped accessible. We had originally proposed a ramp, and, again, in review with ISD, they suggested that a lift might be a better idea and our client supported that.

DOUGLAS MYERS: Why, why did you decide to change from an open vestibule to an enclosed vestibule?

JONATHAN AUSTIN: Because we needed to be able to get -- we wanted to be able to get into an enclosed space, provide a vestibule that would improve

the energy efficiency of the building.

DOUGLAS MYERS: Okay.

CONSTANTINE ALEXANDER: Any other questions, Doug?

DOUGLAS MYERS: No.

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

(No Response.)

CONSTANTINE ALEXANDER: I'll open it up to public comment. Is there anybody here wishing to be heard on this matter?

(No Response.)

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

There is a Certificate of Appropriateness from the Cambridge Historical Commission which obviously says the work that's being proposed is

historically appropriate. We also have a letter or an e-mail from Lloyd Aiello, A-i-e-l-l-o. And looking for the -- yes, Mr. Aiello and his Nancy reside at Two-and-a-half Berkeley Street. And the letter says (Reading) We have reviewed this petition proposed by Lincoln Institute of Land Policy for a Special Permit Case No. 10431, reconfiguration -- describes the Petition. Their house abuts our property at Two-and-a-half Berkeley Street. We understand the specific issue involved and their entire project for 7 and 9 Phillips Place. We fully support the Lincoln Institute's request/petition which we think is an overall improvement and a very reasonable solution to the unique challenges they

face. And that's it.

So that's public commentary. I'll close it.

Any further final comments you want to make?

JONATHAN AUSTIN: No.

CONSTANTINE ALEXANDER: Okay.

Any comments or questions from members of the Board? I think we're ready for a vote.

You're seeking a Special Permit to do this work so we have to make rather various findings.

First of all, pursuant to Section 8.22.2, this Board, the Chair moves that this Board make the findings:

That the Special Permit being requested will not be substantially more detrimental to the neighborhood than the

existing non-conforming use.

And then further, we have to make further findings. That find that traffic generated or patterns as proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

The nature of the work proposed speaks for itself in terms of whether they would have any impact on or cause any congestion or hazard or substantial change.

That the continued operation or development of adjacent uses will not be adversely affected by the nature of the proposed use. Again, the relief being sought is rather modest and will not in any way impact the neighboring properties. And in fact one of the

abutters has signed off on this and has commented to us that they're in support.

No nuisance or hazard will be created to the detriment to the health, safety, and welfare of the occupant or the citizens of the city.

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

In this regard the Chair would refer back to the Certificate of Appropriateness from the Historical Commission. The fact that the most directly affected abutter is in support of the petition. There is no opposition to the petition.

That the Institute is a valued

member of our community, and this will make this -- and they're a nationally recognized organization. And that the relief being sought is rather modest in nature will make their ability to use the structure -- will enhance their ability to use the structure.

So on the basis of these findings the Chair moves that a Special Permit be granted to the Petitioner on the condition that the work proceed in accordance with plans submitted by the Petitioner. These are the ones that I think are on your board, right? Prepared by Austin Architects. This must be the plan.

JONATHAN AUSTIN: Austin Architects.

CONSTANTINE ALEXANDER: A01,

A02, A03, A04, A06, A07, A08, and A09.

The first page of which is initialed by the Chair.

All those in favor of granting the Special Permit, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Sullivan, Green, Myers, McAvey.)

CONSTANTINE ALEXANDER: All good things come to those who wait.

JONATHAN AUSTIN: Thank you.

* * * * *

(10:30 p.m.)

(Sitting Members: Constantine
Alexander, Brendan Sullivan, Janet
Green, Douglas Myers, Kevin McAvey
Casey.)

CONSTANTINE ALEXANDER: The
Chair will call case No. 10432, 275 Fresh
Pond Parkway.

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

ATTORNEY VINCENT PANICO: Good evening. Who wants to go home.

CONSTANTINE ALEXANDER: We may be able to send you home quickly.

ATTORNEY VINCENT PANICO: I am attorney Vincent Panico, P-a-n-i-c-o, 2343 Mass. Avenue, Cambridge, Mass. And on my left, please identify yourself.

ANDREW BELLIZIA: Andrew Bellizia, B-e-l-l-i-z-i-a President of Cambridge Motorcar, 275 Fresh Pond Parkway, Cambridge, Mass.

CONSTANTINE ALEXANDER: We have a small select group you can come up to the front to hear.

ATTORNEY VINCENT PANICO: That better?

As the Chairman knows, we were here 11 years ago.

CONSTANTINE ALEXANDER: I wasn't here 11 years ago. I didn't know that, but I read the file.

ATTORNEY VINCENT PANICO: This is a different proposal. The new proposal for signage, on the existing sign there are five signs. Our proposal calls for the removal of four of those signs. The five signs that we have are all internally illuminated so that four, those four signs -- that internal illumination will all be removed. The new sign is smaller. It's more attractive. It's five feet lower. The parkway and the building itself have been modernized. This sign just does not fit. As the you've probably seen from the file, that's the new sign that we propose putting in there. That's it. There are

no other attachments to it.

UNIDENTIFIED MALE: Is this a time I could ask to see the picture of the new sign?

ATTORNEY VINCENT PANICO: Sure can.

DOUGLAS MYERS: Just the sign with the image that's shown at the left, one sign?

ATTORNEY VINCENT PANICO: That is correct. The other sign is just a smaller version but --

DOUGLAS MYERS: The one that says Honda?

ATTORNEY VINCENT PANICO: That is correct.

DOUGLAS MYERS: I don't mean to throw it.

CONSTANTINE ALEXANDER: Just the

left-side of the page is what we're looking at.

ATTORNEY VINCENT PANICO: That is correct.

CONSTANTINE ALEXANDER: Because the hour is late I'm going to cut to the chase. The Planning Board's comment is not necessarily in favor of it. They ask -- I think it's the of \$64 question. The Board suggests -- and I'm reading from the Planning Board's memo to our Board. The Board suggests that it would be useful for the sign proposal to also illustrate how a conforming sign does not meet the business advertising needs of the car dealership. And that's what I don't understand.

You've got this building there, there's plenty of identification all

along on the building itself. It's clearly a Honda dealership. Why do we need another particularly illuminated sign on the street level since Fresh Pond Parkway is a frequently traveled area.

ATTORNEY VINCENT PANICO:

Mr. Bellizia will describe that in detail. May I just briefly comment?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY VINCENT PANICO: I have made a red diagram if we complied with the Ordinance. That's the sign -- and that's the location of the new sign. It can only be 15 feet high and 100 square feet.

So, Andy, would you please make a comment on that and why we need that visibility.

ANDREW BELLIZIA: From the southern approach from the Route 2 rotary

to and by our dealership at the Concord Street rotary, when you turn to the right, what's immediately visible is the Mobil Station and the appenditure that comes out where the Tokyo restaurant is and that --

CONSTANTINE ALEXANDER: Was --

ANDREW BELLIZIA: -- was, building is and then our line of used cars. At a degree of vision, you would be within 12 feet of the sign before you actually saw it.

CONSTANTINE ALEXANDER: But would you not see before you get to the sign the building itself which has the big Honda letters on it?

