

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JULY 25, 2013

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Timothy Hughes, Vice Chair

Brendan Sullivan, Member

Thomas Scott, Member

Janet Green, Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

(7:30 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And we'll start with some clean up with continued cases. And the Chair is going to call case No. 10445, 1 Orchard Street.

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

(No Response.)

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

The Chair will report that we are in receipt of a letter from the architect for the Petitioners, Mark Wagner. It states:

(Reading) The Petitioners Stanley and Lisa Gedaminsky, G-e-d-a-m-i-n-s-k-y would respectfully like to withdraw their Variance

application to add a dormer at 1 Orchard Street. Any future renovations will be done within the existing structure.

The Chair moves that we accept this request for withdrawal of the petition.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case withdrawn.

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

* * * * *

(7:30 p.m.)

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

Scott, Janet Green.)

CONSTANTINE ALEXANDER: We also have another continued case, 10441, 9 Oakland Street. But we also have the first case on the regular agenda is that same petition, so we'll defer the continued case until further after we hear the regular case.

(Case Recessed.)

* * * * *

(7:30 p.m.)

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

Scott, Janet Green.)

CONSTANTINE ALEXANDER: So the Chair is going to call case No. 10469, 9 Oakland Street. Obviously someone is here wishing to be heard.

SCOTT CHISHOLM: Hi, I'm Scott Chisholm, C-h-i-s-h-o-l-m, the owner of 9 Oakland Street.

CONSTANTINE ALEXANDER:
Mr. Chisholm, the floor is yours.

SCOTT CHISHOLM: My wife and I we bought 9 Oakland Street this past year, and it's sort of in the heart of Inman Square. It's a very interesting, very tight urban site.

CONSTANTINE ALEXANDER: Yes.

SCOTT CHISHOLM: It's an old house that needed a lot of work. Turned out it needed even more work than what we thought.

What appealed to us about this site was that it was a through lot. It went from Oakland to Oak Street. And there was an empty lot on the back side facing Oak Street, and so we always saw that as a potential to offset the cost of the original home renovation to add a second freestanding house.

So, I went through the process. And it was a very small site and it had a lot of restrictions. So this first application was for a Variance to build a small house, a two-bedroom house that tried to accommodate the off-street parking requirements. And so what we had done was present a two parking spots sort of in a share under the house and raise it up to a second and third floor, but we still needed relief from the side yard setbacks and the FAR. Had some neighborhood support from that. But right before the

hearing I realized that there was some vocal neighbors who were not happy with the design, so at that point I postponed that Variance hearing and I reconsidered my proposal. So, after a lot of discussion with the neighbors I came up with a proposal for a much smaller freestanding house, only 625 square feet as of right. It meets all the -- it's only two stories. It meets all the FAR requirements, the setback requirements. It just what it doesn't meet is the second off-street parking requirement. So we are seeking a Special Permit to give relief for one parking spot.

So, the site on the Oak Street side which is an empty lot now has an existing curb cut and that's where the house on Oakland Street previously parked in sort of the center there. So we are looking to maintain that parking spot, build a house on the site

sort of back in the middle, and then without a parking spot. So we -- a house like this, 625 square feet, sort of a very unique. It's like the size of a studio condo apartment, but it's actually a freestanding house. It's two stories with a double story space with a sort of a bedroom looking into the living space. So in presenting that to the neighbors, they really were sort of interested in it. I had one neighbor who was very against the original one. And he said he was not opposed to a house there, but it should be a small house. And so this proposal that I've presented today is a small house. It has a gable roof which is sort of in character of the other neighborhoods -- neighborhood homes. This neighborhood, I mean it's close to public transportation. There's bus routes there.

There is a Zipcar parking spaces all over. And I think this house that we're proposing to build would appeal to a young urban professional. Sort of very small footprint. Consider it going to a LEED rating on this because the size of it and the efficiency of this house, and so we're looking for the Zoning Board to grant us this relief for off-street parking.

CONSTANTINE ALEXANDER: I was looking as you were talking to see if there were any letters in the file, and I didn't see any letters.

SCOTT CHISHOLM: No. And I do have a letter from one of the neighbors which I'll submit who was opposed to the original proposal and who is now supporting this new proposal. So I think they appreciated my efforts to take that under consideration.

BRENDAN SULLIVAN: What I was curious is you plan that there is one space and that you're providing one space and you're one deficient. Where is the one space now?

SCOTT CHISHOLM: It is in the center of that -- the curb cut exists in the center and it is in the front part of the site.

BRENDAN SULLIVAN: But that's not a compliant space.

SCOTT CHISHOLM: Well, talking to Ranjit he said that's an existing condition and that he thought it would be allowed.

BRENDAN SULLIVAN: I don't know why it would be -- I mean, it's obvious there was a curb cut, but I can't imagine that somebody would park there and walk all the ways to the house on Oakland Street. I would think that the driveway would have gone all the way

through.

SCOTT CHISHOLM: No. I mean if you look at the last picture, it shows the existing condition. There actually was a garden in the middle part of the yard.

BRENDAN SULLIVAN: When is the date of that?

SCOTT CHISHOLM: This is from a couple years ago. So there was a sub --

BRENDAN SULLIVAN: Sean, what's the trigger date for --

SEAN O'GRADY: '61.

BRENDAN SULLIVAN: Okay. So I mean that's the first thing that struck me, is that I don't think we have a code compliant existing space so that you really are noncompliant for two spaces.

CONSTANTINE ALEXANDER: Well, let me just challenge that a little bit. I mean,

Ranjit has made -- unless someone takes an appeal from Ranjit's decision, they do have one space in his opinion. It's not up to us to, on our own, to raise an issue that Ranjit doesn't think is an issue. I mean, we can't -- I think that goes too far. We're here to review decisions or Variance requests or decisions on appeal, but no one has appealed Ranjit's decision.

BRENDAN SULLIVAN: A compliant space would be 10 foot.

SEAN O'GRADY: 10 and 18.

BRENDAN SULLIVAN: And then 18. So it would have to be 28 feet from --

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: But, again, we don't have --

BRENDAN SULLIVAN: There is sufficient room to do that.

SCOTT CHISHOLM: Not to put a second house there. So, that is the challenge. So -- no, I'm aware of that. And Ranjit -- I worked with him quite a bit developing this site. And he worked with me on the first site -- or the first proposal. And he said this is what I should present.

TIMOTHY HUGHES: It's a compliant space now but it won't be when they put the second house in because it will be in the front yard setback?

BRENDAN SULLIVAN: Correct. It's a wide open lot right now.

TIMOTHY HUGHES: Right.

BRENDAN SULLIVAN: Which services Oakland Street house by putting a house on the lot --

TIMOTHY HUGHES: So, Brendan, do you think that this -- maybe what he's really

asking for is relief for two spaces?

BRENDAN SULLIVAN: That's correct.

TIMOTHY HUGHES: And that this is mis-advertised?

BRENDAN SULLIVAN: Well, not that it's mis-advertised, just that the plan as presented does not show one legitimate space.

TIMOTHY HUGHES: Right.

BRENDAN SULLIVAN: And so I think it's deficient in that and obviously deficient in not providing one for the new structure.

THOMAS SCOTT: If this house were moved back ten feet, it would be compliant?

BRENDAN SULLIVAN: Well, I'm not sure about the separation in between and all that other stuff. I mean, you'd have to -- there's a little bit more.

THOMAS SCOTT: You'd have 12-foot, 6

between the residences.

BRENDAN SULLIVAN: Yes. I don't have the answer to that without doing a little bit more....

CONSTANTINE ALEXANDER: Well, clearly I guess I'm trying to think of what our options are. We could on our own continue the case and ask Ranjit to make a determination on this and let us know what it is. If he says, in his opinion, it's code compliant, then unless someone else takes a challenge, appeals that decision, that's it. It's not binding. If he says no, now that I've looked at it, thanks to Mr. Sullivan's comments, it's not, then I think what you have to do is come back with a new petition now seeking relief for the two. One thing I will not do is do this in steps. If we do, give you approval tonight for this and then have

you come back a month or two months from now and say oh, by the way, Ranjit's changed his mind and we need further relief. I want to take it all at one time.

SCOTT CHISHOLM: Sure. He has the ability to not grant me -- I mean, he has worked with me on this. He is aware of parking. I would assume he still has the ability to reconsider --

CONSTANTINE ALEXANDER: Yes, but my fear would be, again, assuming we grant relief tonight, is that on reconsideration Ranjit changes his mind. If he does that, then you've got a problem which you can try to solve by coming back before us seeking a different, another Variance or a Special Permit, or whatever it will be. I don't want to do that. I want to decide the case on this property. I want all the relief at one time.

So, that's where we are.

BRENDAN SULLIVAN: I don't doubt the gentleman's presentation that he's had conversation and that the Commissioner has indicated that what is before us is a grandfathered phase. I don't doubt that in the least. I don't think you would waste your time and effort and so forth. I just, I don't see where he could come up with that conclusion.

CONSTANTINE ALEXANDER: Well,
again --

BRENDAN SULLIVAN: Especially not based on a photograph of a couple years ago. And I, I'm not doubting that, you know, people would have a garden there and so on and so forth. But I can't imagine that somebody would pull in here and then walk all the way down to that house. Over time that this was

probably a drive through here and that there was garden on either side or something. Over time, it may have dwindled, but I -- so --

SCOTT CHISHOLM: I mean, the neighbors and even in his letter --

BRENDAN SULLIVAN: I would not support that proposal before us because I really question its legitimacy. However, the other four members may want to go forward.

CONSTANTINE ALEXANDER: So you're saying you're not in favor of granting the Special Permit being sought today?

BRENDAN SULLIVAN: Correct.

SCOTT CHISHOLM: I think even the letter from the neighbors -- historically that garden has been there and that they had -- so, it was clear that they have always parked in the front.

BRENDAN SULLIVAN: I don't mean to

interrupt. Not just for the legitimacy of the grandfathered space, but for the whole concept of waiving the requirement for a second space where I think there was sufficient property, land to provide two parking spaces.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: And also waiving that requirement.

CONSTANTINE ALEXANDER: But it's your representation to the Board that this issue that Mr. Sullivan has raised has been discussed in general terms with Ranjit, and he has not said --

SCOTT CHISHOLM: It's been discussed extensively with Ranjit.

CONSTANTINE ALEXANDER: Okay.

SCOTT CHISHOLM: And he helped me write the wording on this application.

CONSTANTINE ALEXANDER: Okay.

Why don't we go forward, then, on the basis of that. Rightly or wrongly you have one legal off-street parking space for this property and you're seeking a Special Permit for -- not to have a second because of the second dwelling unit you're putting on the lot.

TIMOTHY HUGHES: I'm troubled by the fact that building this second unit is going to make this a not legal space.

CONSTANTINE ALEXANDER: Well, then the reason to vote against relief that's being sought tonight.

TIMOTHY HUGHES: I understand that, yes.

BRENDAN SULLIVAN: So which structure will the parking space serve?

SCOTT CHISHOLM: It actually will

serve for the Oakland Street because it's the bigger house. It's the house that more -- a buyer for that house would more likely need parking. So it's -- it's not -- it's one lot. It's being conveyed as one lot, and they will, you know, share the common areas.

CONSTANTINE ALEXANDER: My concerns are different and that simply is that you've got a very small street, narrow street. Off-street parking has got to be a problem on that street. And now you're going to add, potentially at least, one more car to that street. Maybe not. That's the city's hope, maybe not. But it may.

SCOTT CHISHOLM: Yeah.

CONSTANTINE ALEXANDER: And that, that troubles me a bit. This is not exactly the ideal area to diminish the on-street parking by adding more cars.

TIMOTHY HUGHES: And that's exacerbated by the fact that it's almost in Somerville, you know, so that like the street is -- really only has very limited amount of permit parking for Cambridge residents because the other half of the street is Somerville permit parking.

THOMAS SCOTT: But I could buy the argument that given the size of the house and the fact that it's so close to so many, you know, public transit opportunities that it could be just a single urban professional who doesn't have a car.

CONSTANTINE ALEXANDER: That's the other side of the argument, right.

SCOTT CHISHOLM: Right.

CONSTANTINE ALEXANDER: No question about that.

SCOTT CHISHOLM: And the Zoning, I

think, your ability to grant relief is based on the fact that someone can use alternate forms of transportation.

CONSTANTINE ALEXANDER: Yes, I'm going to read you from the section. And that's true, that's one standard. But it also says we have to make a finding that granting the Special Permit will substantially reduce parking availability for other uses or otherwise adversely impact the neighborhood. And that's the issue I'm raising. And I think Tim is.

SCOTT CHISHOLM: So I talked to neighbors at length on this whole street and I can tell you that -- and my concern was that if that was gonna be a problem, that you would have seen a letter or opposition to this.

CONSTANTINE ALEXANDER: That's true. I'm heartened by the fact that there

is not.

SCOTT CHISHOLM: And you're not seeing opposition.

CONSTANTINE ALEXANDER: And we saw opposition before for the prior project.

SCOTT CHISHOLM: Right. So in the prior project I actually got the parking off site and they actually had more issues with that. So, you're seeing no letters of opposition from the neighbors and you're seeing letters of support from people who didn't support it originally.

CONSTANTINE ALEXANDER: Ma'am, you came to the front, I'm sure you want to say something. Give your name and address to the stenographer, please.

AFSHAN BOKHARI: This is my husband, and my name is difficult so I'll spell it. A-f-s-h-a-n. And the last name is Bokhari,

B-o-k-h-a-r-i and I'm Scott Chisholm's wife.

CONSTANTINE ALEXANDER: Okay.

AFSHAN BOKHARI: So I think Scott did mention one of our options which is that at the end of Oakland Street is a parking lot that is for hire. There's spots that are there for hire that we've already looked into.

Did you already mention that?

SCOTT CHISHOLM: No, I did not.

AFSHAN BOKHARI: Yeah. So our plan was actually to buy one of those, to rent that and to give it to the potential buyer of the studio in case they needed that spot.

CONSTANTINE ALEXANDER: You mean buy you mean tenant, right?

AFSHAN BOKHARI: Well, to rent it, yeah. For sort of like a certain number for long term.

SCOTT CHISHOLM: Long term use.

CONSTANTINE ALEXANDER: You're not selling that house, are you?

SCOTT CHISHOLM: Yes.

CONSTANTINE ALEXANDER: You are? So you're going to condominiumize the property?

SCOTT CHISHOLM: Yes, one lot with two properties on it.

CONSTANTINE ALEXANDER: You're not going to subdivide?

SCOTT CHISHOLM: No.

AFSHAN BOKHARI: So we've already researched that and we also found another lot nearby that also rents parking spots. And so we were going to offer that to the potential buyer if they needed it, to offer it with the price of the condo basically. And there seems to be a lot of options in the

neighborhood to park a car off street. And this -- the one down on Oakland Street is very conveniently located and many people have parked there. And I also just wanted to offer, I don't know if you mentioned it, the people who park, who live across the street from the Oak Street, this potential Oak Street property, they actually are parking in a very non-conforming manner right in front of the house. It's not really a parking spot. And I think, you know, they sort of recognize that there's a lot of issues, not issues, but that people are, you know, just sort of supportive of each other and understanding their situation. But, you know, they don't complain or they don't really say anything, and we've really worked with them to let them know what's happening. And I used to be an architect and, you know,

the idea of in-fill was really important. Like, there's this abandoned -- not abandoned, it's an empty lot with, you know, it's the only one it doesn't have -- it's never had a building. It's interesting. I did a little history on it. So I think considering the big development that's going on there, having that as an empty lot, the alternative is to actually fill it up with more parking. And they realize that and they'd rather not have more than one car there. So I mean that was one of their things that we discussed and I just wanted to bring that up.

SCOTT CHISHOLM: Again, I would say that this house is uniquely small and urban and really is -- it caters to a type of person who is very likely not to own a car. It's 600 square foot loft space. It's really going to

appeal to the demographics of a person of our new generation who is less interested in automobile use. And this is --

AFSHAN BOKHARI: And also Zipcar is available.

SCOTT CHISHOLM: And Zipcar. I did a map of all the Zipcar locations surrounding this area, and it's indicative of that kind of development. It seems on Oak Street to be an appropriate solution for an appropriate type of person that -- and the neighbors have said that the parking -- they, they've said this would not be a negative deterrent to their use or quality of the use of the street.

CONSTANTINE ALEXANDER: Janet?

JANET GREEN: I wanted to ask if there are other sort of legal places where people are parking in the neighborhood? I know you mentioned one right across the

street.

AFSHAN BOKHARI: Yeah.

JANET GREEN: But where are they?
Are there legal spaces besides that
parking --

SCOTT CHISHOLM: The driveways.

JANET GREEN: -- lots with
driveways?

SCOTT CHISHOLM: In the
neighborhood that people lease out spaces
long term so that there are available spaces,
and we are pursuing that should this go
forward.

AFSHAN BOKHARI: Yeah. I think you
mean people who own the homes?

JANET GREEN: Yes, people who own
homes that have --

AFSHAN BOKHARI: Yeah, they're
parking in driveways. There are a lot of

non-conforming lots on that block as you know.

SCOTT CHISHOLM: Well, I mean, they're existing. I mean a lot of people park in side yards.

AFSHAN BOKHARI: A lot of people park on the side yard. They park in the side yard and, yeah.

JANET GREEN: And I believe you referenced the City's interest in encouraging fewer cars in the city and more alternative forms of transportation. And I appreciated that, but I think of it more in terms of larger buildings that have 10 units or something where, you know, there are ways that those buildings can have fewer parking spaces, but they also have a bicycle. And I didn't see any sort of documentation that would encourage -- would say that this

encouraged this kind of tenant. Yes, you might get it, but then again you might not. And so that's a little --

AFSHAN BOKHARI: Yeah, I mean I think the vision for cities in general is this idea of Zip cars and the bicycle program. I mean, it's amazing the studies they're doing at how many people are more likely now to use that and are really motivated to use Zip cars or bicycles. And I think a person in this kind of price category, this price point, is also looking to live somewhere, you know, that is urban and they can walk to places or take a bus, not use money for gas, and they probably -- most likely would not have a car. But if they did, there are opportunities for off-street parking that we've investigated. We've spent a lot of time looking into this so that it isn't burdensome for the neighbors

on the street.