ANDREW BELLIZIA: No.

CONSTANTINE ALEXANDER: No?

ANDREW BELLIZIA: No, no,

because actually we had to elevate the showroom of the Honda building, a part of the building, so it would actually be level with sight. So no, you wouldn't get the advertising value from the signs that are on the building itself. From the southern exposure, if you're coming from Memorial Drive onto Route 16 and by the building, the road veers to the right, there's a corner No. 1. There is a large three-family, I think it's a three-family, at the corner. Then you see the Shell Station sign. And then you see the service vehicles that are parked in front of the building. The elevation is a little bit higher, but still the degree of sight would put you on the sign rather than the sight now which -- and the sign in itself now is not only a sign

saying there's a Honda, but it Honda, but it basically designates where the two driveways are. So, it would cause people to slow down on Route 16 before they saw the main sign and then identify the entrance and/or exit to the property.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY VINCENT PANICO: I think --

CONSTANTINE ALEXANDER: Why the need for illumination? Particularly since you're near a residential area?

ANDREW BELLIZIA: Quite frankly, for the advertising value, because we have it now. It is very softly lit I believe with LED's if it's possible which are more energy efficient. I cannot guarantee that. I did not get the specifics, unfortunately from the sign

company. And as we all know, that Route 2 and 316 is a well traveled area -- well traveled road at all hours of the day and night. So, the sign identifies us, is a beacon, does help with the advertising, and also identifying the entrances and exits. We've had more than one accident in front of the building where people have been able to pull in and get out of the line of traffic, and I believe some of that is due to the fact that this currently 30-foot, I believe, beacon, which we will reduce to 25 feet, is there.

CONSTANTINE ALEXANDER: I hear a disconnect. You're talking about the -- you need the illumination because of the advertising nature of the sign. Our Zoning Ordinance, Section 7.11.1g states: The public interest is served by

use of signs by businesses and services to identify their premises, or the products or services there available, or to display non-commercial messages.

Which is not to say that you can't use signage for advertising purposes, but that takes a big -- more important is to identify your premises and I'm still troubled. I don't see why your current signage on the premises, plus a conforming sign, or a sign that's not illuminated, would not satisfy the identification process.

ANDREW BELLIZIA: I think it would be detrimental to the business. It would be detrimental to the area. I am not asking for anything that does not currently exist on my property, and all the abutters' property; the Shell

Station, to the left of me, the Mobil Station to the right of me, certainly the Sunoco Station prior to hitting the second rotary, that sign dwarfs mine by comparison, and again, I think it would cause my company a disservice not to have something illuminated which people associate with the Honda brand image and with the automobile business in general.

DOUGLAS MYERS: Assuming you were granted the sign that you have requested.

ANDREW BELLIZIA: Yes.

DOUGLAS MYERS: What would you propose to be the hours of illumination?

ANDREW BELLIZIA: The current hours that the sign is illuminated.

DOUGLAS MYERS: Which are?

ANDREW BELLIZIA: Which are, it

goes on at dusk and goes off at dawn.
It's on a timer.

CONSTANTINE ALEXANDER: 24
hours -- 12 hours?

ANDREW BELLIZIA: No, dusk to
dawn.

CONSTANTINE ALEXANDER: Dusk to
dawn?

ANDREW BELLIZIA: Yes.

CONSTANTINE ALEXANDER: How many
car buyers are driving around at three in
the morning?

ANDREW BELLIZIA: I don't know
how many car buyers, but I know there are
many people and potential customers
passing on Route 16 at all hours of the
day and night.

DOUGLAS MYERS: But I mean car
dealerships keep very standard business

hours, right? Your staff goes home at five o'clock?

ANDREW BELLIZIA: My staff is anywhere from six o'clock in the morning until eight o'clock in the evening. The rest of our lights do go out on the lot, the used car lot, and the service area. The current sign does stay illuminated.

DOUGLAS MYERS: What time are you -- what's the latest hour that you're open for business, weekday or weekend?

ANDREW BELLIZIA: Our latest hour is eight p.m.

CONSTANTINE ALEXANDER:
Anything further you want to add?

ATTORNEY VINCENT PANICO: Yes.
One way or the other there is going to be illuminated signs or sign on this property. One way or the other there's

going to be a sign that violates the Ordinance.

CONSTANTINE ALEXANDER: Not necessarily. You can -- you may not like the sign, but you don't have to build a sign that violates the Ordinance. You want to build a sign that doesn't comply with the Ordinance. It doesn't have to be.

ATTORNEY VINCENT PANICO: But if you deny it, but we have a sign that violates the Ordinance.

DOUGLAS MYERS: The suggestion is the present sign will continue and that would be much worse.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY VINCENT PANICO: I would suggest that the spirit of the law of all these signage is to improve the

appearance of the parkway. If you follow the technical law, you say well, technical violation, you can't do it. I think that's against what the spirit of the law was to try to make the place more attractive, but of course the Board makes the decisions.

CONSTANTINE ALEXANDER:

Anything further before I open it to public testimony? You'll have an opportunity to speak again.

ANDREW BELLIZIA: Thank you, sir. Not at this time.

CONSTANTINE ALEXANDER: Is there anyone wishing to be heard on this matter?

JOHN MCKERNAN: John McKernan, M-c-K-e-r-n-a-n. I live directly across the street from Andy's place, and we've had been here before. And I'm all in

favor of his business and I'm pleased to say that he's made a go of that. And we are in communication from time to time with reminders about things that aren't supposed to be happening, and he's always complied when I've made a complaining phone call. And I like what I hear about the sign being less noticeable and shorter. And this is the view of the sign from my kitchen window at night. And it does go all night. And this is how it appears looking out at the front gate. And this is the way it peaks up over.

DOUGLAS MYERS: The front gate of your house?

JOHN MCKERNAN: Yes. And this is how, this is how the sign looks in the daytime. And you can see it just peaks over the top. So if he's going to have

it five feet shorter, that would be much to my liking. I'm curious about whether the sign would stay exactly in the same position, because I could see it from my property where it is. And if it were to move slightly toward Huron Avenue, then it would disappear from my view. I don't know if you put it in the view of the neighbors on the other side or not, but it seems to me that I would benefit from a lower sign and less illumination. The lights do go off in the, what do you call it, your outdoor showroom. We had agreed on 9:30. And they're pretty good about keeping that. I do have to remind them from time to time about daylight savings, but they've complied with all of that. And I don't know if -- see if there's anything else that would be helpful here.

I'm delighted to hear about it being aesthetically better if we're going to have a sign.

JAN DEVEREAUX: I might add, I'm also a neighbor. My name is Jan Devereaux, D-e-v-e-r-e-a-u-x, a resident of Lakeview Avenue. I think that a new sign could certainly be an aesthetic improvement over what's currently there. It is -- the current sign is currently an eyesore. Hearing this conversation I do wonder about the value of illuminating the sign all night. You know, I understand it's advertising, but a car is something you don't buy, it's not like a hamburger. You buy a car every five, six years. It's not an impulse purchase. It's not when you're driving by at midnight you think oh, my gosh, there's

a Honda dealership on Fresh Pond Parkway, I'm going to buy a Honda as soon as they open tomorrow morning. So, given that it's also directly across the street from Fresh Pond Reservoir, which is you know, a great natural resource, I would argue that it doesn't need to be illuminated from dusk until dawn. But then --

CONSTANTINE ALEXANDER: I don't know if you were here earlier in the night, but we had another sign case over Education Sheet and we put a restriction on their illumination not beyond nine p.m. They have to turn the lights off. We allowed them to have an illuminated sign, but not beyond nine p.m. And they're way over in an isolated area in an isolated area of Cambridge and not on Fresh Pond Parkway. And they could turn

it on at dusk and have to turn it off by nine p.m. I would think, speaking only for myself, if we're going to approve this, we're not going to allow you to have the light on all night. At least I'm not going to vote for that. I don't see a need for that whatsoever.

JAN DEVEREAUX: The conservation of energy is not to run lights needlessly in the wee hours, you know.

CONSTANTINE ALEXANDER: Give me a little bit more of an idea of actually how you're going to illuminate the sign? We've got a very specific picture backlit, it creates a shadow. How are you going to illuminate the sign?

ANDREW BELLIZIA: It's going to be backlit with Lexan faces that have the H in the Honda. As I said, I cannot

guarantee the Board the exact lighting although I am going to ask for the LEDs. I'm going to present at this time that I believe it will be lit the traditional way with fluorescent bulbs behind the Lexan portion of the sign.

CONSTANTINE ALEXANDER: Why, you know, often when people come before us they have -- they tell us exactly how they're going to illuminate the sign. Why didn't you do that first and you could have shown us and the neighbors exactly what you want to do rather than saying I haven't decided yet?

ANDREW BELLIZIA: To be honest with you, I did not think that would become an issue of the exact lighting. It is going to be done according to an electrical code. There was nothing out

of the ordinary that was presented to me with the sign as far as illumination being anything beyond what it currently is. So through my ignorance I assumed that the lighting, as it is on the building and as it is on the current sign, is going to be no brighter than is what on the, is on the existing sign. And to the degree that I can guarantee the Board, I would say that I would guarantee that. That if the current sign is illuminated with fluorescent bulbs, and that I would guarantee that whatever illumination is behind there it would be no brighter than what is currently there.

ATTORNEY VINCENT PANICO:

Mr. Chairman, I don't know if this helps but on that sign information I gave you it says white LED illumination, blue LED

recessed lighting on the side of cabinet.

CONSTANTINE ALEXANDER: Oh, yes.

ANDREW BELLIZIA: So there it goes, it's right in front of me and I didn't read it.

DOUGLAS MYERS: Well, I noticed that, too, white LED illumination. What's the Board's understanding of that?

CONSTANTINE ALEXANDER: I have non.

JOHN MCKERNAN: I can say something about that because I have a 12-volt house in Vermont and I use LED's in all of my fixtures and they could be very bright. And I am hoping, I thought I heard that it wasn't going to be as bright because that's one of the problems about the current sign. And then although I thankfully won't be able to see

it because it's going to be shorter, I would hope that it was going to be less than what it is now. And I don't think you can guarantee, Andy, because we had this discussion back when you put up those big tall lights that it wasn't -- going to be too bright and we had to have the Board come in and get you to put shades on them.

ANDREW BELLIZIA: But we did overcome the problems when it was presented.

JOHN MCKERNAN: We have lumens and so forth. I didn't know what the brightness was going to be and you could have avoided additional expense.

ANDREW BELLIZIA: True.

DOUGLAS MYERS: Speaking for myself, I mean I would be very pleased to

approve the type of signage that you want because I think -- except for illumination, I'll get to that. But to give you the -- grant the application with respect to the kind of sign because I think you have reduced the non-conformity immensely and reduced clutter immensely, and I do think you have a legitimate need for sign, and I think that Variance I would be pleased to vote for.

On illumination I would really like, I mean, also support the Chair's view that if you did that, I mean, I would want you to -- encourage you to do that, I feel the illumination should be restricted in terms of hours. And I'd like to know more -- I'd like to prevent -- I'd like to work to prevent bright neon illumination that comes out from inside

the sign. I'd like to see backlit illumination of some kind.

ANDREW BELLIZIA: I can understand your point. And to the degree that I can speak to it, it is my understanding that these facias are, if you will, an opaque finish that is blue, which this area looks black, is the Honda blue. And the white, as we say, is not a bright light, it is again an opaque white finish. So there, I mean I'm not a lighting engineer, but to the degree of -- can I see the picture, Vincent, of the current sign that we have?

JANET GREEN: It is very hard to vote for something that we're not seeing. We don't know what it's going to look like.

CONSTANTINE ALEXANDER:

Exactly.

JANET GREEN: I mean, we don't know exactly what it's going to look like.

ANDREW BELLIZIA: What we're putting in the place is what this material is that currently says Honda. And instead of having what Honda refers to as the Chiclets which are two-by-two individual letters, it has now been morphed, if you will, into this configuration which is the same material from my understanding with the same Honda color, although the color obviously might be a little bit more intense because this is a newer sign as opposed to this 40-year-old sign. But what I have in the individual lettering will now appear in the one solid sign.

KEVIN CASEY McAVEY: Can you give

me an idea visually where that sign will start and end vertically? Compared to your picture since we don't have a visual.

ANDREW BELLIZIA: It will end approximately halfway. These are two-by-two. This is approximately 18 to 20 inches. So it will come just below this current.

KEVIN CASEY McAVEY: Below the Honda as it is?

ANDREW BELLIZIA: Somewhere around there. It is exactly from the footing that is currently there, it is exactly 25 feet, three inches to the top of the proposed sign. So it will, again, be four-foot, nine inches lower than this current sign.

JOHN McKERNAN: Can you show where it would come on the sign there?

Because that's what I see from my house.

BRENDAN SULLIVAN: One of the projected lumens on the existing sign at so many feet, and what the proposed projected lumens will be at that same distance.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: And I think that's a crucial piece -- to answer correctly, what impact does the sign have?

JANET GREEN: Right.

CONSTANTINE ALEXANDER: And I also would have liked to see photo simulations showing what the what the site will look like if we grant the you relief will look like with regard to the sign itself.

BRENDAN SULLIVAN: Sometimes the

sign company comes with the with counsel or with the Petitioner and they have more detailed information. And sometimes they'll even give us a cross-section of the proposed sign and what it's -- how it's constructed.

CONSTANTINE ALEXANDER: We had one person, the church, that they actually brought the sign, the model of the sign that we can see the exact illumination of what it was going to look like.

There is a lot more you could do to educate us and to make sure that we understand what relief we're going to be granting if we grant relief.

ANDREW BELLIZIA: I find that acceptable that I -- if it is granted conditionally, that I will come with the

actual individual --

CONSTANTINE ALEXANDER: We can't do that.

ANDREW BELLIZIA: Oh, you can't do that? Okay.

CONSTANTINE ALEXANDER: We would continue this case and you would bring us that information and we take the vote after we've seen what additional information you've supplied to us. We can't do it the other way around.

ANDREW BELLIZIA: Okay, I'll agree to that. I think you will be pleased. And as far as I'm concerned, the illumination of it, I don't think is going to project any further than the current sign does, and --

BRENDAN SULLIVAN: It would be the same sign that's on all the Herb

Chambers' Hondas.