JANET GREEN: I was curious. I just would have been interested in seeing some of that documentation.

AFSHAN BOKHARI: You mean like a map that shows --

JANET GREEN: Well, it shows that more people in this income bracket who are buying houses are more likely not to own a car or that sort of thing.

AFSHAN BOKHARI: Yeah. I mean, I didn't bring it.

SCOTT CHISHOLM: I mean I have a map just -- I mean this sort of speaks to that I think. It's a map of showing the Zipcar locations and surrounding the site.

JANE GREEN: So they've done the study. The people with the Zip cars.

SCOTT CHISHOLM: They're extensive.

There's maybe 15 or 20 spaces within, you know, a half a mile.

AFSHAN BOKHARI: Yeah.

SCOTT CHISHOLM: It's quite --

CONSTANTINE ALEXANDER: Can I keep this for our files?

SCOTT CHISHOLM: Absolutely.

JANET GREEN: Can you see it?

CONSTANTINE ALEXANDER: Yes.

Anything further? Any further questions from other members of the Board at this point?

UNIDENTIFIED AUDIENCE MEMBER: I wonder if I could ask a question?

CONSTANTINE ALEXANDER: You'll have an opportunity.

AFSHAN BOKHARI: And just in terms of economics, you know, like right now new construction is I think \$450 a square foot in

Cambridge. So if you multiply the 600 square feet by that amount, that price point is between, you know, like 350. And the person looking for that kind of unit is one that probably doesn't have children, is single, and is looking for convenience of mass transportation.

CONSTANTINE ALEXANDER: Okay. He or she would not have children not in a 625 square foot house.

AFSHAN BOKHARI: I don't think so. But we did take that in consideration the price point on who that would attract.

CONSTANTINE ALEXANDER: Should I open it to public testimony?

TIMOTHY HUGHES: You can open it up.

CONSTANTINE ALEXANDER: The Chair will now open this matter up to public testimony.

Is there anyone wishing to be heard on this matter?

SETH GOLDFINE: Yes.

CONSTANTINE ALEXANDER: Name and address to the stenographer, please.

SETH GOLDFINE: My name is Seth Goldfine, G-o-l-d-f-i-n-e. I live at No. 8 Oak Street. I have a lived there for approximately 30 years. The question that I have, I think there were a lot of representations made in what I was able to hear from the Petitioners in terms of what the neighbors do and don't think about the parking issues. The petition that was submitted a couple months ago for a different -- for a Variance on different criteria is another matter. I think it's, I think it's -- I think a lot was said about what neighbors may or may not think about

parking based simply on assumptions from the Petitioner. The question that I have for the Petitioners is I, in looking at their latest plan, and the way that they were going to accommodate parking for the Oakland Street property on -- off of Oak Street, I assume that condominium was in the future for this place, because that seemed to me to be -- they had to own the whole thing and rent it or they had to do a condominium arrangement. I'm not sure why they're off exploring other parking possibilities in the neighborhood if and excuse use the term, if they're going to develop the property and just flip the condominium. So I think, I think they made representations about what the neighborhood feels about the parking and then made representations about the exploration they've done on parking, but it's all

really -- it's all really a mute point because they're going to flip it and it becomes the neighbor's problem at the point. I think the point that Mr. Hughes made is worth repeating, and that is that the parking is very limited on that street, not only because for residents, not only because of all the activity in Inman Square, but because you have probably about eight spaces on that street before you get to the Somerville line. So I think parking really is an issue there. I can't, I can't offer an opinion as to why the neighbors didn't speak up about it in advance of this, but....

CONSTANTINE ALEXANDER: Are you in favor of granting relief or not?

SETH GOLDFINE: No, I'm not.

CONSTANTINE ALEXANDER: Okay.

AFSHAN BOKHARI: Can I ask him?

CONSTANTINE ALEXANDER: I don't want to you to cross-examine him.

AFSHAN BOKHARI: Oh, no. I just was wondering about what you meant by flipping the property? I think we've been very upfront that we're selling the property.

CONSTANTINE ALEXANDER: I don't want to pursue that.

AFSHAN BOKHARI: Oh, okay.

CONSTANTINE ALEXANDER: That's a fair question. Talk about it afterwards. Not as part of public record.

AFSHAN BOKHARI: Okay.

CONSTANTINE ALEXANDER: As to the neighborhood views on this, I can only say we take what we know. Neighbors haven't come. And we know the neighborhood is not shy about expressing their views because of the prior petition. There was one exception of one

letter, they've chosen not to comment. Do we take from that the neighbors are in support? I think if we take it as just basically they're indifferent. I don't know. I don't know except for this one person are they in favor or not in favor? I know you're not. I know this person is. And that's about all -- the only conclusion I would draw from what we have in our record. Unless there's someone else here from the neighborhood who wishes to speak. Let me ask.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard. We have this gentleman who has spoken.

Let me read the letter that's in the file submitted by the Petitioner. It is from

Richard Krushnic, K-r-u-s-h-n-i-c and Susan Markowitz, M-a-r-k-o-w-i-t-z who reside at 20 Oak Street. (Reading) We are owner/occupants of 20 Oak Street. One house away from being directly across the street from Scott Chisholm and Afshan Bokhari's parcel that stretches from Oakland Street to Oak Street and hence nearly across the street from their proposed new construction house. We wrote in opposition to their former proposal which was withdrawn, because among other things, it exceeded the amount of square feet allowed as of right and because of the design, which we considered ugly and out of character for the street. We would have strongly preferred that any additional square feet be added to the existing house on Oakland which would have preserved a portion of the original garden on Oak Street and

allowed parking. But as long as no square footage above the existing as-of-right square footage is used to build the additional house in the proposal before the city, we will support it.

And I would just comment to answer their condition, there is no -- the square footage of the proposed house is as a matter of right. There is no relief being sought, so the condition being expressed in this letter is being satisfied by the Petitioner.

With that I'll close public testimony. Anything further you want to add at this point?

SCOTT CHISHOLM: That's adequate.

CONSTANTINE ALEXANDER: Okay, thank you.

I think we're open to discussion.

THOMAS SCOTT: Did you take a look at

the possibility of connecting this house to the existing house as stated in the letter, and then you'd have to room to put two spaces on the lot that would may be tandem, but you'd have room to do that. I mean given that you're going to condo the property anyway, it doesn't -- the land is the land, but the structure is of what you're actually selling. So they could be combined, right?

SCOTT CHISHOLM: I mean, if you look at sort of the overall site plan, it's a very dense neighborhood. And so the side yard views are quite limited. So the views out the front and out the back are sort of critical to both of these homes. So, the idea of bringing them together and only having sort of side-views is -- would be very challenging.

AFSHAN BOKHARI: And if I could add.

CONSTANTINE ALEXANDER: Sure.

AFSHAN BOKHARI: That the Oakland Street house is right on the sidewalk. There's like absolutely no relief in the front so there's no open space really to sort of lounge and recreate -- so the idea was to have a little courtyard in between to not only allow exposure of sun both to those buildings but also to the contiguous buildings to allow sun to go through and to allow for as much sun for everyone and just sort of an open, you know, area instead of just a massing that sat there. We did think about that. But we're, we're trained architects and we're just thinking about the most, you know, human experience I guess for the building. And so that's why we added just that little open space so that it could feel that there is this concept of first of all, a house, two houses,

but also that everyone could benefit from that open space.

SCOTT CHISHOLM: Yeah, when you walk down Oak Street, there's clearly a rhythm of urban density that is lacking on this site, and it's sort of you walk down there, you see it, and you feel like something's missing, you know, from an urban sort of density point of view. And so we think this proposal is an appropriate in-fill to the neighborhood.

CONSTANTINE ALEXANDER: Okay.

Tom? Brendan, I should say, do you have anything further you want to add?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: Okay. All set.

TIMOTHY HUGHES: I'm curious about why the first proposal which people didn't seem to like didn't have to have parking

relief and why this one which seems to be down sized.

AFSHAN BOKHARI: Because it's under the building.

SCOTT CHISHOLM: I have a rendering of it, but it was under the building which required -- the site's only 30 feet wide. So if you put two cars under it, you would have to sort of breach the side yard setbacks. And so we're keeping it within a 15-foot width structure which would not allow two parking spaces side by side.

AFSHAN BOKHARI: The initial proposal allowed -- asked for more FAR, more square footage so it was a bigger. So that's why we could put two spots under the building. And that was opposed by the neighbors. Strongly opposed.

CONSTANTINE ALEXANDER: Anyone else

wish to make comments?

I have a few comments but I'll wait for others first?

Tom or Janet?

JANET GREEN: Well, I am moved by the fact that they worked with Ranjit to get the design that they have now.

SCOTT CHISHOLM: And the neighbors.

JANET GREEN: And the neighbors.

SCOTT CHISHOLM: There was a lot of input.

JANET GREEN: Ranjit and the neighbors, yes.

CONSTANTINE ALEXANDER: Tom? You don't have to say anything it's up to you.

THOMAS SCOTT: No, I mean I just wanted to know that they had explored that other opportunity. I understand now that you've talked about, you know, the ability of

natural light to filter in not only to these homes, but to the adjacent homes as well.

AFSHAN BOKHARI: Yep.

THOMAS SCOTT: So I see the importance of that. I guess my feeling is if Ranjit is okay with this as being an existing grandfathered space for this building and what you're seeking is relief for this building, then I think I'm okay with it.

CONSTANTINE ALEXANDER: My view was extreme reluctance. Frankly, I think I would vote in favor mainly because it is consistent with the philosophy of the city today about not stressing on-site parking, and largely because there seems to be no neighborhood opposition. I said it's indifferent. I know the neighborhood is interested in the property. They wouldn't have appeared before. And they obviously

aren't necessarily opposed. They may not be in favor. They may not be opposed. So I can get there, but I'm going to be very clear. If you have to come back here for relief after talking to Ranjit or the like, I'm going to reopen this one. Because it's going to be back from the start.

SCOTT CHISHOLM: I can promise you that's not gonna happen.

CONSTANTINE ALEXANDER: Well, you can't promise. Ranjit is going to have to make the promise.

SCOTT CHISHOLM: Fine.

CONSTANTINE ALEXANDER: The fact of the matter is I'm a little unnerved by the points that Brendan is making, the points he has made, because I do not like to decide cases piecemeal. So -- but I'm going to assume that you're okay, Ranjit's okay, right

or wrong, he's okay. And then unless someone takes an appeal from this decision, which can be done by the way. A neighbor could appeal Ranjit's decision or okay of your current parking space. I can support this petition tonight.

SCOTT CHISHOLM: Okay.

CONSTANTINE ALEXANDER: Anyway, I'm going to make a motion. All five of us have spoken.

TIMOTHY HUGHES: You better give me a minute.

CONSTANTINE ALEXANDER: Go ahead.

TIMOTHY HUGHES: I'm understanding that there is an existing non-conforming parking space that Ranjit has said is grandfathered in.

CONSTANTINE ALEXANDER: My understanding, yes.

TIMOTHY HUGHES: And so we can do this without changing the -- we're not looking for relief for that particular parking space being non-conforming. I mean, it hasn't been asked for, but we don't have to do anything about it. This is my understanding right now. And so all we are is we're granting relief for a small loft-style freestanding building on a neighborhood quite frankly that I think doesn't warrant, you know, relief for parking because of how tight it is. So that's where I am right now. You know, I've got a foot on either side of the fence. I really --

CONSTANTINE ALEXANDER: That's why I had my reluctance, Tim.

TIMOTHY HUGHES: I'm as reluctant as you are, but I'm not sure I'm coming down in favor of granting relief because of my

reluctance. Because I know this neighborhood. I mean live in Inman Square and it's like -- I can't imagine that people are not concerned about the loss of a parking space. I can't imagine. It's not possible, you know? They might not have come and said it.

JANET GREEN: So where are they? They came out before.

TIMOTHY HUGHES: There's a gentleman right there. There's one.

JANET GREEN: They came out before and many more.

TIMOTHY HUGHES: I mean, they're obviously more concerned about density on the lot than they are about the loss of a parking space.

BRENDAN SULLIVAN: How many units are going in next to you?

SCOTT CHISHOLM: Three units.

BRENDAN SULLIVAN: That whole --

SCOTT CHISHOLM: 15 Oak Street.

There's three large condominiums being developed there.

BRENDAN SULLIVAN: And each, they're going to provide one space and they're fairly large units.

SCOTT CHISHOLM: Somehow.

AFSHAN BOKHARI: Yeah. They have a parking lot.

SCOTT CHISHOLM: And I don't know if there was any Variance. I don't think there was, but again, they're parking up against -- in the side yard setbacks.

TIMOTHY HUGHES: You know you would have been better off saying yes, just a straight yes that they are providing one space per unit because that makes me even more

reluctant now. Because I'm afraid they're going to come and look for relief for parking. And I can't grant it to you and then have them come and then --

SCOTT CHISHOLM: They're almost complete.

TIMOTHY HUGHES: There isn't anything on the books for that one, is there? Variance for the other project?

AFSHAN BOKHARI: Could they build three units without getting the parking approved?

SCOTT CHISHOLM: It's almost -- they've had their permits -- they're almost.

AFSHAN BOKHARI: They're all done.

BRENDAN SULLIVAN: I guess the point is I don't think we can assume that those people are going to be using Zip cars or

bicycles. And if they're going to be fairly good sized units, then there's going to be more than one person occupying them. And hence I would assume that there's going to be more cars which are going to be generated by each succeeding development because they are increasing the sizes of them which then begets more people. On Oakland Street there is only parking on one side, which is opposite on the front door of this house here. It is just cheap to go.

TIMOTHY HUGHES: Yes, I know.

BRENDAN SULLIVAN: And people may not necessarily oppose it. See what their opinion is on a snow day or a street cleaning day.

CONSTANTINE ALEXANDER: That's right.

SCOTT CHISHOLM: I mean, I think

these neighbors know the street well. Oak Street, 15 Oak Street next-door has always been a three-family and it's always had off --

AFSHAN BOKHARI: Yeah, tenants.

SCOTT CHISHOLM: People living there presumably with cars so....

THOMAS SCOTT: I mean, I live in this neighborhood, too, and anybody who buys in this neighborhood, they better know what they're getting themselves into because parking is a problem period. Everywhere on every street.

SCOTT CHISHOLM: But this is --

THOMAS SCOTT: It's not --

SCOTT CHISHOLM: This is not such a unique neighborhood. I mean, from an urban point of view it's such a pedestrian -- I mean it's so phenomenal that you walk one block

into the heart of Inman Square.

AFSHAN BOKHARI: To your point --

CONSTANTINE ALEXANDER: Do you own a car?

SCOTT CHISHOLM: Yes, we own one car.

CONSTANTINE ALEXANDER: One car for the family?

SCOTT CHISHOLM: I have three children.

AFSHAN BOKHARI: He rides his bike.

SCOTT CHISHOLM: I ride my bike year around.

AFSHAN BOKHARI: I ride my bike, too.

SCOTT CHISHOLM: I'm a professional. I ride my book year round.

AFSHAN BOKHARI: We lived on Walden Street --

SCOTT CHISHOLM: On Walden Street.

AFSHAN BOKHARI: -- all the way to Central Square.

CONSTANTINE ALEXANDER: I would point out that if we grant relief tonight, you could give your parking space to your fellow condominium owner.

AFSHAN BOKHARI: On Walden.

CONSTANTINE ALEXANDER: Yes, and you can rent down the street or do whatever you want.

AFSHAN BOKHARI: That's fine. I want to get rid of all of our cars.

SCOTT CHISHOLM: Yeah, I mean I've been riding my bike in Cambridge and I know so many people who live in Cambridge. Their predominant form of transportation. And I'm not a 25-year-old. I'm a 48-year-old and I ride my bike to work everyday.

AFSHAN BOKHARI: But just to your point that someone needs to know what they're getting into. I think, I think they do know what they're getting into when they buy there. When they even look in those neighborhoods, they know exactly what they're getting into. And I think with that knowledge they're aware that there isn't going to be parking. And the price is such that there isn't providing parking.

THOMAS SCOTT: And to Brendan's point in the wintertime when it snows, all bets are off. It's crazy. I mean I've parked blocks away from my house, you know, because of the snow situation.

AFSHAN BOKHARI: Yeah, and like Mr. Goldfine, you know, there's people who've lived there 10, 20 years.

THOMAS SCOTT: I guess it's just

what people have to do today.

BRENDAN SULLIVAN: If people occupy a space, if there's impending snow, they don't move.

THOMAS SCOTT: Believe me I know.

CONSTANTINE ALEXANDER: Put the chairs out.

BRENDAN SULLIVAN: It's urban living.

THOMAS SCOTT: It is, it's urban living.

AFSHAN BOKHARI: We're fairly confident. And because we come from the bike riding family here, we're -- all three of our kids bike to Rindge. And I bike to Suffolk University from Walden Street. I mean, we know -- and Walden Street's not even that urban. I mean, there's a lot of parking on Walden Street. But knowing the conditions

around this, you know, we're fairly confident that the person looking for this kind of house is not going to have that issue.

BRENDAN SULLIVAN: But what about the person who is buying the Oakland Street house?

AFSHAN BOKHARI: Well, we're providing that one parking.

BRENDAN SULLIVAN: Right. So assuming that there will be a one car household.

AFSHAN BOKHARI: Yeah.

SCOTT CHISHOLM: I mean --

AFSHAN BOKHARI: I mean a person living in that neighborhood isn't coming in with --

SCOTT CHISHOLM: This is urban living.

AFSHAN BOKHARI: Yeah.