ANDREW BELLIZIA: Exactly.

Exactly. If you wanted to go by any other Honda dealership but mine, you would see the sign as it would stand as it is lit.

ATTORNEY VINCENT PANICO:

Mr. Chairman, do I understand if we did a Photoshop on this and put the new sign on this picture --

CONSTANTINE ALEXANDER: Yes, on the new sign, exactly what it's going to look like, before and after. And we'd also like information as Brendan has suggested about the lumens of the sign, compared to what it is today, so we can have an idea of the glare or whatever word you want to use, the visual impact.

KEVIN CASEY McAVEY: And the hour that --

CONSTANTINE ALEXANDER: Clearly we're not going to, in my judgment, we're not going to support this with all night. You're looking at probably nine o'clock lights off. Dusk, lights off at nine. I'm sorry, sir, but that's -- you can live with that. And --

ATTORNEY VINCENT PANICO: We will comply with your request. But on that picture of the new sign, if you have the one with the red on it, I had marked out where the new sign would be located.

CONSTANTINE ALEXANDER: The only thing I saw in the file was what I ripped in half only because I wanted to -- I wanted to separate. I want to see what it looked like. Mr. Panico, when you file a case, you've got to give us complete information.

ATTORNEY VINCENT PANICO: I understand. I understand.

BRENDAN SULLIVAN: The other issue I might raise while you're gathering information, is that the Planning Board has made reference to a Special Permit that they granted.

CONSTANTINE ALEXANDER: Yes, I'm going to get to that.

BRENDAN SULLIVAN: And there may be some conditions in that which needs to be brought to the floor.

CONSTANTINE ALEXANDER: I was going to get to that as well, Brendan, that's right. That's another piece of information we don't have. Maybe the Planning Board should have given it to us rather than you. But we don't have it, you must have it. Let me read into the

record now, and I'll give you the information, the Planning Board has written a memo to us and it says:

(Reading) The Planning Board reviewed the requested Variance application for the freestanding sign at 275 Fresh Pond Parkway for a car dealership. The proposed sign exceeds the height limit of 15 feet, the area limit of 30 square feet, and is proposed to be internally illuminated. The Board suggests -- I read this before, I'll read it again -- the Board suggests it would be useful for the sign proposal to also illustrate how a conforming sign does not meet the business advertising needs of the car dealership.

And we should have a little bit more information on that. Now to Brendan's

point, next paragraph. (Reading) Fresh Pond Parkway has been enhanced for both pedestrians and vehicles with sidewalk and roadway improvements, and the goal is to maintain and protect these connections to the Fresh Pond Reservation.

Excessive signage can create visual chaos. Also, the Planning Board granted special -- here you are,

Mr. Panico -- the Planning Board granted Special Permit No. 1419B for the site which conditioned the decision on encouraging compliance with the sign orders when the freestanding sign was replaced. The Planning Board does commend the business on the decision not to use large display pendants and balloons on the cars. So I do need to know more about the Special Permit. We

all need to, not I, the Board needs to know that.

ATTORNEY VINCENT PANICO: Okay. Concluding my end of it, could I read a statement from the neighbor who had to leave? He was here and left.

CONSTANTINE ALEXANDER: Sure.

ATTORNEY VINCENT PANICO: Okay, quickly.

CONSTANTINE ALEXANDER: Yes, you can, but we're probably going to continue the case as you can tell, but you can do it the next time or now, it's your pleasure.

ATTORNEY VINCENT PANICO: He said I'm here to support the proposed new sign. I had to leave before I could speak. The proposed signage is a major improvement to our neighborhood. I have

seen the proposed sign. I'm pleased to support it as both the neighbor to Honda and an architect working in Cambridge. New signage is smaller and more attractive. Honda has been a reasonable and responsive neighbor since I have been in the neighborhood. Adam Glassman, G-l-a-s-s-m-a-n, 2 Worthington Street, Cambridge.

CONSTANTINE ALEXANDER: How close is Worthington Street to the property?

ATTORNEY VINCENT PANICO: It abuts the property.

BRENDAN SULLIVAN: Behind it.

JAN DEVEREAUX: It's at the rear.

BRENDAN SULLIVAN: On the hours of the sign, I think that this is a little bit different than what's going on down

at North Point. And my wife recently was in the market for a car, and I'm thinking, you know, as we come back at night, most people return to their house after nine o'clock or so, after dinner, what have you, and I think it's important that signage be on. You know, to shut it off at nine o'clock, I think it's a little bit different application. Maybe all night may not be totally worthwhile, but on the same token, I think nine o'clock in my thinking, again, if we're going to continue this, we can think individually a little bit further about this. Nine o'clock is a little bit soon. Because I think your lights in your showroom are on a little bit later because customers are still in there and what have you.

ANDREW BELLIZIA: Yes, and we

have obviously security lighting --

BRENDAN SULLIVAN: I'm thinking, you know, the purpose of the sign, identification --

ANDREW BELLIZIA: That stays on --

BRENDAN SULLIVAN: -- and I think my view would be that nine o'clock is quite soon. Anyhow that's --

CONSTANTINE ALEXANDER: Yes, I'm open to -- I'm not wedded to nine o'clock. Come back with a proposal that you hear the message. Not all night.

DOUGLAS MYERS: That relates to your specific business operations.

ANDREW BELLIZIA: I understand clearly.

BRENDAN SULLIVAN: I think we all need to think about that a little it

anyway.

ATTORNEY VINCENT PANICO: This is -- my interpretation of the location of the new sign.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY VINCENT PANICO: Excuse me, my interpretation of a complying sign which has to be 15 square feet. I made it six-by-six. And that's at a 15-foot height. That's where it would be on the --

CONSTANTINE ALEXANDER: Since we're going to continue the case --

ATTORNEY VINCENT PANICO: We're going to bring somebody in.

CONSTANTINE ALEXANDER: Elaborate on this, that's fine. That's exactly what we need to have. Show us what you have to do if you -- to comply.

What you want to do. Give us the reasons why we should approve what you want to do. Help us some more about the nature of the illumination, particularly the glare or the brightness aspect the number of lumens, the nature of the illumination. Talk to us a bit about hours for the light to be on. I think you've got the message not all night, but if nine o'clock is too soon, tell us and why, too, give us another reasonable hour.

ATTORNEY VINCENT PANICO: And the Planning Board decision you want --

CONSTANTINE ALEXANDER: We want the Planning Board Special Permit, whatever it is. That decision.

BRENDAN SULLIVAN: But I think you need to be apprised of it so that you can address the issue. I will pull that

and have it in the file. I think you then need to read it to see what it says so that you're not ambushed by it.

CONSTANTINE ALEXANDER: And, again, as you know, all of this information has got to be in our files by five p.m. on the Monday before the day we're going to hear this case. You're aware of that, Mr. Panico. So this is going to be a continued case.

KEVIN CASEY McAVEY: Signs changed.

CONSTANTINE ALEXANDER: I want to find the date first. I'm going to get to that.

This is a case heard which means you've got to have a date when all five of us can be here again. Not any other members of the Board. You could proceed

with less than five of us, but you would be at great risk if you do that because you need four votes. There's five of us. If you get all five of us here, you can have a decenter and still get the relief. If you go with four, you need a unanimous vote. So the risk is great. It's your call.