SCOTT CHISHOLM: I don't think the City of Cambridge is providing --

BRENDAN SULLIVAN: It's too much of a stretch for me.

AFSHAN BOKHARI: Okay --

SCOTT CHISHOLM: -- one parking spot for every person in the City of Cambridge.

AFSHAN BOKHARI: -- fair enough.

SCOTT CHISHOLM: I mean, would it compel you to grant this if we were to come with a rented spot for several years for this unit? I mean, would that be convincing enough?

CONSTANTINE ALEXANDER: To me, speaking only for myself, that wouldn't do it. It would have to be permanent and it would have to run with the land.

TIMOTHY HUGHES: Yes, I mean because that's -- because you're right about the

argument that there's a chance that people that rent there or the person that rents this place will not need a parking space. You know, so offering alternative parking isn't really the solution because we're granting, we're granting a permit that goes on forever. We're not granting a permit for the three years that you might lease a parking space. You know? So that's where I am. I have to decide whether or not --

AFSHAN BOKHARI: But if you package the sale with that, you have two years of parking here, they become -- and they have a car, they become accustomed to parking. They'll just continue that person. It's not as if they --

TIMOTHY HUGHES: Maybe.

AFSHAN BOKHARI: Because they'll see, as you say, the restrictions of parking

on the street. I mean, this is something that they --

TIMOTHY HUGHES: You know, in fact I think, you know, if you were to lease a space for just a short amount of time to go along with the condo, that sort of undercuts the argument that you're pursuing the idea of somebody that's carless, you know, buying this place.

AFSHAN BOKHARI: Well, no, that's just to give you a little more confidence in your --

TIMOTHY HUGHES: I wouldn't be more confident because you're basically giving them a place to park for three years and then it's on them to continue it. And, you know, it gets, you know, snatched out from under them. It would be preferable if somebody got, you know, inculcated into not having a

car in this space.

SCOTT CHISHOLM: Except you guys aren't acknowledging the trend that people are having less cars.

AFSHAN BOKHARI: Yeah.

SCOTT CHISHOLM: I mean it's a clear trend.

TIMOTHY HUGHES: You know, people have to have less cars in Cambridge because we're getting more people. You know? And, you know, traffic is going to be, you know, absolutely bizarre for the next three years while the Longfellow Bridge is under construction. Not to mention how bad it is already going Cambridge Street, Hampshire Street, you know, at the beginning of the day and at the end of the day, you know, every day or every weekday.

AFSHAN BOKHARI: We're a family of

five and we have existed with one car.

TIMOTHY HUGHES: I understand that.

AFSHAN BOKHARI: For like 18 years of living here.

TIMOTHY HUGHES: And I applaud you, I really do.

AFSHAN BOKHARI: But I think that is the trend. I mean, I think you have to recognize that.

TIMOTHY HUGHES: I'd like to think it is the trend.

AFSHAN BOKHARI: Okay.

TIMOTHY HUGHES: But there are way too many cars out there for me to believe that, you know?

AFSHAN BOKHARI: I agree.

CONSTANTINE ALEXANDER: Let me try to analytically approach it a different way to get my head around this. If we turn you

down tonight, you can't build this structure that you're proposing to build. You'd have to try to come up with an as-of-right solution. One of the -- Tom was sort of suggesting one possible possibility is adding this second unit to the structure itself so you have more backyard. Would you be able to get two compliant parking spaces?

SCOTT CHISHOLM: I think.

CONSTANTINE ALEXANDER: I think you should know that.

BRENDAN SULLIVAN: That would trigger more relief.

CONSTANTINE ALEXANDER: What's that?

BRENDAN SULLIVAN: That would probably trigger even more relief if they're attaching onto an existing.

TIMOTHY HUGHES: Yes, then they're

probably going to need more FAR relief, you know, besides parking in a setback even if they have two cars. At some point we've got to -- if this is going to happen at all, we have to give them some kind of relief.

CONSTANTINE ALEXANDER: Yes.

TIMOTHY HUGHES: One way or the other.

CONSTANTINE ALEXANDER: But quite often we give relief for FAR and setbacks when people put an addition on. That's to me that's less controversial than what we're talking about tonight with regard to waiving the parking spot.

TIMOTHY HUGHES: Right, yes.

CONSTANTINE ALEXANDER: Anyway, I throw that out for people to put in their minds how they're going to vote in this case. Namely you.

TIMOTHY HUGHES: Yeah, I know who you mean. This is like a coin toss for me it really is. It's tough.

CONSTANTINE ALEXANDER: You want more time or do you want me to make a motion? It's up to you. Seriously, whatever you want. Talk some more?

TIMOTHY HUGHES: Talking is probably not going to do it. Anyway I look at it I'm not going to be happy with my decision.

CONSTANTINE ALEXANDER: All right, I'm going to make a motion so we can move on and we'll see what happens.

The Chair moves that this Board grant a Special Permit to the Petitioner pursuant to Section 6.35.1 to allow -- to waive the requirement for a second off-street parking space which has been required because of the

fact that a second structure, a second dwelling unit is being added to the property. On the grounds that we find -- the Board finds that the lesser amount of parking will not cause excessive congestion, endanger public safety, substantially reduce parking availability for other uses, or otherwise adversely impact the neighborhood or that the other alternative is what you're doing will provide positive environmental or other benefits to the users of the lot in the neighborhood.

I think that if we make the finding that should be to grant relief, that it should be on the basis that I just expressed, will not cause excessive congestion.

Will not substantially reduce parking availability for other uses in the neighborhood, etcetera.

And in this regard the Chair notes that there is nearby ample public transportation.

That there are parking facilities in the general vicinity that likely will be available to the occupant of the second unit.

And on the basis that there is no neighborhood, no expressed neighborhood opposition with one exception, but there's also one in support.

And the Chair would note that this is in contrast to more vociferous and active neighborhood participation to a prior project. So what the neighborhood seems to be one that is plugged in and not shy about expressing its views if it opposes something.

And lastly on the basis that it is certainly the expressed philosophy now, now, of the City of Cambridge to diminish automobile use. And in that regard not to

push off-street parking which in turn can incentivize people to have automobiles by enforcing them to be on the street. It's likely that people will choose not to have a car.

And further that the nature of the additional unit being created is such that although there could be no assurance, it's likely that the occupant will not be owning an automobile and, therefore, not need the off-street parking space that is required by our Ordinance but which the Petitioner is seeking us to eliminate.

We also have to make further findings for Special Permits, and they are that the traffic generated and the patterns of access or egress that would result from the elimination of the second off-street parking space will not cause congestion, hazard, or

substantial change in established neighborhood character. And that the continued operation of or development of adjacent uses will not be adversely affected by what is being proposed. And that no nuisance or hazard will be created to the detriment of the health, safety and/or welfare of the occupants or the citizens of the city.

And that the proposed waiver or elimination of the second off-street parking space will not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of this Ordinance.

With regard to all of these criteria, the findings that I cited before with respect to 6.35.1 apply here as well.

So on the basis of all these findings

the Chair moves that we grant the Petitioner a Special Permit to eliminate -- to not be required to have an additional off-street parking space with regard to the additional dwelling unit that they're constructing on the property.

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

(Aye.)

(Alexander, Hughes, Scott, Green.)

CONSTANTINE ALEXANDER: Four in favor.

One opposed. Opposed?

(Sullivan.)

CONSTANTINE ALEXANDER: Four in favor. Motion carries. Good luck.

* * * * *

(8:25 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: Do you want to withdraw the other petition?

SCOTT CHISHOLM: I want to close that.

CONSTANTINE ALEXANDER: You want to withdraw that?

SCOTT CHISHOLM: Yes. Thank you very much.

CONSTANTINE ALEXANDER: The Chair moves that we accept the request of withdrawal in case No. 10441, 9 Oakland Street.

All those in favor of withdrawing that.

(Show of hands.)

CONSTANTINE ALEXANDER: Four in

favor. Case with withdrawn.

(Alexander, Hughes, Sullivan,
Scott.)

* * * * *

(8:20 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10470, 47A Mount Auburn Street.

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

ATTORNEY BERNARD GOLDBERG: Good evening, Mr. Chairman, and members of the Board. Attorney Bernard Goldberg representing the petitioner on my right.

Please identify yourself for the Board.

NAJEER HUSSAIN: My name is Najeer Hussain.

ATTORNEY BERNARD GOLDBERG:
Mr. Chairman, members of the Board, Najeer has been operating a convenience store on

Mount Auburn Street for the past five, six years. If you're familiar with the territory, you'll know that it was operating as a convenience store for many, many years. The original convenience store was Cahaley's (phonetic) and I remember that name. And then from Cahaley's it then became Sage's. And he took over the premises with a new landlord.

One of the terms of the lease regarding the new landlord was that she did not want a fryolater or cooking on the premises. And because of this, the convenience store is at a disadvantage and a hardship because they cannot operate as many convenience stores do.

At the present time he operates the convenience store with the all the necessary products of the convenience store and he caters to mostly walk-in traffic and this is

because of the fact that more students go into his store. And they go into the store not only for product of the convenience store, but they also like to have a pizza or soup at the time of the day or the early part of the evening. What Mr. Hussain does is he takes this can of soup, opens it up, and puts it into his microwave and heats it up. So too with the pizza which is frozen, and he does put a slice of pizza in and cooks it through whatever measure that the customer wants.

He now appears before the Board for a Variance. And his Variance is to operate as a food store food establishment. And he increases his menu, if you will, by wanting to add sandwiches, cold sandwiches, which he will put in the convection oven or the microwave I should say. And he also wants to sell fresh juices. Also he does sell

vegetables at the moment in time. And he also wants to have a salad bar without the bar itself. What he intends by having all of the fresh vegetables in the refrigerator, and if someone does request a salad, he will put it in a biodegradable container and cut up the tomatoes and the lettuce and the cucumbers or the onions and provide a vegetable salad. So in that sense he is not in competition with any other convenience store. If you recall, the convenience store was at the corner of Mount Auburn Street and JFK Street was a 7-11 and they've gone and a new product is in there, a Tasty Burger which I understand is doing mountains of service.

And now with regard to his sandwiches, they will be varied type of sandwiches depending on the customer.

So far as the fast food is concerned and

the requirements, he has walking traffic. No drive or automobile traffic will come to that particular store. And in that sense he has complied with the traffic problem, and there is no problem so far he's concerned because all of the product is sold to mostly students in the area where he's presently at. So far as the size of the site of the store do have in here, and it may be in the file, but nonetheless, I want you to take a look at the site itself which is a four-story -- not four-story, it's contains four buildings, commercial buildings. There is two restaurants there. Daedalus and the Boathouse and a cleaning establishment, not so much as a tailor but nonetheless a cleanser if you will. And he has his store within the particular district. So the physical characteristic of the building itself is not

changed and will not change.

So far as the need, there is a need in the area. As I mentioned to you, there is no convenience store in the area itself. The one that was there has gone. And there is no competition that he will interfere with.

So far as the two restaurants are concerned, Mr. Hussain has indicated to me that he's spoken to both of them and they have no objection and they do not sell the same type of food that he does.

As I mentioned to you, he will have biodegradable product, packaging product. And service of not plastic but biodegradable.

And finally, so far as his waste is concerned, in back of his store there is a dumpster. And he has within the store itself a receptacle for any trash that is created by the customer. But mostly they'll leave the

trash in the receptacle and he will then deposit it in the dumpster. There's no interference so far as a Special Permit is concerned because it doesn't violate any of the rules and laws and regulations that would impact the Zoning Ordinance.

CONSTANTINE ALEXANDER: Let me as a jumping point off for me if I may. I have to say as a citizen of the city, I'm not troubled by the relief you're seeking. But as a lawyer and someone who as a member of the Board who has got to apply the law, I've got to tell you there's absolutely no basis whatsoever for granting you the relief or your client the relief being sought. You're looking for a Use Variance. You can't justify a Use Variance for this property. This property -- there's plenty of business uses, office uses that are in the zone that

can be done. What your client wants is a hardship in a sense he can't extend the business as he would like to. That's not a Zoning hardship, not at all. We've had Use Variances for fast order food establishments in other parts of the city and we've turned them down. In particular a Dunkin' Donuts on Mass. Ave. up near Leslie. It was a little more controversial case. The problem is it's you're before the Board, in a sense before the wrong board. You should be before the City Council. Why in God's name is this property in an office zone which doesn't allow any fast order food establishments is beyond me. Why we even have in our Zoning Ordinance any longer a fast food establishment -- fast order food establishment, makes no sense to me. We're beyond that. It's inadequate, but it's on

the books. And I as a member of the Board feel that I've got apply the law as it is.

But the good news for you is I'm the only lawyer on the Board. And the other four members are not lawyers. They've got more common sense obviously than I do. And I'm sure they will vote their common sense. But I've got to tell you I'm going to vote against it. Just so you --

ATTORNEY BERNARD GOLDBERG:

Understandably so. And as an attorney myself, I understand your objection. However, we applied to the Building Department and we spoke with the Zoning Laws and they said put the fast food operation --

CONSTANTINE ALEXANDER: Well, you had no choice. They gave you the right advice.

ATTORNEY BERNARD GOLDBERG:

However, I understand what you're saying. Nonetheless, the hardship that I'm confronted with and he's confronted with is that the lease itself does not allow for any fast food or an in sell system which we require.

CONSTANTINE ALEXANDER: Again, that's irrelevant from a Zoning point of view.

ATTORNEY BERNARD GOLDBERG: Yes, okay.

CONSTANTINE ALEXANDER: The fact of the matter is this property can be used for a lot of uses. The one you want to use it for, the City has said you can't use it for. And that's the end of the story really.

ATTORNEY BERNARD GOLDBERG: I understand.

CONSTANTINE ALEXANDER: Unless you

get the City -- and you should get the City to change the Zoning for this area.

ATTORNEY BERNARD GOLDBERG: Well, that would be a most difficult project, and I don't know whether we would ever be able to get before the City Council. I know that so far as the Building Department is concerned, they have come down and inspected it as it presently exists and has given their approval, pass it otherwise. And in that sense that's why we appeared before the Zoning Board and request that the Variance be granted.

BRENDAN SULLIVAN: If the lease prohibits then why come before us to get permission to have it?

ATTORNEY BERNARD GOLDBERG: Well, that was the only area where I could have gone to for permission.

BRENDAN SULLIVAN: But by us even allowing it, if the lease does not permit --

CONSTANTINE ALEXANDER: The lease doesn't permit fry -- he's not going to do what the lease prohibits him from doing. He wants other kinds of food operations.

BRENDAN SULLIVAN: All right, okay. So two different things?

CONSTANTINE ALEXANDER: Yes. The lease allows what the Zoning doesn't.

BRENDAN SULLIVAN: As a wanna-be lawyer on Thursday nights, and I will cite what I usually cite, as a tip of the hat to the attorney. *Mendoza versus Licensing Board of Fall River, 2005*, the courts found (Reading) Although all Variances are unusual forms of relief from Zoning requirements, Use Variances should be particularly the most extraordinary kind of relief because they

inherently undermine the local Zoning Ordinances division of uses.

And so I think maybe that's your point.

CONSTANTINE ALEXANDER: That's where I'm coming from.

BRENDAN SULLIVAN: The very basis of the establishment of Zoning was the division of uses, and that all of the other dimensional stuff sort of filled in after that. So, that is sort of a hurdle that's hard for us to get over because the courts have found that it really needs to be the most extraordinary type of relief under unusual circumstances, and I think excluding it from the Zone is -- doesn't make sense. But anyhow.

CONSTANTINE ALEXANDER: Anybody else have a comment or I'll open it public testimony?

THOMAS SCOTT: Why couldn't you do

what you're asking to do anyway? Why can't he just sell cold sandwiches? Why do you have to have relief from this Board?

JANET GREEN: The salad. I think it's the salad.

THOMAS SCOTT: Is it the salad?

SEAN O'GRADY: Yes, if it's fresh food production.

THOMAS SCOTT: It's what?

SEAN O'GRADY: It's fresh food production.

THOMAS SCOTT: Okay. But he's selling stuff now that's prepackaged.

JANET GREEN: Right. He's already selling foods.

THOMAS SCOTT: He could do that. He could make the sandwiches off-site, bring them on-site and sell them.

SEAN O'GRADY: He can't.

THOMAS SCOTT: He can?

SEAN O'GRADY: No, he can't unless he's a food wholesaler. I'm not going to try to pretend that this makes sense.

CONSTANTINE ALEXANDER: Again, the Inspectional Services Department, that's how they've decided to interpret it. Right or wrong, that's how they do it.

SEAN O'GRADY: Yes, it's hard to defend but that's where the line --

CONSTANTINE ALEXANDER: You can complain to Ranjit.

JANET GREEN: You know, five years ago probably people wouldn't be as interested in salads and making their choices about whether they could get salads, and now everybody wants a salad.

NAJEER HUSSAIN: People have been asking for sandwiches since I've taken over.

People have been asking for fresh made sandwiches. And I have tried to sell packed sandwiches, but they don't (inaudible). They don't know, you know, they don't -- they want to see how it's being made. So, and it's much healthier than giving them chips and soda. I believe that -- and I have 99 percent of my clients are the students. And I'm located right in the middle of the dorm. So 90 percent of the students come walk into my store. And the cost of a sandwich -- you go Tasty Burger, they're selling their stuff for \$7. My sandwiches are \$5. A student will not afford a \$9. And a student will go for a five, six, seven dollar sandwich. All I'm asking is that I can make sandwiches, fresh sandwiches, cold cuts which I can sell. I have no competition with the restaurant people. I don't know why the Board is not

allowing me to --

THOMAS SCOTT: Isn't it the problem that the Use Variance stays with the property; right?

CONSTANTINE ALEXANDER: Unless we put a time limit, yes.

THOMAS SCOTT: So, if he moved out, somebody else, a fast food establishment could move in. A McDonald's could move in there if we grant relief.

CONSTANTINE ALEXANDER: That's right.