ANDREW BELLIZIA: I think I'll try to satisfy the five of you.

CONSTANTINE ALEXANDER: Yes, sir.

JOHN MCKERNAN: I'm going to be out of the country for a period of time, and if I could get some idea of when this is going to happen.

CONSTANTINE ALEXANDER: In a second, we'll get to that. Maria -- well, first of all, what's the

earliest date? We can't have the next time because I'm not going to be here.

MARIA PACHECO: June 13th.

CONSTANTINE ALEXANDER: June 13th. So that's a months from now. Let me start with you because you're the Petitioner. Does that give you enough time to put together the information we need? Remember we need it the Monday before June 13th by five p.m. That works for you?

ANDREW BELLIZIA: Yes.

JOHN MCKERNAN: I'm leaving June 4th.

CONSTANTINE ALEXANDER: For how long?

JOHN MCKERNAN: Until July 17th. I could write something up.

CONSTANTINE ALEXANDER: Yes, by

all means. Will you have enough to write about? Because they don't have to submit the --

JOHN MCKERNAN: It's difficult.

ANDREW BELLIZIA: May I interject?

CONSTANTINE ALEXANDER: Yes.

ANDREW BELLIZIA: Since Jack's concern is the sign being lower, I assume.

JOHN MCKERNAN: I have a picture there that shows how it --

ANDREW BELLIZIA: If you don't mind if I keep this --

JOHN MCKERNAN: That would be perfect.

ANDREW BELLIZIA: -- when I get the sign company and he does his renderings, if I come to you personally prior to you leaving the country --

JOHN MCKERNAN: Yep.

ANDREW BELLIZIA: -- and you agree -- I know I only have about seven feet of area in the front, I'm sure whether it be a foot or 27 and a half inches, I can move the sign further south to some degree. I can't guarantee, of course, because of the --

John MCKERNAN: It looks like it's going to be lower already.

ANDREW BELLIZIA: I believe we're going to be pretty safe there, but damn close.

JOHN MCKERNAN: If you go a little the other way, it's going to be behind the big round thing and --

BRENDAN SULLIVAN: Okay, so anyhow, June 13th?

DOUGLAS MYERS: Sounds good.

CONSTANTINE ALEXANDER: June
13th?

MARIA PACHECO: Yes.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be continued until seven p.m. on June 13th on the following conditions:

That the Petitioner sign a waiver for time of decision. Mr. Panico.

That the sign -- we never got to the issue there's a -- signs that you posted got torn down. I think, again, we had a case of good faith effort on your part, and so we heard the case tonight obviously. But you got to go put those signs back up. Get some new ones from Maria. Get the new date and new time and keep them up there as best you can as compliant for our Ordinance for ten days.

So you need new signs, the correct date, and seven p.m. You need to sign a waiver of time for decision. And any the information we requested, the additional information, has got to be in our files by five p.m. -- no later than five p.m. on the Monday before June 13th. If it's not, we're going to have to continue the case further. Okay?

ANDREW BELLIZIA: If you want to get paid you better have it there Friday.

ATTORNEY VINCENT PANICO: We did get three signs back up before the hearing.

CONSTANTINE ALEXANDER: I know you did. And I should have mentioned it at the outset of the case. There's no complaint about what you did. You did the best you could.

All those in favor of continuing the case on this basis say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Sullivan, Green, Myers, Casey.)

ANDREW BELLIZIA: Thank you, folks. Pleasant evening to all.

* * * * *

(11:05 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Kevin Casey McAvey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10433, 7 Montgomery Street. Is there anyone here wishing to be heard on this matter?

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

ANDREW STEVENS: Andrew Stevens,
Gloucester, Mass.

CONSTANTINE ALEXANDER: Can I
ask you --

ANDREW STEVENS: Born on Huron
Avenue.

CONSTANTINE ALEXANDER: Are you
the architect?

ANDREW STEVENS: I'm the general
contractor.

CONSTANTINE ALEXANDER: General
contractor, okay.

ANDREW STEVENS: This is a case
that's very similar at Harvey Street.

CONSTANTINE ALEXANDER:
Unfortunately.

ANDREW STEVENS: Unfortunately,
that's right. Slightly different but
similar. I was originally hired by

Steven and his father in January to complete the house remodel at 7 Montgomery after the first contractor had overcharged them for the work and left them in a tough financial position to complete the project. At the time the plans I received showed a demolition plan for the second floor and roof that specified that only certain parts of the roof were to be restructured and one wall of the second floor was to be removed. When my crew arrived on-site, the whole roof and all of the second floor walls were gone. This led me to believe that the City and builder had realized that the structure of the building was inadequate and more demolition was needed to build a structurally sound and energy efficient structure. This misunderstanding

created following events:

We arrived on March 4th to start. Due to weather and scheduling conflicts we had been unable to start until then, and the remaining building had been tarped off but had seen a great deal of water damage in the interim period.

The second floor frame was four-by-six, spaced about 28 inches on center and running the long way of the building. This structure would not come close to meeting any acceptable standard structural soundness for habitation, and the plans called for it being reframed.

The two-by-four first floor walls that remained were water logged, had some degree of rot, had no headers, and they did not have top plates on the long walls as the building was balloon framed. And

when the other -- the prior contractor removed the second floor walls, he chopped them off. And then so the only thing holding the studs in place was the sheathing, it was the board sheathing.

It was determined by my crew at that time that that was inherently unsafe and that we needed to remove the walls. We removed two and a half -- two and a half sides of the building more than the original permit allowed. Approximately 40 feet of total wall in length.

CONSTANTINE ALEXANDER: Let me ask the question that Brendan asked of the other, why did you folks not contact ISD when you discovered this?

ANDREW STEVENS: Well, it was our opinion that we thought all of this permitting had been handled by the

previous contractor.

BRENDAN SULLIVAN: Did you, when you took over from the contractor, did you not pull your own permit?

ANDREW STEVENS: I assumed the permit. They simply handed me -- I went down and signed the paper and he handed me the permit.

BRENDAN SULLIVAN: Okay.

ANDREW STEVENS: And the thing that lended a little bit more confusion to this is that they had a Building Permit but they never -- it turns out they never had a demolition permit.

BRENDAN SULLIVAN: Right.

ANDREW STEVENS: So what happened was when Michael came by, we had him come by immediately that first day. He came by and said we have exceeded the

scope of what I perceived to be the case for the demolition. So we need to go to Historical. I met with Charlie Sullivan. Charlie said we need to go to the committee. We went to the committee last month and the committee did approve for us to move forward.

CONSTANTINE ALEXANDER: They did not impose a two-year moratorium?

ANDREW STEVENS: They did not impose a two-year moratorium.

CONSTANTINE ALEXANDER: On the grounds -- we'll see it in the file -- on the grounds that there was no intent to demolish beyond the original --

ANDREW STEVENS: That's correct. Well, let me put it this way. On the grounds that I was another fool and had done the wrong thing, there was no gain

for me and no gain for the clients.

The proposal as were in front of you is to simply rebuild exactly was we were going to build anyway. And I believe you approved the plans last summer. And so nothing has changed in the plan. Nothing has changed in the design. Obviously the materials will be materially different, but that's it.