SEAN O'GRADY: That is true, it runs with the land, the Variance.

BRENDAN SULLIVAN: It could be a Subway.

THOMAS SCOTT: Or a Subway or whatever, right. So whatever we do is really kind of a permanent, you know --

CONSTANTINE ALEXANDER: Yes.

THOMAS SCOTT: -- change to the property.

CONSTANTINE ALEXANDER: And it doesn't behoove me to raise additional question. I guess the answer might be so what, so he moves out, a Subway moves in. We haven't had a problem with fast order food establishments in the Harvard Square area before so why do we care now? It would be my view. I mean, I care but no one else cares on this Board.

JANET GREEN: I was going to say you care.

THOMAS SCOTT: If it was pizza, I understand.

CONSTANTINE ALEXANDER: No, my point is the Board is beyond that.

TIMOTHY HUGHES: You know, we don't

care as long as it's pizza, hamburgers, or coffee.

CONSTANTINE ALEXANDER: Or Mexican food, too.

Anyway, what I'm trying to say, sir, and I really -- I do as I tried to say before, empathize with you. The problem is the City Council, not with us. You're asking us to say well, the City Council got it wrong with regard to this site. And we can -- we could say that, and we could give you the relief you want. I have problems getting there from a legal point of view. But other members -- and I'm only one of five, and you only need four votes. If the other four members wanted to vote in favor, you would grant the relief and I don't think anybody is going to challenge you in court. But that's where we are. I mean, it's a dumb Zoning

provision. The Zoning map is dumb with regard to this, and the fast order food establishment concept is dumb in today's environment.

NAJEER HUSSAIN: Question, sir. Is this really a fast food what I'm asking? All I'm asking is I need to make fresh sandwiches and fresh salad.

CONSTANTINE ALEXANDER: And you're right.

NAJEER HUSSAIN: How come Tasty Burger is running --

CONSTANTINE ALEXANDER: You're right. The City Council is saying what you want to do is a fast order food establishment. I might be with you on that. That's what the City Council has said.

JANET GREEN: But that's what the purpose of coming for a Variance is.

CONSTANTINE ALEXANDER: Well, usually it's a Special Permit in an area, in a district that allows it.

JANET GREEN: In this case it's a Variance.

CONSTANTINE ALEXANDER: It's a Variance. The City Council said in this area, you can't have any food, fast food establishments, none, period. And you're seeking a Variance from that.

BRENDAN SULLIVAN: The after having cited Mendoza now, and being on one side of the issue. I guess the other side of me says that this is not going to be a fast food order establishment, only a very small, little component of his establishment will serve fast order food.

CONSTANTINE ALEXANDER: That's right, that's right.

BRENDAN SULLIVAN: So that this should not be the tail that wags the dog in a sense. In other words, that it is a very small component of it. We could structure it that we are allowing for his proposed use change, but that it be an integral part of a larger convenience store.

CONSTANTINE ALEXANDER: That's a good point.

BRENDAN SULLIVAN: And that this could only be -- so that then precludes and, again, we cannot exclude national chains, but that it cannot then be automatically converted to what we would normally say a fast food operation.

JANET GREEN: A hundred percent fast food.

BRENDAN SULLIVAN: Correct. That this is a very, very small part of a small

component of a larger business establishment.

CONSTANTINE ALEXANDER: Yes, that's a good thought. I was going to suggest at an appropriate time a time frame so that we can see, three years, five years, you come back. And if in the meantime you sold out to Subway, we might have a different view. But Brendan comes up with probably a more elegant solution than what I was going to suggest.

NAJEER HUSSAIN: If the Board wants I can get a petition by the students who have been asking me that --

BRENDAN SULLIVAN: I don't think we doubt the need and the viability of it and that you will produce a good product. We don't doubt that in the least. We're hampered by what the City Council gives us by way of the Planning Board by the way.

THOMAS SCOTT: A sample platter would have been nice this evening.

CONSTANTINE ALEXANDER: That's right.

ATTORNEY BERNARD GOLDBERG:
Mr. Chairman, at this moment in time as you described it, it was an elegant consideration and if that could be incorporated into the decision --

CONSTANTINE ALEXANDER: When I make the motion, I will make that as a condition of the motion. I agree with that.

Unless there's further comments from the Board, I'll open it to public testimony.

Is there anyone wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one is expressing to be heard.

There are no letters one way or another. I can close public testimony.

Mr. Goldberg, any final comments?

ATTORNEY BERNARD GOLDBERG: No, that would be it.

CONSTANTINE ALEXANDER: Ready for a motion?

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 he will not be able to fully maximize his commercial opportunities in the space he now rents without being able to offer this additional product line.

That the hardship is owing to

circumstances relating to the nature of the structure. It is an old wooden structure with a landlord which provides restrictive conditions with respect to the ability to use that structure.

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

In this regard the Chair would note that the Petitioner has represented to us that he would otherwise meet the requirements for a Special Permit for a fast order food establishment.

That the relief being sought is a very modest extension of what the business as being conducted on the premises now is. And that it would provide a useful service to the residents, but the people who generally

occupy and use that area; namely, the students of Harvard University.

On the basis of these findings the Chair moves that the Variance be granted to the Petitioner to operate a fast order food establishment within the existing convenience store on the condition that this, in the nature of the activities that make it a fast order food establishment, are to be subsidiary to and subordinate to the general maintenance of a convenience store. This is an additional element of it, but the building will, and the premises, will continue to be primarily a convenience store and not a restaurant or otherwise fast order food establishment.

On the basis of this motion -- any further comments? The Chair moves that we grant the Variance subject to the condition

that I've just noted.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in
favor.

(Hughes, Sullivan, Scott, Green.)

CONSTANTINE ALEXANDER: One
opposed.

(Alexander.)

CONSTANTINE ALEXANDER: Variance
granted.

* * * * *

(8:45 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10471, 1 Corliss Place.

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

HUGH RUSSELL: Good evening.

CONSTANTINE ALEXANDER: Good evening. The floor is yours.

HUGH RUSSELL: Okay. I'm Hugh Russell and this is my husband, Ken Allen. I have lived at 1 Corliss Place for 43 years. And in my narrative, which I'm not sure when you've had an opportunity to read, if you wish, I'll go through that. What I want to

do is add a second floor to a one-story addition that I built 13 years ago with a Variance from this Board as a Setback Variance. The addition does not extend beyond the walls of the first floor. And actually, I believe meets the standard for granting a permit under 18.22.1.H but and Ranjit didn't agree with me and he sent me saying I believe his logic is because the building has been added to already and was a non-conforming structure. That's why he feels this review is appropriate.

So I lived in the original house from 1970 to 1999 and I bought 30 feet of land from my next-door neighbor in the seventies because I wanted a yard. There was no yard space in the house. And I actually subdivided the land that was bought so that (inaudible) also got a place to have a garden.

And so if you go there, you'll see that it's just landscaped as a single space and we share it.

In '99 my neighbor had passed away and her house was sold and there were two tenants in that building who I had come to like a lot. Are now co-owners of Corliss Place. Kent French and Robert Guthrie.

JANET GREEN: What did you say?

HUGH RUSSELL: Kent French and Robert Guthrie. And so we own the house together and we lived in the house together for ten years. They've been away for three years and they're coming back this fall.

When I built the addition, I thought I'm going to down size and I'm going to build a studio, it's going to be simple. I'm, you know, 60-years-old, I'm not going to have another relationship. I'll just have a nice

small place for myself. Well, life doesn't always work the way you expect and I met this wonderful man five years ago. And so now there are two of us trying to share my one small studio.

Ken has recently had a career change. He's now a full-time musician and he graduated from the Conservatory last spring and he needs the space to do his music. He plays the viola.

I'm looking at a transition for myself. I'm not going to work forever, although sometimes I think I might like to. So it can well be that in a few years we'll both be there all the time during the day; he'll be doing his music and I'll be doing whatever I'll be doing. And so we need a little more space and some separation.

The addition doesn't extend beyond the

existing footprint. It doesn't exceed the permitted floor area on the lot. It's been reviewed by the neighborhood conservation district and they've granted an approval. I don't know if you have that in your file. I can give you -- I brought a copy of --

CONSTANTINE ALEXANDER: We have a copy of it in the file. A Certificate of Appropriateness.

HUGH RUSSELL: Yes.

In the context of that addition I had to make some minor changes to the plans. I have five copies of the elevations. It's illustrated actually on this. They had a principle that I was not aware of that additions should not be taller there than the houses being added to. So I had to cut the height of my addition by six inches to meet that standard.

There's -- I guess the other point is why did I need a Variance 13 years ago? And the reason was to actually to deal with the intent of the Ordinance. The intent of the Ordinance is that open space be created in the back yards and that it be shared on the block. Shared at least visually. Ranjit determined that my backyard was on the side that faces the school and so the shared common space was actually in my front yard, so we moved the addition so as to maximize the shared open space. So that's kind of the story.

Any questions from the Board?

CONSTANTINE ALEXANDER: Anybody have any questions at this point? I have none.

HUGH RUSSELL: Well, I guess I should say that I gave plans to my abutters who sent in --

CONSTANTINE ALEXANDER: We're going to get into that. There are a number of letters of support in the file which I will read in a second.

Does anyone here wish to be heard on this matter?

(No Response.)

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

As noted, the Chair would point out there are a number of things in our files. One is there is a Certificate of Appropriateness from the Historical Commission for the Mid-Cambridge Neighborhood Conservation District Commission, and it's part of the file.

We also have a number of letters which I will put into the record. We have a letter from Helena Hughes. It doesn't have an

address. Oh, here it is. (Reading) I own the house abutting 1 Corliss Place on the Antrim Street side. I have reviewed the plans for the addition of a second floor to the one-story portion of the house and have no objection to this change. Hugh has lived at the same address for 45 years. He is an integral part of this community and an informed source on the history of the neighborhood and environment. Allowing neighbors to make such modifications adds to the stability of the neighborhood by allowing people to stay in their homes. Changing circumstances are a part of life. I think they should be accommodated when possible and appropriate.

There's also a letter from Katherine Ellin, E-l-l-i-n and Gilead, G-i-l-e-a-d Tadmor, T-a-d-m-o-r. (Reading) We own the

house at 2 Corliss Place facing 1 Corliss Place. We have reviewed the plans for the addition of a second floor to the one-story portion of the house and have no objections to this change. Allowing such modifications to add to the stability of our community by allowing Ken and Hugh to stay in their house by adapting it to their changing circumstances.

We have a letter from Alan, A-l-a-n J. Stone, S-t-o-n-e. (Reading) I live at 31B Antrim, which is very close to 1 Corliss Place. As I will be unable to attend the upcoming meetings in person, I am writing to let you know that I support Hugh Russell's proposed addition to 1 Corliss Place. Hugh is a good neighbor, a thoughtful person, and a fine architect and planner, and I am confident that this addition will be

appropriate to the scale and place.

Another from a Christopher Reiner, R-e-i-n-e-r. (Reading) I am a property owner in Mid-Cambridge at 31A Antrim Street, and I would like to provide my endorsement for Hugh Russell's plans for expanding 1 Corliss Place. I have had the opportunity to review the detailed plans that Hugh has provided for this project and I very much look forward to seeing the final results.

And that's it. I will close public testimony.

Any final comments you want to make?

HUGH RUSSELL: No.

CONSTANTINE ALEXANDER: None?

Of the Board have comments or do you want to go to a vote?

TIMOTHY HUGHES: I'm good with it.
Vote.

THOMAS SCOTT: Good.

CONSTANTINE ALEXANDER: Okay.

All right. The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the hardship would involve a substantial hardship to the Petitioner. Such hardship being that additional living space is necessary to best utilize the property.

That the hardship is owing to basically the shape of the lot. It is a non-conforming lot.

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

In this regard the Chair would note that

the relief being sought is modest. It is set back in nature.

The project has unanimous support of the neighborhood.

It has received a Certificate of Appropriateness from the Historical Commission, and it is going to improve the housing stock of the community by allowing a better use of this structure at 1 Corliss Place.

So on the basis of these findings, the Chair moves that we grant the Variance sought on the condition that the work proceed in accordance with plans submitted by the Petitioner which the Chair has initialled.

These are the final plans?

THOMAS SCOTT: Revised by these?

CONSTANTINE ALEXANDER: Yes, right.

Thank you. And as modified by revised

drawings submitted by the Petitioner to the Historical Commission, a copy of which has been initialled by the Chair.

All those in favor of granting relief say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

* * * * *

(9:00 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10472, 30 Crescent Street.

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

JOHN LaFRENIERE: I'm John LaFreniere. I'm the architect and applicant for the owners who are actually at a family reunion in California. So they apologize for not presenting themselves here with this.

They've recently purchased this house with the intention of making it their family home. And it is -- she's a school teacher

and they've got a couple of small children. So it would be a nice family, you know, increase the family environment there.

The very modest changes we're proposing, all of which because of the nature of the very small house, run up against a number of these Zoning constraints.

Essentially everything we're doing is within the existing footprint of the building, and there are three -- essentially three changes or two changes we really want to make. If you can see the elevation of the building there.

One is -- I should actually, if I could -- it's two-story house with a third floor essentially under the attic. To get to the third floor, when you get, you come up the stairway, which is part of the continuing stairway, you essentially come into a situation where you have this very low roof

that you almost hit your head against. So the first thing we want to do is put a dormer over that so that then, you know, it's no longer a hazard as you come up that stair and into that space. Clearly it's been there probably almost since the beginning of the house.

CONSTANTINE ALEXANDER: And that dormer is going to comply with our dormer guidelines?

JOHN LaFRENIERE: I believe so, yes. And it's -- so you can see it here. It's within the, you know, it essentially looks like it had always been there, simple a shed roof dormer. The, what was I going to say about it? In doing that, in raising the height of the ceiling there, it becomes floor area, so we're increasing the FAR slightly by --

CONSTANTINE ALEXANDER: By 22 feet.

JOHN LaFRENIERE: 22 feet exactly.

That's one of the areas of relief.

The second area of relief is the existing rear yard setback comes up to a little beyond or into the back of the house. There is an existing sort of bump in the back which currently has a door which comes straight out into the backyard like this. So the idea here is to add a simple little powder room in that space and move the door around the side, essentially still becomes a mudroom but it then also opens up the yard because the stair's now out of the way. So it gives them a little bit more useful backyard, and it really doesn't change the outside appearance. Instead of a door now we have a window.

The other thing they wanted to add a

little window up here. Again, because it's in the wall of the existing setback, we have to appear here again talking about that.

Those essentially, I believe, are the items I was requesting relief on. One, I guess is a Variance, the other one is a Special Permit. And -- but essentially we are, you know, making minor modifications to the house to make it more useful.

CONSTANTINE ALEXANDER: Are there any privacy issues that are going to be created by the new windows?

JOHN LaFRENIERE: I don't believe so. I think they're pretty much in the same, you know, plane as the existing windows that are just --

CONSTANTINE ALEXANDER: How far is the nearest structure to those windows?

JOHN LaFRENIERE: Well,

they're -- the setback whatever, it's like 20 feet and this is to the -- for the -- so we're just --

CONSTANTINE ALEXANDER: The windows are going to be separated by a 20-foot setback?

JOHN LaFRENIERE: I think so. Well, it's 1970. Had it been 20 feet I wouldn't be here for that.

JANET GREEN: This is a two-family house; is that right?

JOHN LaFRENIERE: It's a parallel two-family. It's in England they would call it a semi-attached house. They've got a party wall that combines them. It's a single-family residence on its own land, but it shares a party wall with the other -- its neighbor.

BRENDAN SULLIVAN: Philadelphia

duplex.

THOMAS SCOTT: Duplex.

BRENDAN SULLIVAN: It's a Philadelphia duplex is what it is.

JOHN LaFRENIERE: Okay. So this is where that dormer is going to be and it's barely visible unless you're looking for it really.

CONSTANTINE ALEXANDER: Just for the record, the FAR is going to be -- by adding 22 feet, you're going to go from 0.952 to 0.966 in a 0.75 district. So you're not dramatically over right now or non-conforming. And you're going to just lightly increase it. And you have setback and open space issues as well?

JOHN LaFRENIERE: Exactly right.

CONSTANTINE ALEXANDER: I just wanted to put that in the record.

Questions at this point?

I'll open it to public testimony. Is there anyone wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes there's no one wishing to be heard.

The Chair would provide that we are in receipt of some letters, two in fact, that I can find anyway.

One is from Jon, J-o-n and Lenore, L-e-n-o-r-e Cummings. (Reading) This is to let you know we are aware that both interior and exterior construction will be done at 30 Crescent Street, Cambridge, Mass. We understand the work will begin in August and last till mid-December. We also understand that the work involved includes adding a dormer to the third floor and windows to the

first and second floors. While we have been assured that as little as possible impact in the neighborhood will be made, and know that some impact is unavoidable, our only concern is street parking during a project of this duration.

So it's not neither for or against. Is there any way you plan to deal with the street parking concern as this person has expressed?

JOHN LaFRENIERE: The contractor is somebody who has done a lot of work in Cambridge. I think he's sensitive to the shortage of parking in the area. And it's actually -- I think that street is all, in fact, permit parking. So they'll have one sticker they can use and they'll have to park somewhere else if they're contractors.

CONSTANTINE ALEXANDER: And the second letter is from Priscilla Connors,

C-o-n-n-o-r-s at 41 Crescent Street.

(Reading) This is in relation to the Variance request at 30 Crescent Street, Cambridge.

I, Priscilla Connors, owner of the adjacent duplex of 32 Crescent Street, Cambridge, am aware of the request for a Variance on the building project at 30 Crescent Street. I am in favor of these changes -- those changes.

And that's all she wrote.

I'm going to close public testimony.

Anything further you want to add?

JOHN LaFRENIERE: I think I'm set.

Thank you.

CONSTANTINE ALEXANDER: Comments from members of the Board? Do you want to go for a vote?

TIMOTHY HUGHES: Ready for a vote.

CONSTANTINE ALEXANDER: Okay.

We'll start with the Variance first.

The Chair moves that this Board make the following findings with regard to the Variance being sought to add a dormer to the third floor.

That a literal enforcement of the provisions of this Ordinance would involve a substantial hardship to the Petitioner. Such hardship being is that the Petitioner's ability to fully utilize the third floor is compromised and will be without the ability to add a dormer to the third floor.

That the hardship is owing to circumstances relating to the basically the shape of the lot, lot and structure. It is a non -- it is a small lot, non-conforming, so any changes requires Zoning relief.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from

the intent and purpose of this Ordinance.

In this regard the Chair would not that there is no neighborhood opposition.

That the relief being sought is modest in nature.

And it doesn't prove the inhabitability of the structure.

Therefore, on the basis of all these findings, the Chair moves that this Board grant the Variance being sought on the condition that the work proceed in accordance with the plans submitted by the Mr. LaFreniere, the architect for the project included in our files and initialled by the Chair.

Before we take a vote, no more changes in these plans or you have to come back before us.

JOHN LaFRENIERE: We're good with

it.

CONSTANTINE ALEXANDER: Okay.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Variance granted.

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

CONSTANTINE ALEXANDER: Let's turn
to the Special Permit.

The Chair moves that with regard to the
Special Permit being sought to add windows to
the first and second floors of the structure,
that doing so will not cause -- adding these
windows 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.

In this regard, in particular, the Petitioner represented to us that the potential for invasion of privacy of the neighboring structure will not be increased by the nature of the additional windows, and there's at least a 20 yard space between.

JOHN LaFRENIERE: 20 foot.

CONSTANTINE ALEXANDER: Sorry?

JOHN LaFRENIERE: 20-foot space.

CONSTANTINE ALEXANDER: You're right, sorry. 20 foot.

20-foot space between where these windows are going to be added and the adjoining structure.

That no nuisance or hazard will be created to the detriment of the health,

safety, and welfare of occupant or the citizens of the city.

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

In this regard the findings be made with respect to the Variance apply equally to the Special Permit being sought.

Based on these determinations or these findings, the Chair moves that this Board grant a Special Permit to the Petitioner to add the windows being sought on the condition that the work proceed in accordance with the plans initialled in connection with the Variance that we just granted.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. Good luck.

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

JOHN LaFRENIERE: Thank you very
much. Good evening.

* * * * *

(9:10 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10473, 198 Sherman Street.

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

ZHENGYU HUANG: This is another letter that we just got yesterday.

CONSTANTINE ALEXANDER: Another letter? Is this any different than what's in our files?

ZHENGYU HUANG: Same. Same thing. Just easier for me to present.

CONSTANTINE ALEXANDER: Go ahead,

the floor is yours. Your name and address for the stenographer.

ZHENGYU HUANG: Okay. My name is Zhengyu Huang. For the property I have 198 Sherman Street. Currently I'm living at 27 Adams Street, Acton.

Good evening. Thank you for having my --

CONSTANTINE ALEXANDER: Before you start, what you've handed us is not in our files. We have other plans, or maybe they're just the cover sheet is different. I want to be sure that you haven't given us new plans.

ZHENGYU HUANG: Yeah, I copy it from here. Copy it from this in the file.

CONSTANTINE ALEXANDER: These plans are, and these are the same, there's no different information?

ZHENGYU HUANG: They're exactly the

same, yeah.

CONSTANTINE ALEXANDER: Okay. If we grant relief, I'm going to tie them to these plans which are more detailed construction drawings.

ZHENGYU HUANG: Yeah, this here is more detailed. Here I just copied this.

CONSTANTINE ALEXANDER: I want to be clear from that.

ZHENGYU HUANG: That's why you see different.

Okay. So I just bought this house a couple -- three months ago so because it's in a very bad shape. It's one half of century old. And there is a time, serious several times renovation, but now it's in a bad condition. From the picture you can see that the two chimneys are not straight because they're center down in the middle so it's this

way.

CONSTANTINE ALEXANDER: Right.

ZHENGYU HUANG: So now I'm doing a bigger renovation now.

So in the renovation there is some, something variance --

CONSTANTINE ALEXANDER: With regard to the Variance, you're seeking a Variance and a Special Permit.

ZHENGYU HUANG: Right.

CONSTANTINE ALEXANDER: The Special Permit is with regard to adding -- relocating windows and doors.

ZHENGYU HUANG: Yeah.

CONSTANTINE ALEXANDER: On the Variance the only reason -- you're not changing any of the dimensional requirements because you're changing the tilt of the roof.

ZHENGYU HUANG: Exactly, yeah.

CONSTANTINE ALEXANDER: That technically requires a Variance, Zoning relief because it's a non-conforming structure. Am I right?

ZHENGYU HUANG: Yes, that's why. (Inaudible). At the beginning Ranjit said that no need for a Variance, and then Sean finally said I need to add this one.

CONSTANTINE ALEXANDER: Okay.

ZHENGYU HUANG: So page 2 is the current condition. It's very bad shape from the second -- this picture you can see this is from the Google Earth. You can show that the two chimneys are in bad shape.

CONSTANTINE ALEXANDER: Are you planning to do any renovations, exterior renovations to the structure?

ZHENGYU HUANG: Who?

CONSTANTINE ALEXANDER: My question

is are you going to come back before us for more relief in a month? I'm sorry.

ZHENGYU HUANG: On this Tuesday my contractor went to the office to apply -- to talk to, what was his name? Mike. About a structure. We need to apply for another for structure change. Structure. Because then it would be --

CONSTANTINE ALEXANDER: Another Variance?

ZHENGYU HUANG: Not a variance, just for structure. Engineering.

CONSTANTINE ALEXANDER: Okay.

The reason I'm asking is that I don't want to find -- you may have heard me --

ZHENGYU HUANG: I know.

CONSTANTINE ALEXANDER: -- blow off steam before.

ZHENGYU HUANG: No worries.

CONSTANTINE ALEXANDER: -- find out in a couple months you're back before us for something else.

ZHENGYU HUANG: No, no additional variance.

CONSTANTINE ALEXANDER: Okay. As far as you know right now?

ZHENGYU HUANG: Yeah, yeah, yeah, right.

CONSTANTINE ALEXANDER: Okay.

ZHENGYU HUANG: On page three you can see for the Variance, this is a Variance. What's the Variance for. Basically on the rear, you know, left and rear side of the portion of this house it's a very, the eave is below.

So on the left side of, this is the inside, from inside you can see the shape is going this way. So it cannot be fully used

in this small room. So I want to raise the slope of the house of this part to raise it a little bit. Keep this, the height the same, but raise the angle so that the room, the room will be -- the raise of the room would be higher just to improve the liveability.

So on this page it's from the exterior so where the change would be. The change, the change of the shape of the slope of the roof. This is the change.

So, the second Variance is for a small deck stairs. So this picture shows the original, the current structure.

CONSTANTINE ALEXANDER: Right.

ZHENGYU HUANG: And here on this picture this is the from the town -- from the (Inaudible).

CONSTANTINE ALEXANDER: It's okay.

ZHENGYU HUANG: Yeah.

You can see because on the back of the space very limited, just three to four feet. So by adding -- this original deck in here. So originally it's one side stair. So in order to go from this -- here is the second egress, from second egress to the basement -- here's a bulkhead, it can go this way but no all around the house go here. But now I propose to add the stair towards the other side, to the next side. Actually from back to the right side so it go to here. It just go this small. So it also improve the convenience to use the house.

So this is for a Variance.

CONSTANTINE ALEXANDER: Right.

ZHENGYU HUANG: Part. And next I come to the Special Permit.

CONSTANTINE ALEXANDER: Yes, I want to see -- I mean, it's in the plans. But show

the Board where the new windows and doors are going to be located.

ZHENGYU HUANG: Yeah. I show it here, yeah.

So, on page 6 of 7, 6 and 7 shows the changes of the windows and location and the sizes. For first, for this one is a front view. From front of view, there's no change at all. We just replace the windows.

CONSTANTINE ALEXANDER: Right.

ZHENGYU HUANG: Okay?

On the bottom is the right elevation, the right side, the right side. There is also very new changes from here. Originally there is in the second egress a stairway. There's some more window. Now we just change them, almost no change, but just probably make this one the same width as the others so that it is easier to order the window.

So I'm wondering, you're asking me what is the further change? Actually, this, there might be a little change, to change this window, the same side as this one, because this is was a mistake.

CONSTANTINE ALEXANDER: Wait, wait. Are you saying that if we were to approve those plans, you still might want to move the windows even further?

ZHENGYU HUANG: No, no, no. Just this window will be the same, top would be the same, but change the same size because the contractor prefer to have the same size. This is a mistake by the architect because it's part my fault. On the (inaudible) I had a picture showing the location. He draw it in the picture this the window in the wrong place. I told him, I gave him a picture. So we change it to the original size. We going

to keep it.

CONSTANTINE ALEXANDER: But in terms of the potential intrusiveness on your neighbors, you have two windows before, you're going to have two windows now. They're going to be slightly reoriented, am I right?

ZHENGYU HUANG: From this side besides this window there's nothing changed. Nothing changing. That's this window on the side. Just this window, the side originally here, see? Actually, from here, from the page 2 you can see, yeah, this one. It's smaller, much smaller. It's stairway on the top.

CONSTANTINE ALEXANDER: Okay, got it.

THOMAS SCOTT: Are you saying that you're going to change that --

JANET GREEN: Right, this window?

THOMAS SCOTT: -- to a double hung window?

ZHENGYU HUANG: Yeah. Not double hung. It's not reachable from the -- because there's a stairway. It's not reachable.

THOMAS SCOTT: Okay.

ZHENGYU HUANG: So there will be no --

THOMAS SCOTT: So you're just raising it?

BRENDAN SULLIVAN: It's going to be a fixed light.

ZHENGYU HUANG: Yeah, a fixed light.

JANET GREEN: But it's not going to be the same size?

ZHENGYU HUANG: Yeah, it will be the same size as the other.

JANET GREEN: Same size as the other one? Got it.

THOMAS SCOTT: Oh, you're going to make it a double hung?

ZHENGYU HUANG: Yeah, not double hung. It's a fixed.

BRENDAN SULLIVAN: A fixed light. It's in the stairwell.

THOMAS SCOTT: It's going to be bigger?

ZHENGYU HUANG: Yeah. Same size as the other ones.

THOMAS SCOTT: Okay. It's going to be bigger. That's the change to the plan?

BRENDAN SULLIVAN: It's this one now and it's going to this one.

JANET GREEN: The old size is the same as the new size. It's just a different location.

THOMAS SCOTT: He's saying that this window is going to be the same size as that window.

JANET GREEN: I thought that originally.

ZHENGYU HUANG: Yeah, yeah. All of this is going to be the same size.

THOMAS SCOTT: They'll all be the same. He's saying all these three are going to be the same.

BRENDAN SULLIVAN: Aesthetically it's a better plan than hodge-podge what it is now.

THOMAS SCOTT: It's a better plan. So this change. It should be modified.

CONSTANTINE ALEXANDER: Keep going. I'm making a note for the file.

ZHENGYU HUANG: Okay.

So the number page 6. So page 7 shows

the rear elevation view and then the left elevation view for -- actually, the most changes are here. Better go back to page 2 to see the order, the original existing. Now for the left side, this is for the left side. Here's the left side. So we added on this side -- on the -- this is the main -- let me see. Oh, this is the left side. This is the left side, right? This is the left side. So we, we're adding --

THOMAS SCOTT: That's the rear.

ZHENGYU HUANG: Rear?

THOMAS SCOTT: That's the rear.

The bottom one is the left.

ZHENGYU HUANG: Yeah, yeah.

THOMAS SCOTT: That's the rear.

ZHENGYU HUANG: Okay.

THOMAS SCOTT: It says -- I see what the problem is. This one's labelled right

and this one's labelled left, but it's the same.

CONSTANTINE ALEXANDER: I had the craziest time trying to figure the plans out.

ZHENGYU HUANG: That's the original one there. That's embarrassing. Okay. Because I just --

CONSTANTINE ALEXANDER: These are the official plans.

ZHENGYU HUANG: That's the official one.

THOMAS SCOTT: That's the right.

CONSTANTINE ALEXANDER: Right. Proposed.

THOMAS SCOTT: Right, okay.

So this is saying this is the right this window is getting bigger.

ZHENGYU HUANG: Yeah.

THOMAS SCOTT: Okay, and let's see

the left.

ZHENGYU HUANG: Oh, yeah, that's correct.

THOMAS SCOTT: This is wrong on here.

BRENDAN SULLIVAN: Clerical error.

THOMAS SCOTT: These are all changing, too.

ZHENGYU HUANG: Yeah.

THOMAS SCOTT: Okay, it wasn't in this package. This is the official one. Okay.

ZHENGYU HUANG: Sorry.

So the change of the double windows is double hung.

THOMAS SCOTT: And then you just reconfigured the right and the left?

ZHENGYU HUANG: So because it's a bigger room, so it's harder. If we keep the

original double hung, it's harder to keep it to the bed in there. So we change it to the higher transom windows.

CONSTANTINE ALEXANDER: Okay?

THOMAS SCOTT: Okay.

ZHENGYU HUANG: And the other one is on the rear elevation view, this is the correct. See? This one, yeah.

BRENDAN SULLIVAN: Are you going to occupy this house or are you just developing it, renovating it?

ZHENGYU HUANG: I may occupy it just one. This is a two-family.

BRENDAN SULLIVAN: Yes, right.

ZHENGYU HUANG: Yeah. I may occupy one and maybe a sell or rent the other one.

BRENDAN SULLIVAN: Okay.

THOMAS SCOTT: Okay.

ZHENGYU HUANG: On the rear side in

the dining room -- not the, it's called the living room, yeah. The two windows will be changing to the old double hung. So now the, all new designs, just the one side -- just two sides. One is a transom windows in the other rooms. All the other windows are the same size double hung so it will be easier and looks nicer.

CONSTANTINE ALEXANDER: Okay, okay.

ZHENGYU HUANG: And that's it. The other page 8 is just summary.

So (inaudible) no area change. The FAR is exactly same as before. And total height is because just change the slope. There's a slope. There's no total height change. And the setback distance is same. So that's simple.

CONSTANTINE ALEXANDER: Okay, thank you.

Questions from members of
the -- further questions from members of the
Board?

Open the matter up to public testimony.
Is there anybody here wishing to be heard on
this matter?

(No Response.)

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

We are in receipt of two letters. One
is from Steve and Donna Smith who reside at
200 Sherman Street. (Reading) We would like
to support the project at 198 Sherman Street.
We have lived next-door to this property
since 1988 and feel that the exterior has not
been maintained well over the years. We have
gotten to know the Petitioner and are happy
with his plans for improvements. When
completed, we believe the property will be a

positive asset to the neighborhood.

And the other is from Lorelei, L-o-r-e-l-e-i and Rudy, R-u-d-y Fritsch, F-r-i-t-s-c-h who reside at 193 Sherman Street. (Reading) We are writing in support of the above-mentioned Petitioner and the Zoning appeal for the renovation of his property at 198 Sherman Street. Our home is situated directly across the street from 198 Sherman Street, and because the Petitioner's property is set back from the street line, we are the only property with a full view of the front of the house. We have lived at 193 Sherman since 1990. We have reviewed your notice of public hearing concerning the Zoning appeal, and we have discussed the project and plan renovations with the Petitioner. We urge you to grant a Variance which would allow for the raising of the left

rear portion of the roof and adding stairs to the right side of the small deck. We would also encourage you to grant a Special Permit allowing for the relocation of windows and doors within the setback. We believe that nothing the Petitioner intends to do with the property will adversely affect the enjoyment of our home, our view of the property, or in a larger sense the betterment of the neighborhood or community. In fact, we believe the opposite is true. Over the years the property at 198 Sherman has fallen to some disrepair. The Petitioner's planned renovations will improve our view of the property, will generally increase the aesthetics of the neighborhood, and will contribute positively to the overall property values of our community. We find nothing in the renovation plan that will be

allowed, that will be allowed by granting both the Variance and Special Permit to have any negative impact at all. As such, we support the petition and hope you will grant the Petitioner the Variance and Special Permit. We thank you for your consideration in this matter and we are excited to see the improvements move forward with the property.

And that's it.

Anything further you wanted to add at this point?

ZHENGYU HUANG: Nothing.

CONSTANTINE ALEXANDER: I'm going to close public testimony.

Comments from members of the Board?
Ready for a vote?

THOMAS SCOTT: Just a question.
What's the height at which FAR is calculated?
Is this four feet?

CONSTANTINE ALEXANDER: Ask this gentleman.

SEAN O'GRADY: Five.

THOMAS SCOTT: It's five feet. Is it five feet from here to here? You said there's no change in FAR.

ZHENGYU HUANG: Yeah, FAR now from the page 6 --

THOMAS SCOTT: What I'm saying is if five feet is here --

ZHENGYU HUANG: Yeah, yeah, right.

THOMAS SCOTT: Right? If five feet is here, don't you only measure the FAR to that point?

BRENDAN SULLIVAN: From there.

THOMAS SCOTT: Let's say it's here.

BRENDAN SULLIVAN: This way correct.

THOMAS SCOTT: So then if he's

raising this roof, right, isn't this area, floor area considered additional FAR? Let's say that's five feet to here.

TIMOTHY HUGHES: Isn't it already five feet and he's raising it to five feet?

THOMAS SCOTT: It's not five feet. This isn't five feet.

TIMOTHY HUGHES: It's not?

THOMAS SCOTT: You know what I'm saying?

SEAN O'GRADY: I do know what you're saying.

TIMOTHY HUGHES: I know what you're saying.

BRENDAN SULLIVAN: It's a small pie shape area.

THOMAS SCOTT: It is. A small rectangle area that's added that gets picked up by raising this roof.

BRENDAN SULLIVAN: So I would think the answer is yes, quite de minimus.