As far as -- it seems to me that there's two major forms of hardship here. The first is that given the very small nature of the lot, if we were to have to conform to the contemporary codes, we would essentially be building a closet.

CONSTANTINE ALEXANDER: Right.

ANDREW STEVENS: You know.

And secondarily, Steven's father, which he can speak to, is handicapped has

lived in the house for 30 years and everybody wants to essentially get, you know, allow him to return to his home.

CONSTANTINE ALEXANDER: The, you mentioned that, and support obviously, that you're going to build the same building that we gave you permission to do the last time around?

ANDREW STEVENS: That's correct.

CONSTANTINE ALEXANDER: I'm looking at the dimensional form, and maybe it's just different people. The last time it was represented to us that the FAR of the building was 0.8. And you're going to go to 0.102 and the district only allows 0.5. Now your dimensional form shows your FAR is 0.67 but you're going to 1.25 and again in a 0.5 district. What's -- can you help me

with the discrepancy between these?

ANDREW STEVENS: The only possible discrepancy which I could explain is that Building Inspector of his own volition allowed them to put a rear stairway on. It did not have a secondary access. And I do not -- and I believe, you can speak to this, but I believe that that may not have been what was in front of you at the time.

CONSTANTINE ALEXANDER: That wouldn't increase the FAR, though, would it?

ANDREW STEVENS: Well, I mean that's the only thing that I'm aware of that's different.

STEVEN ALIANO: We came to four or five meeting here --

CONSTANTINE ALEXANDER: Yes, you

did.

STEVEN ALIANO: -- and a couple of times there was paperwork and numbers and formulas that were done incorrectly. And the only thing that I can think of now from sitting here is maybe someone put in a wrong number, because when we did look at the file over at City Hall, there was three -- two or three different pages if I'm correct, some numbers were scratched out, some weren't. So maybe something got filled out incorrectly.

CONSTANTINE ALEXANDER: But your representation to us tonight is you're not building anything different than what we -- in terms of the footprints and the dimensions and FAR, nothing different than what we approved except this rear staircase perhaps?

ANDREW STEVENS: Correct.

CONSTANTINE ALEXANDER: And it looks like, and I guess the only explanation would be someone got a wrong somewhere along the line.

BRENDAN SULLIVAN: In the previous house when you and your dad lived there, in the basement where you said you used to store your tools and all that other stuff, what was the floor to ceiling height there before?

STEVEN ALIANO: There was a drop ceiling in the basement.

BRENDAN SULLIVAN: Well, it would have been to the framing if you got the drop ceiling. Less than seven feet?

STEVEN ALIANO: It's been a long time, but, I think it was, I think it was six-foot, nine.

BRENDAN SULLIVAN: Okay. And proposed now that's where the square footage is coming.

CONSTANTINE ALEXANDER: Yes. Okay. Thank you.

Continue.

ANDREW STEVENS: I don't have really anything else to say.

CONSTANTINE ALEXANDER: Okay. Questions from members of the Board at this point?

(No Response.)

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that there is no one wishing to be heard.

We are in receipt of some written communications I believe. There is a letter from Leland Cheung, City Councillor. (Reading) I am writing to express my support for Mr. Steven Aliano of 7 Montgomery Street. Mr. Aliano has applied for a Variance from the requirements of Article 5.000, Section 5.31 to reconstruct a single-family home, with a raised roof, new decks, and a two-story addition. I do not often write to the Board of Zoning Appeal because of your judicious and conscientious approach to evaluating cases, but I wanted to be sure to call your attention to the unique circumstances of the Petitioner. Mr. Aliano initiated the construction on 7 Montgomery Street in an effort to complete handicap improvements

for his father, Mr. Michael Aliano. Michael Aliano suffers from muscle disorders and spinal stenosis, the combination of which has rendered him unable to move more than four feet independently. The proposed improvements to the property will allow Michael to have improved access around the residents and heighten his quality of life. Mr. Aliano's intent in completing renovations is neither for monetary gain or obtain any additional increases to the property. He is not applying for a Zoning change or an expanded balcony or deck. It is his desire to complete renovations on the property to enhance a the quality of life of his disabled father. The Board of Zoning Appeal has a long track record to be a responsive and

(inaudible) body that protects the interest of the broader community when considering plans for the future. I trust the Board to exercise the same conscientious consideration in this case as well.

We have a letter from Mark Gottlieb, G-o-t-t-l-i-e-b at 11 Montgomery Street. He says I'm sorry I was unable to attend tonight's meeting in person. (Reading) As a homeowner who lives directly adjacent to property in question, I want to express my full support for the application to rebuild 7 Montgomery Street as previously approved. The home was simply too small to accommodate Mr. Aliano and his family, especially considering that he requires extra care due to his serious health issues. But

now that the home has been demolished for some reason, it is of particular interest to me that the structure is rebuilt for aesthetic as well as health and safety reasons. It should not continue in its present condition any longer than is absolutely necessary. I hope you approve the plans and help to resolve this situation as soon as possible.

I have something from Cambridge Historical but I'll do that last. I'll see if there's anything else. I don't believe so. And that's it except for Cambridge Historical. (Reading) The building at 7 Montgomery Street was constructed more than 50 years ago and is subject to demolition review by the Cambridge Historical Commission. Work was stopped on or about March 4, 2013,

when the extent of work exceeded the existing Building Permit. At a hearing on April 4, 2013, the Commission voted to recommend that the Inspectional Services Commissioner suspend the two-year moratorium on demolition and building permits. See attached memorandum. And the attached memorandum says with regard to this recommended suspension, the Commission's decision was made in light of the particular circumstances of this case, and the property owner Mr. Michael Aliano.

There's no indication here about intent. It's just simply that they are making it on the basis of hardship, really, it sounds like. Hardship of your father, Mr. Michael Aliano. Anyway, that's all she wrote.

BRENDAN SULLIVAN: It's your presentation tonight, though, that your dad will move in?

STEVE ALIANO: Yeah, right now he's living in an apartment that's -- it's not handicap accessible. You know, he's already fallen there a couple times. He's had two surgeries in six months.

BRENDAN SULLIVAN: Upon completion of this project, your dad is going to move back to the house?

STEVE ALIANO: Correct, correct yes.

CONSTANTINE ALEXANDER: Okay. I'll close public testimony. Do you have anything else you want to add at this point? We'll debate it among ourselves.

ANDREW STEVENS: No.

CONSTANTINE ALEXANDER: Okay.

Comments?

JANET GREEN: I had a question. This is exactly the same house that was approved before or was there some, in the question about the addition of FAR, was that answered by the basement being --

BRENDAN SULLIVAN: I think they may be bumping up. I have to see how.

CONSTANTINE ALEXANDER: I think the answer was that --

BRENDAN SULLIVAN: I'm not sure if the basement was included before.

CONSTANTINE ALEXANDER: Yes, I don't know it was included before and now it's included.

BRENDAN SULLIVAN: And now it's included.

JANET GREEN: It's the same plan just added in now?

BRENDAN SULLIVAN: Right.

ANDREW STEVENS: That's what I understood.