THOMAS SCOTT: It's de minimus, right.

ZHENGYU HUANG: Because here it's already show -- it's already counted as --

THOMAS SCOTT: Yes, but it's how you measure it.

ZHENGYU HUANG: You calculate it as floor area.

BRENDAN SULLIVAN: You almost have to see it. You almost have to see it in the plan.

THOMAS SCOTT: Yes.

ZHENGYU HUANG: So because it's slope, I would -- couldn't fully use this space so that's why.

THOMAS SCOTT: You're right. It's how you measure the FAR.

CONSTANTINE ALEXANDER: The point being that you do need FAR relief. Your representation or your statement to us is that you do not. What Mr. Scott has pointed out is that you do. But the amount of FAR relief you need is very -- not very, is minimal. And I think it's encompassed within the advertisement for your case tonight so I think we can grant the relief tied to these plans even though there will be some additional FAR added to the property.

THOMAS SCOTT: Let's say the floor is here and this is three feet or four feet. That's where the FAR is currently measured and --

BRENDAN SULLIVAN: This area is excluded.

THOMAS SCOTT: Right.

BRENDAN SULLIVAN: And raising this

five feet. So you're actually adding.

THOMAS SCOTT: That FAR in the plan.

BRENDAN SULLIVAN: That's right.

It would be adding that.

THOMAS SCOTT: There is a slight increase in FAR. That's just a minor point, though.

CONSTANTINE ALEXANDER: It's a valid point. But unless it may affect your vote.

THOMAS SCOTT: No, it doesn't. It doesn't because it's within the confines of the building shape, you know, I'm fine with it.

BRENDAN SULLIVAN: The number does bump up.

CONSTANTINE ALEXANDER: It bumps up a little bit.

BRENDAN SULLIVAN: Very little.

CONSTANTINE ALEXANDER: But the advertisement is broad enough to cover. So I think we can go ahead with the case.

Any further comments or ready for a vote?

TIMOTHY HUGHES: I was ready for a vote before that further comment.

CONSTANTINE ALEXANDER: Okay, we'll take the Variance vote first.

The Chair moves that we make the following findings with regard to the Variance being sought to raise the left rear portion of the roof and to add stairs to the right side of a small deck.

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that this structure is not in good condition arising from a lack of

maintenance prior to the Petitioner owning the property, and that the relief being sought is therefore necessary to improve the inhabitability of the structure.

That the hardship is owing to the fact of the structure, currently the non-conforming structure and, therefore, any additions or modifications require Zoning relief. And that relief may be granted without substantial detriment to the public good, or nullifying or substantially derogating from the intent and purpose of this Ordinance.

In this regard the Chair would note that there is neighborhood support.

That the work being sought will improve the condition of the property and approve the housing stock of the city.

That although the Petitioner has not

identified it to us, there will be an increase in FAR, but such increase is not, is not meaningful with regard to the relief being sought.

On the basis of these findings, the Chair moves that a Variance be granted to the Petitioner on the condition that the work proceed in accordance with plans submitted by the Petitioner, prepared by Vina Design, V-i-n-a. And they are numbered T1, A1, A1.1, A-1.2, A-2, A-2.1. Some of these plans having been modified by the Chair in accordance with the discussions and the testimony at this hearing, and the first page of which, page T1, has been initialled by the Chair.

Sir, so you understand, these are the plans. If you modify these plans or your contractor wants to modify them, you're going

to be coming back before us.

ZHENGYU HUANG: Yeah, for the windows in the -- the one window in the stairway.

CONSTANTINE ALEXANDER: It's going to be the same size as the other two.

ZHENGYU HUANG: Yeah, yeah, yeah, right.

CONSTANTINE ALEXANDER: I marked that on the plans. That's already taken care of.

ZHENGYU HUANG: Okay.

CONSTANTINE ALEXANDER: Okay?

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

(Alexander, Hughes, Sullivan,

Scott, Green.)

CONSTANTINE ALEXANDER: Let's go to the Special Permit.

The Chair moves that this Board make the following findings with regard to the requested Special Permit to add windows on non-conforming walls:

That what is being proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

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

That no nuisance or hazard will be created to the detriment of the health, safety, and welfare of the occupants or the citizens of the city.

And that the proposed work will not

impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

With regard to the latter, the Chair moves that we incorporate the findings that we made with regard to the Variance with regard to derogation and integrity with regard to the Special Permit.

The Chair therefore moves that a Special Permit be granted to the Petitioner to proceed to add the windows on non-conforming walls on the condition that the work proceed in accordance with the plans identified with regard to the Variance and has been modified and is marked on the plans by the Chair.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

* * * * *

(9:35 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10477, 288 Norfolk Street.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair

notes there is no one here wishing to be heard.

The Chair would further report that we are in receipt of a letter from the Petitioner requesting a continuance of this case because of the fact that there are apparently ongoing design revisions with regard to the proposed plans being discussed with the Historic Commission. And I think they're also -- it says they are also meeting with the Planning Board. So this matter is in flux.

The Petitioner requests that the public hearing be rescheduled and added to the Board's agenda for consideration on August 15th or the next available date thereafter.

August 15th available?

SEAN O'GRADY: We can't. August 29th.

CONSTANTINE ALEXANDER: August

29th. Okay. It's a case not heard so we don't have to be worried about who's going to be there.

The Chair moves that this case be continued until seven p.m. on August 29th.

Excuse me, have they signed a waiver for time for decision?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: They have. Until seven p.m. on August 29th. This being a case not heard.

The Petitioner having signed a waiver for a time of decision, on the conditions that the sign on the property be modified to reflect the new date, August 29th, and the time of seven p.m.

And that this sign as so modified be maintained in accordance with the posting requirements of our Zoning Ordinance.

And on the further condition that new designs and plans, which appear to be forthcoming, have to be in our files no later than five p.m. on the Monday prior to August 29th.

All those in favor of continuing the case on this basis say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

* * * * *

(9:40 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10474, 102-104 Otis Street.

Is there anyone here wishing to be heard on this matter? The floor is yours, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Char. My name is James Rafferty. I'm an attorney with offices at 1030 Bishop Allen Drive. I'm appearing this evening on behalf of the Applicant, CMS Partners. Seated to my right is Mr. Christopher Shachoy, S-h-a-c-h-o-y. Mr. Shachoy is a principal of the ownership entity.

This is an application --

CONSTANTINE ALEXANDER: Is your father a lawyer?

CHRISTOPHER SHACHOY: No, me.

CONSTANTINE ALEXANDER: I knew his father many years ago. That doesn't require me to recuse myself.

ATTORNEY JAMES RAFFERTY: Provided it was a cordal relationship. Not everyone's interaction is as pleasant and I'm

not sure why.

At any rate, this -- this is a property on Otis Street, and the property consists of two semi-attached structures each presently containing three dwelling units.

Mr. Shachoy recently purchased the property, and it's his intention to essentially reorganize the rear of these properties. They have significant non-conformities in terms of setback and open space. And if you've had an opportunity to see the site plan or view the Assessor's --

CONSTANTINE ALEXANDER: What was the structure built for originally? It's an odd structure in terms of the neighborhood. Was it build as a residence as it is now?

ATTORNEY JAMES RAFFERTY: Yes, I don't know if it had a connection to the church. The house next-door was the

rectory. And I know from the Deed that that was owned by the Diocese. I don't know if -- it was, yeah, it's more stately than the surrounding wood frame structures, yeah.

So --

CHRISTOPHER SHACHOY: The neighborhood has informed us that the nuns lived in this structure and then next-door was the rectory.

ATTORNEY JAMES RAFFERTY: So anyway, in each building, each building contains three dwelling units. So Mr. Shachoy has retained Maggie Booz as his architect and her colleague is with us this evening. But the proposal involves a removing the significantly non-conforming one- and two-story appendages that run nearly to the rear lot line. And as is depicted in the application, the result will be that at

the end of the day, the new structure will have slightly less GFA than exists there today, but there will be significant improvements in terms of the rear setbacks. They will become conforming. The open space, which is significantly non-conforming, will become conforming. And the number of dwelling units by the reduction from six to four brings the lot area per dwelling unit now closer or in greater conformity. So on most of the metrics by which we evaluate properties, this alteration will be seen as an improvement. Because the property is non-conforming, the additions that are proposed cannot be accomplished as of right. The property still will have a GFA that exceeds the allowable FAR because I noted at the end of the day that number is about --

CONSTANTINE ALEXANDER: It's 1.47 now, and it will go to 1.46 and the district requires no more than 0.75. So you're slightly decreasing the FAR, but as you point out, you're still going to be essentially non-conforming.

ATTORNEY JAMES RAFFERTY: Right. So I think there's about a 60 -- the net result is 60 square feet less.

CONSTANTINE ALEXANDER: Less.

ATTORNEY JAMES RAFFERTY: And candidly not a coincidence in evaluating an appropriate form of relief and acknowledgement that removing these structures and reorganizing the program in the house should not result in a greater non-conformity than is currently there. But as is noted, the property has had a significant amount of deferred maintenance

over the years, so Mr. Shachoy owns a number of properties. His intention is to own and hold this as a four-unit rental property.

The property has a single driveway. We've been talking with some neighbors about the historical use of the driveway. I note that in some of the site plans there are three vehicles depicted there. That's based on information provided to Mr. Shachoy by the prior owner. I've been doing my best to inform the neighbors that we don't know that that is at the end of the day -- the driveway the relationship of hardscape to landscape is unchanged. It's been suggested that maybe, maybe three cars were not there, that it was more like two cars, but we're not looking for any parking relief. To the extent parking exists and it enjoys the benefits of grandfathering, it may, or it may not, but the

reduction in unit count as you know, means that the Petitioner doesn't, doesn't face any additional parking requirements. And so the existing parking largely will remain unchanged. But whatever Traffic Department and ISD concludes is the allowed number of spaces will be, and the relationship of the parking, the driveway -- the house that abuts the driveway appears to be close to a zero setback, so we can discuss with neighbors. They rightfully are concerned about the level of activity in the driveway, but the driveway has existed for sometime and it's an historical use as a driveway is not questioned. I think we've been having a discussion of -- and we have some Google Earth photos, it appears the prior owner stored vehicles there. So there are a number of vehicles you can see further into the

property. We certainly won't be storing vehicles. I'm not sure that that is a permitted use. But at any rate, the intention is to allow, allow for the rear additions to replace the existing additions. And also we're very close on one of the side walls to the setback. And as you know, in this district it's a formula setback and it's a high plus length by four on the side. But if the building is less than 40 feet in height, the four becomes a six. And the default is to a 7.5 minimum. We're at 7.8. So there's part of us that thinks that we're okay. But it's never clear to me whether we have to take the -- we've got three different heights on that wall, and if you -- we've done the math back and forth, and to the extent the relief is needed, the windows as they appear -- and this would be on the -- as you

stand in front of the property, it would be the right side. The left side is conforming. The rear side is conforming. There are no new windows being put in the existing structure. These are in the additions. So we have sought relief for Special Permit to the extent that the wall that's being proposed there.

CONSTANTINE ALEXANDER: I thought you said your advertisement said you're going to add windows in non-conforming walls.

ATTORNEY JAMES RAFFERTY: Right, that's what I'm saying. It's on the right side.

CONSTANTINE ALEXANDER: Yes, maybe I misunderstood you.

ATTORNEY JAMES RAFFERTY: No, there's no new windows going into the existing structure.

CONSTANTINE ALEXANDER: Oh, okay.

ATTORNEY JAMES RAFFERTY: The existing wall, which are non-conforming are not going to have additional windows. The addition which is being set back doesn't, if you look at the proposed rear addition doesn't extend -- the property is on right side. It's as close to three-foot, nine. The proposed addition where the walls are is at 7.8. The minimum on that side setback is 7.5. But if you do the formula and the formula comes out with a number larger than 7.5, then we have --

CONSTANTINE ALEXANDER: The fact of the matter is, and we'll get into this in more detail I'm sure in a while, is that that property on the right, it's 106 Otis Street as you face the structure on Otis Street, is lower. The property, the grade is lower.

So they're below your structure and there's a problem of runoffs.

ATTORNEY JAMES RAFFERTY: Yes, there is.

CONSTANTINE ALEXANDER: I trust you're going to get to that. There's also a problem with regard to adding windows on this very close area, maybe privacy issues. I don't know, we'll find out. And there's also the issue about by putting this one, getting rid of a sprawl of the wood structures in this one new addition at the rear has been pointed out by that abutter, is that you're taking away some of her light. The structure's going to block the sunlight or natural light at least in part of her structure.

ATTORNEY JAMES RAFFERTY: Right. We've been in conversation with that abutter on all of those issues. I wouldn't hesitate

to speak for her, but we have indicated an expectation that a drainage plan would be required and that Mr. Shachoy would review it with her. We've been discussing what is leading to the problem. There had been attempts that abutters had told us in the past to deal with the prior owner and apparently --

CONSTANTINE ALEXANDER: I just want to address this drainage plan. If we grant you relief tonight, of course drainage would not be part of our relief, at least I don't want to get into that, then you would go about and working out a drainage plan with the abutter. What if you don't reach agreement? What if she wants and believes is necessary, you don't think is necessary? We have granted relief to allow you to go forward and you're, if you will, in the driver seat with

regard to a drainage plan?

ATTORNEY JAMES RAFFERTY: Well, I would defer to the Building Department, but I do think there are runoff requirements and abutters does have certain rights. So there is going to be some excavation here. There's going to be significant increase in permeable area here. There's going to be opportunities for better storm water management in terms of bringing roof drains into a cistern or a dry well which is the concept that Mr. Shachoy has shared with the neighbors. One neighbor interestingly, and I believe there's a basis for that, on the other side expressed some reservation about the dry well because its intent to have a different kind of an affect on an abutting property. So -- but I think what I understand from listening to the neighbor's

concern that's most affected, is that there are a number of downspouts on the existing structure that are running right into their property. And there is a retaining wall between these properties that are in disrepair as a result of the water seepage, so I would imagine a condition around drainage would have to be reviewed and approved as part of the Building Permit.

CONSTANTINE ALEXANDER: Okay.

We'll have to think about this.

You'll have an opportunity, Ma'am.

I would have liked, I would have hoped you would have come before us with a more detailed resolution of the drainage issues, a plan that you've shown that the neighbors think is okay rather than, if you will, kick the can down the road with regard to drainage and just go with the Zoning relief. Because

we have an opportunity today, this Board, to tie up a lot of loose ends with regard to this property. I don't want to lose that.

ATTORNEY JAMES RAFFERTY: Agreed. But I think there's some engineering and design work that is needed as to what our --

CONSTANTINE ALEXANDER: I understand.

ATTORNEY JAMES RAFFERTY: What is the appropriate solution here. But as is often happens, these issues -- this becomes a forum where issues that deserve attention come to surface and as I said --

CONSTANTINE ALEXANDER: Usually -- you're right. Usually what happens the final resolution is those issues get resolved more or less and in connection with the relief being granted. But what I don't hear yet is that the issues are going

to be resolved if we grant relief tonight. It's still to be worked out, to be determined, and that's a little troublesome to me.

ATTORNEY JAMES RAFFERTY: Well, I mean the nature of the -- the nature of drainage is that it appears that through a change in grade and other factors that there is runoff occurring from this property on to the abutters's property. And Mr. Shachoy has committed to curing that. And he has his own reasons. And the retaining wall is on his property and serves on his property so it's being compromised. So I don't know what we -- I mean, I saw the letter from the abutter recently. We did didn't have a long lead time on this issue. But we did host a meeting last night at the property. I estimated -- how many people were there?

CHRISTOPHER SHACHOY: 30 people.

CONSTANTINE ALEXANDER: And there are a number of people in the audience and I suspect we're going to hear from them anyway. I've said what I'm going to say for now on this. I'm sorry, I didn't mean to interrupt you.

ATTORNEY JAMES RAFFERTY: Those are the two areas that we're seeking relief. And maybe have clouded the issue around the Special Permit, and what I'm attempting to say is we believe it may be that one of these walls, at seven feet, eight, it might be an interpretation that that wall doesn't qualify for the seven-foot, five minimum and thus is not regarded as a conforming wall. And if that's the case, we would need the relief and you're looking at me puzzled.

SEAN O'GRADY: I know you're looking at me, Jim. And the seven --

ATTORNEY JAMES RAFFERTY: You know how there's a default to the minimum?

SEAN O'GRADY: In the C Zone?

ATTORNEY JAMES RAFFERTY: C-1?

SEAN O'GRADY: In the table, that little....

ATTORNEY JAMES RAFFERTY: In the footnote.

BRENDAN SULLIVAN: Can I see the dimensional form?

SEAN O'GRADY: That's actually the minimum $7, 6$ sum of 2θ under the H plus L over 5 ? It's actually attached to Residence C.

ATTORNEY JAMES RAFFERTY: Did you go to footnote N that appears next to it?

SEAN O'GRADY: Oh, that footnote? That's a new footnote and that's to say if you use multiple planes, you can't -- you were having a lot of problems with people getting

very artful with multiple planes and pushing them within --

ATTORNEY JAMES RAFFERTY: Oh, all right. So we're at seven-foot, eight there and I guess theoretically -- I suppose we are multi-plane in that location?

ARCHITECT: We are.

ATTORNEY JAMES RAFFERTY: Yes, so that probably satisfies that question.

SEAN O'GRADY: Well, the wall may be fine. Without doing the calculations, I don't know that. But that end doesn't say you're going to get to the 7, 6. It just says when you're done doing multiple planes --

ATTORNEY JAMES RAFFERTY:
Understood. Right, right. I agree.

So that's our point on the -- that wall, that setback is at eight. Where those windows are appearing is eight feet.

CONSTANTINE ALEXANDER: And you're still seeking a Special Permit.

ATTORNEY JAMES RAFFERTY: We're still seeking a Special Permit because perhaps when you do the formula, which really -- I have great admiration for anyone who can figure the height and the length of the multi-plane, and the back and forth. And I have people read it all the time.