CONSTANTINE ALEXANDER: Are these the plans, these two pages for the --

ANDREW STEVENS: That's actually the framing plan. It's actually not the plan, plan. You want to see the plan, plan?

CONSTANTINE ALEXANDER: Well, no, what we're going to do when we get to have a motion, I'm going to tie relief to the plans.

ANDREW STEVENS: Okay, yeah.

CONSTANTINE ALEXANDER: If you need those keep them. We have a set.

ANDREW STEVENS: That's the framing plan.

CONSTANTINE ALEXANDER: Anyway, while Kevin's looking at it, any further comments?

BRENDAN SULLIVAN: That's the previous case.

KEVIN CASEY McAVEY: Previous case, yes.

CONSTANTINE ALEXANDER: This is it?

ANDREW STEVENS: Yeah, that's the plan exactly.

CONSTANTINE ALEXANDER:
Commentary or ready for a vote?

DOUGLAS MYERS: I think, I'm ready just as long as we're satisfied that it's the same plans.

CONSTANTINE ALEXANDER: I'll make that -- the motion will be conditioned on that being the case.

DOUGLAS MYERS: Okay.

CONSTANTINE ALEXANDER:

Anything else?

DOUGLAS MYERS: What about the back stairs then? Are they something that was not in the previous plan?

CONSTANTINE ALEXANDER: I don't understand why ISD allowed it to be built.

ANDREW STEVENS: I believe it was a second egress issue.

CONSTANTINE ALEXANDER: Okay. I'm surprised that they didn't tell you, not you, to tell your client to come back before us because it wasn't on the plans. But those are, it's on the plans now.

ANDREW STEVENS: Uh-huh.

CONSTANTINE ALEXANDER: That second means of egress.

Considering the quality of the

representation of the drawings you had last time, I'm not surprised. They blew that one.

ANDREW STEVENS: Yeah.

CONSTANTINE ALEXANDER: It's not the presentation or a good set of plans.

Okay. The Chair moves, if we're ready for a vote or, Brendan, do you want more time?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: 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 that he would not be able to complete the work that we approved in recent terms of dimensions at an

earlier hearing as approved by case No. 10103. And that hardship would mean that the property would be abandoned, to be an eyesore to the neighborhood if not a safety issue.

That the hardship is owing to circumstances related to the size of the shape of the lot. It's a very odd lot. It's a lot that as you pointed out, that all you can build if you wanted to comply with the Zoning Ordinance would be a closet almost.

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

The Chair would note that we made all of these necessary findings when we

granted the Variance, the Variance No. 10103. That it's been represented to us, and it will be a condition of any relief we grant, that the work being proposed with the exception of the rear staircase, is identical to the plans that we approved the last time around. And that we do not find a problem with respect to adding this second means of egress which is required as a matter of law anyway.

The Board would move that we make the finding about no detriment to the public good. We would note that there are letters of support both from a City Councillor and a direct abutter supporting the project.

The same hardship that applied before applies now, and on top of that we have a hardship of if we don't allow this

to happen, who knows what happens to that property with regard to the existing structure.

And so, the Chair moves that a Variance be granted on the condition that the work proceed in accordance with plans submitted by the Petitioner. They're numbered A1, A2, and A3, initialed by the Chair.

And, again, the Chair would reiterate that these -- this relief is being granted on the specific condition that except for that rear staircase, the work is going to be identical to the work that we approved before and so no change in the footprint or location of the structure on the lot.

All those in favor of granting the variance say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted. Good luck again.

(Alexander, Sullivan, Green, Myers, McAvey.)

(11:25 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Kevin Casey McAvey.)

CONSTANTINE ALEXANDER: Last but not least, the Chair will call case No. 10434, 77 Walden Street.

ATTORNEY JAMES RAFFERTY: Good evening. James Rafferty on behalf of the applicant. Seated to my right the applicant and property owner John Stamper, S-t-a-m-p-e-r. And to

Mr. Stamper's right is his architect, David Harmon, H-a-r-m-o-n. This three-family home on Walden Street is actually the house Mr. Stamper grew up in. He moved back a few years ago to assist his mother who recently passed away and he now owns the home and he's beginning the process of making some renovations to the home. It's a significantly sized lot. The house is considerably undersize for the allowable FAR, and what's proposed here is to put an addition on that conforms to the dimensional requirements of the district but exceeds 25 percent of the existing structure. The house is non-conforming in at least one respect and that's the right setback. It's a corner lot. It doesn't have a rear yard, but it has two

fronts and two sides. And it's the right side as you stand facing the house on Walden Street, it's about four or five feet. And the minimum in that district is seven and a half feet. So the proposed addition isn't occurring in that area or within that setback. It's actually occurring much further down. It's a two-story addition that's going to include a garage at the ground floor. But the garage is not included in the GFA calculations. And it's a two car garage, but it's a three-unit dwelling so the Ordinance allows you to have one parking space for each dwelling unit. So the request is to allow for the addition as designed by Mr. Harmon. And Mr. Stamper has at least one very good neighbor who has been sitting with us for several hours

and I know she's here in support.

CONSTANTINE ALEXANDER: Very good neighbor.

JOHN STAMPER: Actually two.

CONSTANTINE ALEXANDER: Two?

ATTORNEY JAMES RAFFERTY: We should all have two nice neighbors.

CONSTANTINE ALEXANDER: Just a question. On the dimensional form you show that the -- with regard to the ratio of usable open space to lot area, you show today or existing is 31 percent, and then with the -- you're going to go to 34 percent even though you're adding an addition. How can increase the ratio?

ATTORNEY JAMES RAFFERTY: I had the same question of Mr. Harmon when he proposed that and I forget what your response was.

DAVID HARMON: Well, let me think about it.

ATTORNEY JAMES RAFFERTY: I think it had something to do with the area today, was it slope that you were improving or taking up some asphalt?

DAVID HARMON: Maybe we increased the driveway or something. I -- we have ample space there for --

CONSTANTINE ALEXANDER: You want to show that, and I'm not sure this is right. The Ordinance requires 30 percent. So if you're going to 34 percent, you do have a problem.

ATTORNEY JAMES RAFFERTY: Well, in response to that I had Mr. Harmon prepare an open space calculation to show me how he arrived at that. So he took the site plan and identified the various

areas that meet the open space.

CONSTANTINE ALEXANDER: What are the open space requirements for this district? Is it 30 percent?

ATTORNEY JAMES RAFFERTY: It's 30 percent, yes. And then the open space requirements, 50 percent has to be measurable 15 feet -- minimum 15 feet.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: But no, I had -- I do recall this, and then I asked David to prepare -- I said, well, show me your math as to how you arrived at your open space calculation. So it may be that the existing condition is inaccurately stated on the dimensional form but I think the proposed --

CONSTANTINE ALEXANDER: I was

wondering whether the numbers got transposed. That you're going to go from 34 percent to 31 percent but you're okay with 30.

ATTORNEY JAMES RAFFERTY: Is the total of the open space calculated there? I think it was. And then we -- so, it says 31 percent on the, it says that --

CONSTANTINE ALEXANDER: That's the existing?

ATTORNEY JAMES RAFFERTY: No. I think that means proposed.

CONSTANTINE ALEXANDER: Yes, I think it's transposed.