CONSTANTINE ALEXANDER: We have a crack ISD team and they would be able to interpret.

ATTORNEY JAMES RAFFERTY: I know, and that's why I rely on them. And when I did it, I said, I'm not sure, we may trip it, so why don't we ask for relief. So, but we are on that side. See, the dimensional form isn't helpful in this regard because you're required to list the closest point of setback

which is the existing structure not the addition.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So I'm looking at the dimensional form, it's three, nine. But the plan depicts that distance at eight feet.

And I think that probably covers our presentation.

CONSTANTINE ALEXANDER: Okay. You'll have an opportunity for further comments.

I'm going to open this matter to public testimony. Is there anyone wishing to be heard on this matter? You have to come forward and give your name and address to the -- pull your seat up if you like. You don't have to stand.

JENNIFER ESENCOURT: Jennifer

Esencourt.

CONSTANTINE ALEXANDER: You're the one who has written the letter in our file.

JENNIFER ESENCOURT: I did. I did go to the meeting last night. We had, I don't know, two days' notice. So, but that was a good meeting, and to meet Chris. Some of you will have read the letter. Basically we've had water issues from this property next-door at No. 104 for years. I called the Building Department about seven years ago and they said to try to work it out with the Baileys which I did try to do. Three of the owners at that time -- we have new owners on the third floor and the first floor right now. I'm the person that's been there for a long, long time. So we met with the Baileys five, six years ago, with the contractor, Louis Archia of Archia Remodeling (phonetic) who

basically was pointing out to us, which I explained to Chris yesterday and to the architect Maggie, I don't know, Booz I think, that there are at least four downspouts on the side of this building that literally terminate at the ground level. They terminate on a brick apron which is all broken up, full of weeds. And the land is so friable that I was in my basement one day on a hot summer's day, there was a hose that somebody had left running, the water was going straight down, not across the ground, down through the ground and reappearing in our basement some six feet below the upper level. So that's like eleven feet down. And I was wondering where on earth this water was coming from. So there's that.

There's the walkway along the side of this building that's asphalt, and the asphalt

is all broken up. There's a retaining wall that's parallel to the walkway, but there are these huge gaping holes behind it now. So the water's been running through that over the years I think, and pushing it out and freezing and cracking it. So we've been kind of struggling with this. And in good faith, I keep forgetting his name, the brother at 102.

CHRISTOPHER SHACHOY: Oh, George.

JENNIFER ESENCOURT: George asked us to fix the fence that was on the top of the wall, a gate, because it's an enormously heavy post-Civil War gate, iron gate. It's like over 150 pounds. And it was hanging loose on his side and on ours. So he did that as a good faith gesture from that meeting. And he never fixed the other side and he never did any of the walkway work. And it

deteriorated hugely in the last six years. So our property gets water in it. We sit in a well. We have a very small apron. If you look at the plan, there's not really room for us to put a gravel drainage pit in the back. And the contractors that we've talked to have said look, you are these people's swimming pool is what he called it. And which is not good news for us. We've spent an enormous amount of money and time, you know, taking care of our water. We've changed from clapboards to cement boards. We put in fans. We've tried to extract the water. We got a sump pump. We do have a drain that does take some water away. But this has been really challenging. And now it seems to me is our one chance with new owners coming in, it doesn't matter if it's a developer or who it is, but to try to talk to the owner and say

okay, we don't even know who's retaining wall this is. We know that there's a fence on top. Elizabeth called and got permission to put that fence up. But in either regard even if it was our retaining wall, we can't really do any work to make that last until they do work on the side of their land and their building. And it seems like most contractors agreed that the good thing to do would be to -- while they're doing a garden way in the back, to dig down a really deep drainage pit with gravel, I forget the correct term, but you know, where you take all the downspouts and try to put it in there low enough so that they drain. Because in East Cambridge it's a real problem. The land is really pourus. Neighbors are very tight. We discovered last night the house behind ours which also abuts his property, our wall starts further

forward, has another downspout that's been going in and creating a huge hole through the ground, you know, and literally pouring water down in line with our retaining wall. So we're trying to find a way to address this all the way around. This is a perfect time. I'm the person that said okay, my kitchen window is going to get blocked by your third floor slightly, I'll deal with it. I talked to somebody in the Building Department and he was kind enough to say well, you know, introduce that you're willing to let go of that if these people really will step forward and work with you. And I'm hoping for a, you know, a geotech and a soils engineer and really to create a plan that we can stick to. So that this is not approved and then we find out oh, by the way we're just tarmacking over it. And it's, you know, we're not really

paying attention to the fact that there's really quite possibly a problem here.

What -- one of the things just so that you guys know, is this brick house, it's a double brick house, it's enormously heavy. So it really is. And people have pointed out to us, contractors, it's pushing the land out. We're on a slope, so we're below them. So that entire side which is the walkway, if people don't deal with this, and nobody's dealt with it for years, we've got a real problem. They're not gonna have a walkway. We're not gonna have a retaining wall, and we've got the water dropping straight down through. So I'm here waving a little flag going hello. Because whether I'm there or not, purely for paying it forward for the sake of this property which we've tried to maintain, you know, I'm trying to push that

now's the time.

CONSTANTINE ALEXANDER: Did you raise these issues or have any of the discussion at the meeting last night?

JENNIFER ESENCOURT: I did.

CONSTANTINE ALEXANDER: And what did --

JENNIFER ESENCOURT: These gentlemen -- Chris said -- sorry.

CONSTANTINE ALEXANDER: No, no. Were you satisfied with what you heard?

JENNIFER ESENCOURT: I thought they were very open. Maggie Booz I thought was very open. She was expressing -- Chris had done really nice renovations on other properties that are known. And it seems like he's willing to meet us. I just wanted to come tonight to make sure that, like you said, it didn't kind of just -- I wasn't just

placated and everything went through and then nothing happened.

CONSTANTINE ALEXANDER: Right. That's, if you will, the dilemma that I was trying to identify before. Ideally when we have these situations, there is a solution that has been worked out with the neighborhood.

JENNIFER ESENCOURT: Right. There wasn't time.

CONSTANTINE ALEXANDER: I understand. And I think not time for a long time because there's a lot of -- as Mr. Rafferty points out, a lot of engineering work and other work that's got to be done first.

JENNIFER ESENCOURT: Right.

CONSTANTINE ALEXANDER: The fact of the matter is if we had a specific plan, we

could make that plan part of our decision and off you run.

JENNIFER ESENCOURT: Right.

CONSTANTINE ALEXANDER: What we're looking at tonight is if we grant relief, you'll have to proceed on the -- basically the good faith, and I don't suggest anything less, the good faith of Mr. Shachoy.

ATTORNEY JAMES RAFFERTY: Well, Mr. Chairman, and I inquired of Mr. O'Grady because there is a role of DPW in the Building Permit process where a storm water management plan would need to be submitted here. And I've suggested that --

CONSTANTINE ALEXANDER:
Independent of the Zoning relief you mean?

ATTORNEY JAMES RAFFERTY: Right, just as part of the Building Permit. But I think it would not be problematic with a belt

and suspenders approach for the Board if they were inclined to grant relief to require such a storm water management plan be approved by DPW as part of the relief.

Now, so the issue has to do with retaining water and allowing for it to slowly go into the city's sewer system. So there's a separation between storm water and domestic water now in this area, that separation has occurred. But Mr. Shachoy is committed and is probably more in the nature of private agreement, but it could also reflect that the retaining wall is in disrepair and that he will repair or replace or rebuild that retaining wall, and that he will, he will submit for approval with the neighbor and ultimately by DPW, a storm water management plan that properly addresses runoff from the lot to this property and other into the

street.

CONSTANTINE ALEXANDER: That's fine. In regard to this, Sean, is there a -- must the DPW sign off on a storm water drainage plan?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: We can't tell them to do it if they don't want to do it.

SEAN O'GRADY: No, of course that's not Zoning so I'm not directly involved in that.

CONSTANTINE ALEXANDER: I understand.

SEAN O'GRADY: My understanding is that, yes, they do require that and that it's gotten more recently very strict.

ATTORNEY JAMES RAFFERTY: And you would acknowledge on the Building Permit

application, one has to obtain the DPW signoff. So it's not -- so one has to go to DPW --

SEAN O'GRADY: Right.

ATTORNEY JAMES RAFFERTY: -- and when you present your Building Permit application, you have the Fire Department, the DPW, and the Traffic Department already signed off. So my point is it's somewhat, it is regulated. I was telling you.

JANET GREEN: And that's because of the number of units that's in this building or the size of the building?

ATTORNEY JAMES RAFFERTY: No, I just think it's part of the Building Permit process.

SEAN O'GRADY: I'm not sure at what point it kicks off. It kicks off at a fairly low point. It's certainly something like

this it's going to kick off.

ATTORNEY JAMES RAFFERTY:

Mr. Shachoy is an experienced builder in Cambridge. Even in a single-family buildings he has to submit these plans.

JENNIFER ESENCOURT: Can you explain what that means in real terms? Thanks.

CONSTANTINE ALEXANDER: Yes. And Mr. Rafferty can correct me if I'm wrong. What he's saying is that there is a check and balance here. If we were to say to grant relief --

JENNIFER ESENCOURT: Okay.

CONSTANTINE ALEXANDER: -- they still have to have, go to the DPW and get a water drainage --

ATTORNEY JAMES RAFFERTY: Storm water management plan.

CONSTANTINE ALEXANDER: Storm water management -- drain system approved and you will have an opportunity to weigh in at that point in time. And there would be a city office that would look over the shoulders and -- it may be a plan that you don't like, but if the City likes it or will accept it, that would be the plan that would be put in place. That's just the way it works. So there is, it's not a matter of, if you will, exposed going forward if we grant relief tonight, you're -- you then, not just relying on Mr. Shachoy's good faith, you would be relying on the city official, the DPW, approving plans. It's sort of like with a restaurant. If we approve a restaurant to go forward, they have to go to the License Commission to get approval for the hours and all the other things. And --

JENNIFER ESENCOURT: Do we have input with you whatever you submit or do you -- do we just wait to hear?

ATTORNEY JAMES RAFFERTY: We could agree to share. We can commit to share, provide you with a copy of the plans, seek your input. There are going to be a number of construction-related issues that are going to require collaboration. The building is only three feet off your property. So there would be a need to corroborate.

CONSTANTINE ALEXANDER: Did I hear you to say with regard to the retaining wall between 106 and -- you will rebuild it?

CHRISTOPHER SHACHOY: We will rebuild it.

CONSTANTINE ALEXANDER: That we can put in as part of the Zoning relief.

JENNIFER ESENCOURT: Okay. Thank you. Fabulous.

TIMOTHY HUGHES: I'm sure you're going to want to stay on top of this process because I'm not sure that the City's concerns with a storm water plan are going to be the same concerns as yours.

CONSTANTINE ALEXANDER: Exactly right.

JENNIFER ESENCOURT: What does that mean though?

TIMOTHY HUGHES: I don't think the city cares if it's going in your basement.

ATTORNEY JAMES RAFFERTY: Oh, I wouldn't go that far.

JANET GREEN: I think they care mostly about if it's going into the sewer system.

TIMOTHY HUGHES: Yes, that's what

they're concerned about.

JENNIFER ESENCOURT: So how do I work with Mr. Shachoy so that --

TIMOTHY HUGHES: I'm not sure about that.

JENNIFER ESENCOURT: -- basically this goes into say the back garden into a gravel pit that's deep enough that the neighbors are not concerned about runoff for whatever? I mean, how does one do this? I don't know.

CHRISTOPHER SHACHOY: Ultimately in cases that I've dealt with this in the past. We have gone to DPW and they've required us to retain an engineer to do drainage calculations of the whole site.

JENNIFER ESENCOURT: Okay.

CHRISTOPHER SHACHOY: And with those drainage calculations the engineer

will then design a drainage system that will -- I could be wrong on this, but I think you're not allowed to drain off the site any more water into the storm water drainage system than existed before the change in the property, and you have to retain the balance of the water on-site and release it out over time which would involve like tanks, cisterns, dry wells, things of that nature on the -- to be built subsurface on the site to retain the drainage and release it out over time into the street.

JENNIFER ESENCOURT: Okay.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, I can think of cases where the Board has placed conditions where it wouldn't be to the neighbor's satisfaction, but prior to the issuance of the Building Permit, the Building Department, the Commissioner of ISD

would have to be satisfied that a drainage plan has been -- is part of the plan that ensures that there's no runoff to the abutter.

CONSTANTINE ALEXANDER: I think we have done that in the past, but it's my view at least, that that puts the Building Department in a very awkward position. And it's sort of asking them to do things. It gets them in the middle of a dispute, potential dispute between two neighbors over something that is not within the strict purview of the Building Department. That's my view.

I mean, Sean, do you feel otherwise or do you think you can handle it? Then I would be happy to do what Mr. Rafferty suggests.

SEAN O'GRADY: We would defer to the DPW on that issue I think.

JANET GREEN: If the DPW and their concern is primarily that the water doesn't go into the sewer system --

CONSTANTINE ALEXANDER: I think that's right.

JANET GREEN: -- then would it make sense for an interested neighbor to have a second opinion about whether that plan was sufficient for controlling the water that would be coming into their property?

JENNIFER ESENCOURT: That's an idea. I mean there are a couple of architects here who are neighbors, I don't know if you would be willing to look over something.

CONSTANTINE ALEXANDER: I can put something, I'm going to characterize as soft language in the decision, assuming we grant relief, that would push towards that end.

I'm just trying to say is that it's not going to airtight. And you've got issues -- I mean, hopefully no issues, but you could have issues in the future.

JENNIFER ESENCOURT: Right.

CONSTANTINE ALEXANDER: For example, Mr. Shachoy could decide that he's not going to pursue this project and sell to someone else. And the someone else is not nearly as cooperative as Mr. Shachoy. That's a risk. I just got to point that out.

JENNIFER ESENCOURT: Right.

CONSTANTINE ALEXANDER: So we can do the best we can, but I'm not going to give you any assurance that we're going to give you something iron-clad.

JENNIFER ESENCOURT: Well, it sounds like I mean, No. 1 we can at least guarantee maybe that there are not open

downspouts facing our property shooting their water in our direction possibly. We might be able to put -- make it concrete that you're willing to replace the wall which is awesome, and the walkway along there, which presumably you're going to do anyway. It's barely walkable now. You know, it's all cracked and broken and uneven. I don't know what else -- I mean, you know, whatever we can do that will help. We may still get water in the basement, but efforts like that make a huge difference. Taking the water, moving it away from shooting it straight at our building over years would make a vast difference I think. Repairing, you know, wherever there's totally broken up bricks and asphalt will help and moving the water elsewhere into a gravel pit. So if he's willing to do that and whatever the language

that you guys would recommend. I would love it if somebody else would go over as a second opinion. Would you be willing to do that?

BRENDAN SULLIVAN: Was the only discussion with the neighbors last evening?

JENNIFER ESENCOURT: Yeah.

BRENDAN SULLIVAN: As a group?

ATTORNEY JAMES RAFFERTY: As a group. There have been one-on-one discussions prior to that.

JENNIFER ESENCOURT: Yes.

BRENDAN SULLIVAN: I go back to your original comment that it would have been better if it was vented a little bit more.

CONSTANTINE ALEXANDER: Well, that's what I've been trying to get at. What I've been hearing and I don't --

BRENDAN SULLIVAN: So that we would have gotten --

CONSTANTINE ALEXANDER: A lot more. More. I don't know if we get enough.

BRENDAN SULLIVAN: That's being Judge Baker's guidance center here.

CONSTANTINE ALEXANDER: That's why I was probing. I don't think we get far enough along that we can really get the answer that I'd like to get.

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: I mean, we can try. I think we'd be back with a lot of soft stuff and a lot of delay and I don't know if that's going to solve anything.

ATTORNEY JAMES RAFFERTY: Well, I mean, I think that we're --

CONSTANTINE ALEXANDER: Maybe I'm wrong.

ATTORNEY JAMES RAFFERTY: There are private agreements that could be negotiated

and drafted and executed, and many times I've been here, the Board recognizes those as private agreement. I would think that we're aware of the DPW process. I think you could require the Applicant submit a drainage plan as part of the Building Permit application for review by the Building Department that addresses these concerns. It may not cure everything, but it does I think add another requirement. And I'm not sure beyond that, I mean, these are not pure Zoning issues but everyone agrees there's an opportunity. But with a history here of deferred maintenance and a commitment on new walkways and new retaining walls and a requirement that DPW storm water management plan and that the Applicant submit a drainage plan that addresses issues about runoff to the abutter --

CONSTANTINE ALEXANDER: I think that's right. I think that's as best we can do tonight. I don't think that's the best we can do a month from now if we continue this case. It's not perfect.

BRENDAN SULLIVAN: If that were on the site plan as part of our -- even though that is not in our seeking relief from that, that that is still part of the total package --

CONSTANTINE ALEXANDER: Oh, yes, absolutely.

BRENDAN SULLIVAN: -- that we're evaluating.

CONSTANTINE ALEXANDER: I think we have every right --

BRENDAN SULLIVAN: Right now it's sort of smoke that we're trying to put our hands around.

ATTORNEY JAMES RAFFERTY: Well, we admittedly haven't done the engineering work to address, you know, the existing conditions and what, what is the correct remedy. And I think it will result in a period of time with DWP and with a private civil engineer. But I mean I think there's a commitment to do it. I agree, in some cases and certainly a larger big project we do see civil engineering drawings in Article 19 review process, if this was a building greater than 125,000 square feet and they were before the Planning Board, they would an engineer's report. But I think the scale of this project, they have a requirement that a drainage plan be submitted that addresses runoff along with the other commitments.

BRENDAN SULLIVAN: I'm just wondering if stepping back for another couple

of weeks would not be advantageous.