ATTORNEY JAMES RAFFERTY: You think 753 square feet on a 5691 square foot lot, so 1700 square feet of open space. The lot is 5600, and you say it's here 31 percent. I don't know how

we're -- is there a -- I don't know why we're -- I suspect that there was a -- well, be maybe they're in the wrong column. Is that what you mean by transposed?

CONSTANTINE ALEXANDER: Yes, they're in the wrong column. That's what I mean by transposed.

ATTORNEY JAMES RAFFERTY: Yes. I apologize.

CONSTANTINE ALEXANDER: I'm going to make a correction on the file company.

ATTORNEY JAMES RAFFERTY: Okay. And I do believe -- I hope there's a copy of that in the file?

CONSTANTINE ALEXANDER: There is. I remember seeing it.

ATTORNEY JAMES RAFFERTY: So it

is spelled out in the file correctly.

CONSTANTINE ALEXANDER: Okay.

Well, you know, ISD will review this and if they have a different view, but hopefully we're all set in terms of the calculation.

ATTORNEY JAMES RAFFERTY: Oh, no, I've been over the calculation. I think the integrity of the calculation is fine. I think the form contains the mistake, not the calculation.

CONSTANTINE ALEXANDER: Okay.

I'll open it to public testimony. Is there anyone here wishing to be heard?

ELEANOR JEWETT: Yes. I'm a little sleepy but I'll try. My name is Eleanor Jewett, J-e-w-e-t-t and I'm a neighbor of John's and I live -- I would be in abutter except Hubbard Avenue is

between us. So my southeast part of my house faces his -- no, my --

JOHN STAMPER: Yeah, that's right.

ELEANOR JEWETT: So your southeast faces my --

JOHN STAMPER: Either outcome versus my.

ELEANOR JEWETT: Anyway, we're parallel, like this. And from my kitchen, dining room, and porch I can see this area that where he's going to be building. And currently it's, it's a parking area. And I think the structure as designed is very aesthetically pleasing in that it, it looks like it's been there a long time, at least as you've designed it. And it looks quite natural with the house. So I think from my

perspective, aesthetically it will improve John's property. But from my personal perspective it improves my view. So I -- and the view of the neighborhood which of course is what we're all interested in doing. So I am just encouraging you to support the project.

CONSTANTINE ALEXANDER: Thank you.

Sir.

CHRIS REILLEY: Yes. My name is Chris Reilley, R-e-i-l-l-e-y. And I live right next-door to John at 71 Walden, and I'm in favor of the project. I think it's a good addition and the design looks really good. He talked to me all the way through the process and --

CONSTANTINE ALEXANDER: You're a good neighbor to stay all this time to say

that.

CHRIS REILLEY: No problem.

He's a good guy.

CONSTANTINE ALEXANDER: Good neighbors.

Mr. Rafferty, I'm looking through the file and I'm seeing two plans for this. As you know, we're going to tie it to something. Look at this.

ATTORNEY JAMES RAFFERTY: Well, it's the later dated set. I seem to recall that after the initial submission some questions -- David, could you verify? There might have been a modify --

DAVID HARMON: This is the newer plan.

ATTORNEY JAMES RAFFERTY: Do you see a date on this?

DAVID HARMON: This shows the dimensions (inaudible).

CONSTANTINE ALEXANDER: Look at the other pages, too, because the second page is different.

ATTORNEY JAMES RAFFERTY: Right. I think it's this set. I recall now, when this was initially filed, it lacked dimensions on the elevations and a few other things. And similarly the parking spaces were not dimensioned and all that. So we updated that. So it's that set there.

CONSTANTINE ALEXANDER: Are there dimensions here? Yes.

ATTORNEY JAMES RAFFERTY: The addition, the vast majority of the house is unchanged so we didn't bother to measure the elevations on that.

CONSTANTINE ALEXANDER: I see.
Okay.

I don't think there are any letters in the file. We have certainly two loyal neighbors who have spoken in favor. I'll put an X on this.

I'll close public testimony.
Anything further?

ATTORNEY JAMES RAFFERTY: No,
thank you.

CONSTANTINE ALEXANDER:
Comments? Ready for a vote? This is a
Special Permit?

ATTORNEY JAMES RAFFERTY:
Correct.

CONSTANTINE ALEXANDER: Okay.
The Chair moves -- first of all, I've
got to find the right pages, that -- we
have to first make a determination about

substantially more detrimental.

The Chair moves that we make the following findings:

That what is being proposed, the proposed alteration of the structure will not be more substantially more detrimental to the neighborhood than the existing non-conforming use.

That the relief being sought will not cause congestion, hazard, or substantial change in established neighborhood character.

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

No nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant or

the citizens of the city.

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

The Chair would note, and this is part of the record, that the relief being sought is modest. It is a pleasing addition to the structure. It has support of the neighbors. There's no other opposition, and it will improve, generally, this slightly non-conforming structure and make it more usable to the occupants of the structure.

On the basis of all of these findings the Chair moves that a Special Permit be granted the Petitioner on the condition, Special Permit being requested, on the

condition that the work proceed in accordance with plans several pages in length, the first page of which has been initialed by the Chair.

All those in favor say "Aye."

(Aye.)

(Alexander, Sullivan, Green, Myers, McAvey.)

CONSTANTINE ALEXANDER: At long last. Good luck.

ATTORNEY JAMES RAFFERTY: Thank you.

* * * * *

(11:35 p.m.)

(Sitting Members: Constantine
Alexander, Brendan Sullivan, Janet
Green, Douglas Myers, Kevin Casey
McAvey.)

CONSTANTINE ALEXANDER: The
Chair will call case No. 10081, 1 Parkway
Terrace.

This matter involved an extension of

time of expiration. The Petitioner in this case was granted a Special Permit on May 25, 2011. They have now requested an extension of the expiration of the Special Permit. The Board is being asked to extend the Special Permit for a period of six months starting on May 26, 2013, and ending on November 25, 2013. And there is a letter in the file from the Asif, A-s-i-f Jilani, J-i-l-a-n-i apparently the owner of the property.

(Reading) I would like to request an extension to the validity period for the residential Special Permit referenced above. It is my understanding that the Special Permit which was approved on May 25, 2011, has a validity period of two years. I require some additional time to finalize arrangements with my selected

general contractor to begin construction/renovation activities at my property at 1 Parkway Terrace in Cambridge. My expectation is to be able to commence construction no later than August 2013, and likely earlier. The reason for my not starting construction earlier was due to some uncertainty my family had regarding our long term residence in the Cambridge area. In short, last year when we expected to commence construction activities, my employer had considered transitioning me to an international assignment based in Europe. This will not be the case and we are now intending to maintain our long term residence in Cambridge and are looking forward to proceeding with our original renovation construction plans.

And there we are. The Chair moves that we grant the requested extension of time for a period of six months starting on May 26, 2013, and ending on November 25, 2013.

All in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The extension has been granted:

DOUGLAS MYERS: Only one such extension can be granted?

CONSTANTINE ALEXANDER: I think so. That's right.

(Whereupon, at 11:40 p.m., the
Board of Zoning Appeal
Adjourned.)

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**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 24th day of May 2013.

Catherine L. Zelinski
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Certified Shorthand Reporter
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