CONSTANTINE ALEXANDER: I'm not adverse to that. The only point I think is I think we have, I think we have a chicken and egg issue here. I don't think the Petitioner would want to go for the expense of varying these plans unless they knew they were going to get relief from us. And so I think the other approach is to grant the relief with many bells and whistles that we can put on this to try to assure that the end product will be okay. But I think to suggest that they've got to do all this engineering work not knowing whether they're going to do the project at all is a bit much. A little bit unfair requirement. That's just my view.

BRENDAN SULLIVAN: I for one have some hesitations on the proposal that's before us.

JENNIFER ESENCOURT: On the what?
Sorry, I didn't hear you.

BRENDAN SULLIVAN: On the proposal
that is before us.

JENNIFER ESENCOURT: Oh.

BRENDAN SULLIVAN: Separates from
your issue. Just on the relief that is being
requested.

CONSTANTINE ALEXANDER: Let me get
further public testimony. Your point is
very well taken.

JENNIFER ESENCOURT: Thank you.

CONSTANTINE ALEXANDER: One second.
You did submit a letter to us.

JENNIFER ESENCOURT: I did.

CONSTANTINE ALEXANDER: Can I
assume that everything that's in this letter
you covered in your oral testimony so I don't
have to read the letter into the record?

JENNIFER ESENCOURT: I think so.

CONSTANTINE ALEXANDER: I think so to. I just want to be sure.

Okay, thank you very much for taking the time to come down.

Now, sir, you've been dying to speak. Here's your chance. Come forward and give your name and address to the stenographer.

MICHAEL McKEE: My name is Michael Mckee, M-c-K-e-e. I'm the abutter on the other side.

CONSTANTINE ALEXANDER: You're on the other side?

MICHAEL McKEE: We're on the other side, the other abutter. We're on the uphill side.

JANET GREEN: Can you speak into the microphone just so other people in the room can hear you.

MICHAEL McKEE: I didn't come here to speak about water, but I just wanted to throw in -- just add my two cents worth because I don't think -- you seem to be saying that they have to have a full engineer.

CONSTANTINE ALEXANDER: Say it again, please?

MICHAEL McKEE: You're saying that you feel they would need to have fully engineered solution where it seems to me that somebody could look at it and at least write a report, visit her, her cellar, look inside, look at the sidewalk, and at least identify what the problems are because I think you're correct, that the DPW doesn't necessarily care about the water going into her basement, it cares about other things.

CONSTANTINE ALEXANDER: I'm not -- maybe I'm dead wrong because I know

nothing about this area, but I'm not as sanguine as you are that someone could just do a report. I think this is going to require -- to get the problem solved is going to require quite a bit of engineering work and investment.

MIKE McKEE: It would just be identifying what the issues are, water in the basement, just so that you've got something that's beyond --

CONSTANTINE ALEXANDER: We know what the issues are, water in the basement. Trouble is how do we solve it? Not we, but how the Petitioner can solve it.

MIKE McKEE: So I'm the abutter on the other side. We came here and I think to support the project. We like the project. We like what's happening. We've got concerns as well. Our concerns are about the

parking and the way it's structured, and I know that parking isn't on -- they're not asking relief for the parking and I'm not even sure we can speak about parking.

CONSTANTINE ALEXANDER: I'm going to point out they're not asking for relief on parking. I have to assume that the Inspectional Services Department sees no need for relief on parking so it's not an issue, at least of right now. Again, my assumption is that if they continue to do what they've done in the past, that it's legal.

MIKE McKEE: And I think Mr. Rafferty somewhat, he was resenting it. I think there's some ambiguity about what the existing conditions are, what is as of right. I'm not -- I don't know. I didn't go in and look and see if the parking in these areas. All I know is that, you know, the way it was

used. I don't even know if that was legal. But, again, similar to the question about the -- what we're concerned about is whether this is our only chance to have input on what goes --

CONSTANTINE ALEXANDER: Not necessarily on parking -- not sure your only chance. If you think at any time that you think the parking is violates the Zoning, you can certainly go to the Inspectional Services and get a determination. And you can -- even if you don't -- the determination is it's okay, you can take an appeal and come before this Board. So it's not foreclosed forever on this parking. And on that, Sean, do you know if Ranjit -- or let me ask Mr. Rafferty. Has Ranjit explored the parking with you on this project? It's your own determination that you don't think there's a parking issue.

ATTORNEY JAMES RAFFERTY: I say there's not a parking issue because the parking is what the parking is. There's no requirement to provide additional parking. How many -- the Assessor's database has a number of parking spaces associated with it. There's a curb cut and there's a driveway. How many cars are permitted to park in that driveway? Whatever that requirement is.

CONSTANTINE ALEXANDER: True.
That's true.

ATTORNEY JAMES RAFFERTY: And we're not adding a dwelling unit. So whatever the parking requirement is, it's being satisfied or it's not being satisfied, but we're reducing the dwelling units by two so I don't see how there's any issue around parking from a Zoning perspective. I did provide the same advice to Mr. McKee that you did, which is

there's a feeling that the use of the driveway doesn't conform with Zoning. There are remedies independent of this process that he can explore.

CONSTANTINE ALEXANDER: So anyway, bottom line is if you're not absolutely foreclosed on parking. That issue is not before us tonight. The assumption is that everything is going to be okay legally -- I don't know from your perspective, but from a legal perspective, they're just going to continue what's there before. And what is there before never been determined to be in violation of our Zoning Ordinance. At some point in time you or anyone else wants to challenge that, you talk to Mr. Singanayagam.

MIKE McKEE: Again, the process we would have preferred a process in which we

could sit down with the developer ahead of time and work this out and that didn't happen. So we're not necessarily -- and we prefer to not get confrontational and not, you know, try to find problems that exist. So I don't know if there's anything that we can -- right now we'd like to sit down, we wanted to sit down. I couldn't come.

CONSTANTINE ALEXANDER: That's between you and the developer.

MIKE McKEE: I couldn't get to the meeting last night because I was out of town and I rushed back to this meeting.

CONSTANTINE ALEXANDER: My only suggestion is the developer has been willing so far to sit down with the neighbors at last night's meeting, and I'm sure he would be willing to sit down with you and talk further about parking after tonight's meeting.

Okay?

Mr. Shachoy, I take it you're okay with that?

CHRISTOPHER SHACHOY: Sure.

MIKE McKEE: I was concerned about the parking and the driveway and the traffic.

CONSTANTINE ALEXANDER: Okay, thank you.

Is there anyone else who wishes to be heard? You don't have to speak you seemed like you wanted to speak.

JANET McKEE: Just don't recognize the -- I have on the building.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard on this matter?

(No Response.)

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

We are in receipt of one letter from

Jennifer Esencourt but it's -- the nature of what's in this letter has been covered by her public testimony so there's no need to read this letter into the file. And that's it with regard to public testimony.

Mr. Rafferty, any concluding remarks?

ATTORNEY JAMES RAFFERTY: Well, thank you. As stated, the relief is related to GFA, but it results in the reorganization of the building and it results in bringing the building into greater conformity both in terms of GFA, open space, setbacks, and lot area per dwelling unit. And for that reason there's been testified to and the photographs show, that there's a significant amount of deferred maintenance at the property. The proposal has been well designed, and I guess you heard from neighbors well received. We did have 30 people in attendance last

evening. And I think there was some favorable commentary about the design as you heard from Mr. McKee who is lives in close proximity. The overall design, I think, this issue about parking --

JANET GREEN: Can you use the microphone? They can't hear you back here.

JENNIFER ESENCOURT: Thank you. Can't hear a word.

ATTORNEY JAMES RAFFERTY: One thing that we've made clear is that the issue around the parking is certainly a subject worthy of discussion, and we couldn't agree more, the preference would be to not have an adversarial relationship around this thing, and there's an opportunity to discuss that. Frankly at the moment the approach we've taken is to leave the existing conditions as they were and create open space. We did have

a conversation about well, what about putting more open parking in the rear? And it was a conscious decision not to seek that relief and, for a variety of reasons. So the proposal before the Board tonight really is silent as to parking because it's a six-unit dwelling, and at some point it provides parking. What that requirement is, how it's being satisfied, it's not a case that if it's determined that one of those parking spaces isn't lawful, that it affects the unit count here. At any rate we're reducing. For all of those reasons we would request the Board find the relief certainly does not derogate from the intent of the Ordinance. It brings the property into greater conformity. And the additions as proposed, meet the open space and setback requirements in a way that are not currently addressed.

CONSTANTINE ALEXANDER: You want to comment at all on Mr. Sullivan's suggestion that perhaps this case is premature for decision tonight and we need more information about drainage plans and how to deal with the runoff?

ATTORNEY JAMES RAFFERTY: Well, I mean I think, I think the issue has been identified. There is a grade change here. I suppose one could envision a more detailed plan on that issue, but I frankly feel that a requirement that a plan be provided should be sufficient. The answer probably is a combination of creation of new roof drains and some type of a retention. I accept the fact that the primary focus of DPW will be how the water is infiltrated into the city system. But I think requiring the Applicant to provide a runoff or drainage plan, I think

basic Building Code doesn't allow a property to drain its water on to an abutting property. So I think the commitment around the wall, and I guess at this point I haven't heard, and I hesitate to speak for the abutter, I don't hear the affected abutter saying delay action on this for further issue. If that were the case, maybe it would be more compelling. I believe that there are adequate resources within the context of a proposed decision that can address these concerns.

CONSTANTINE ALEXANDER: Thank you. I think we've, we've closed public testimony unless there's something very compelling you want to add.

JENNIFER ESENCOURT: No, no. I just wanted to ask for as much control for us as possible.

CONSTANTINE ALEXANDER: Well,

that's -- if I could be smart enough to figure that out, that's what we would do. But I don't think we can get there unfortunately.

Anyway, closing public testimony.

Discussion from members of the Board.

Brendan, you were the one I think you were interested in maybe deferring the decision tonight and getting more information. Do you still feel that way?

BRENDAN SULLIVAN: Even though there is a reduction in the number to bring it into greater conformity with the Ordinance, I think I would question the massing of the building and the effect that it would have on the adjoining property. And I'm not sure if a shadow study has been done. But I think that even though there is a redistribution of square footage, that the massing, I think, does have an impact, an

adverse impact on the adjoining properties. And the other issues, even though they're not Zoning issues, I think cannot be ignored either. So I would probably not support the proposal that is in front of us.

CONSTANTINE ALEXANDER: So you're ready to vote tonight, but you're going to vote sounds like negatively?

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: Okay. Understand, of course, that, I don't know -- I know you understand that if we were to deny relief, it doesn't solve the drainage problem for the abutters going forward.

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: Anybody else wishing to be heard on this?

TIMOTHY HUGHES: I would support the proposal because of the moves that it makes

in the direction of coming into greater conformity, and then because of the reduction of the number of units I think will have less of an impact on the neighborhood. I do think that you're going to have to stay on top of things in terms of getting some satisfaction with the runoff into your basement, but I also do on the Petitioner's testimony that this is going to be rental property and he's willing to make the improvements to the retaining wall and sidewalks. He's not going to want to see those destroyed from water coming down from open drains coming from the top of his house. He's a got a financial stake in this in keeping this up and it's to your benefit, too. For all those reasons I would be in support of the project.

CONSTANTINE ALEXANDER: Anybody else? You don't have to be heard. I'm going

to comment last.

THOMAS SCOTT: Can the approval be conditioned to require a storm, you know, runoff management plan? Or not?

CONSTANTINE ALEXANDER: I think it can but the question is the plan to whose satisfaction? I mean, we can say there must be a storm management plan, but if it's one that doesn't work from the point of view of an abutter then there we are, that's the problem. So we can get somewhere there, some of the distance but not all the way in my view anyway.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, the proposed conditions we had suggested was one is related to DPW storm water management. Runoff is a separate issue.

CONSTANTINE ALEXANDER: I

understand that.

ATTORNEY JAMES RAFFERTY: A runoff plan can be required to be submitted and required by the Building Department.

CONSTANTINE ALEXANDER: The issue is who decides, you know, whether that runoff plan is adequate. You may think it's adequate. The abutter may think it's not adequate. And I don't know how the Building Department resolves a conflict. I mean, by what standard do they apply? I think that's -- that's what I'm trying to say before. We can get to some soft answers and some good faith attempts to get closer to putting teeth into what is desired. I don't think you can get all the way there in my view. Maybe I'm wrong. We'll just have to caution.

Sean, you want to say something?

SEAN O'GRADY: Yes. We can

certainly control where the downspouts go.

CONSTANTINE ALEXANDER: That we can do, deal with the retaining wall and the walkway. No question about that.

SEAN O'GRADY: Permeability. The DPW on the storm water. The Building Code to the extent that it deals with non-shifting water, new water onto the neighbor's property. Those are laws already set up for all of those things.

CONSTANTINE ALEXANDER: Right. That's as far as we can go.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Not all the way there, but it's a long way better than we are right now. I agree. That's how I see it, too.

SEAN O'GRADY: Okay.

CONSTANTINE ALEXANDER: Janet?

JANET GREEN: I think it's going to be -- come down to a matter of good faith and working with the neighbors. I think all those things that Sean just described are really important. And you know that, they know that, we know that, but there's some, you know, places where you'll have to kind of go the extra bit to make sure it works. And I think as you've done work before, you probably found out that it probably cost less to go that extra mile in the beginning than to sort of try to clean it up later. So I mean, you know, so there you go. So I'm inclined to vote for it.

CONSTANTINE ALEXANDER: My view is that I'm also going to vote in favor of it. I think we can -- I think I agree with Brendan about the massing. That's a negative. But the positive is we're getting rid of this

horrible wooden structure that goes way too far in the back and we're getting some open space. We're getting a refurbishment of a property that's in need of refurbishment. And I think we can begin to tackle, I don't know if we can solve, but go a long way tackling and solving a neighborhood issue; namely, the drainage issues. Why not take our best shot at it. I just want to again caution -- I don't believe that we can get the final perfect answer tonight, but I think we can get a long way there. I'm going to try to do that in the motion. So I would vote in favor of it as well.

Okay, ready for a vote? And please help me as I get to the conditions to make sure I get them all.

Anyway, the Chair moves that this Board make -- we haven't talked about the Special

Permit. I guess you have. You talked about in terms of the windows and the like?

ATTORNEY JAMES RAFFERTY: Right.

The windows on right side wall facing Ms. -- the west elevation. Ms. Esencourt.

CONSTANTINE ALEXANDER: On that, do you have any problem, have you seen where the new windows are going to be relocated and do you have any issues with that?

JENNIFER ESENCOURT: I don't think so really.

CONSTANTINE ALEXANDER: Okay.

JENNIFER ESENCOURT: I'll lose some light by going higher, but the building's actually going to be shorter, so, you know, it's ten of one and six of the other, whatever.

CONSTANTINE ALEXANDER: Okay.

Let me start with the Variance. The

Chair moves that this Board make the following findings with regard to the Variance being sought to construct additions to this non-conforming dwelling:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being is that this building is now oddly constructed with the extensions in the rear, and requires substantial modifications to the structure to improve its inhabitability.

That the hardship is owing to the fact that this is a non-conforming lot with a structure that fills most of the lot as it now is.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from

the intent and purpose of this Ordinance.

In this regard the Chair notes that the relief being sought would in fact improve compliance, would not make it Zoning compliant, but improve the compliance of the Zoning requirements by reducing FAR and improving setbacks and the like.

That the structure will improve the housing stock of the city, and that with the conditions being proposed, it will also work toward solving an existing problem in the neighborhood somewhat unrelated to Zoning.

So the Chair moves that the Variance being sought be granted on the following conditions:

That the existing retaining wall or the retaining wall and driveway be repaired and maintained by the Petitioner.

ATTORNEY JAMES RAFFERTY: Excuse

me, I think you meant the walkway.

CONSTANTINE ALEXANDER: Walkway I did mean that. Thank you.

ATTORNEY JAMES RAFFERTY: On the west side.

CONSTANTINE ALEXANDER: On the west side. Thank you again.

On the west side, the side between the property in question and 106 Otis Street.

That the walkway and retaining wall be rebuilt and maintained -- continue to be maintained by the owner, not necessarily the Petitioner but the owner of the premises at 102-104 Otis Street.

That the downspouts on this side of the building, that there be no open downspouts on the side of the building between 102-104 and 106 Otis Street.

That the Petitioner or whoever is going

to proceed with this project, will submit a storm water management plan with the DPW.

And further that a drainage plan be submitted together with the Building Permit application. Such plans to be designed to the maximum extent as reasonably possible to avoid water runoff on adjoining properties, particularly as to 106 Otis Street.

Anything else people can think of?

Okay. Therefore, on the basis subject to these conditions, the Chair moves that a Variance be granted to the Petitioner.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Scott, Green.)

CONSTANTINE ALEXANDER: Opposed?

(Sullivan.)

CONSTANTINE ALEXANDER: One
opposed.

Let's go to the Special Permit.
Special Permit is with regard to adding
windows on a non-conforming wall which
requires, as I said, a Special Permit.

The Chair moves that the following
findings be made by this Board with regard to
the Special Permit:

I'm sorry, let me go back to the
Variance. I want to add a condition that the
work proceed in accordance with plans
submitted by the Petitioner. They are
numbered A-1.0, A-2.0, A-2.1, A-2.2, A-2.3,
A-2.4, A-3.0, A-3.1, A-7.0, A-7.1, and A-7.2.
The first page of which A-1.0 having been
initialed by the Chair.

Now back to the Special Permit because
I want to tie this to those plans as well.

Going back, that we make the following findings that with respect to the window issues, that the relief being sought will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of adjacent uses will not be adversely affected by the nature of the proposed use.

The Chair would not in this regard that the property most affected, may be solely affected by the window changes 106 Otis Street has expressed no opposition to the window changes. Expressed opposition to other things, but not to window changes.

And that no nuisance or hazard would be created to the detriment of the health, safety, and welfare of the occupant or the citizens of the city.

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

In that regard to the latter one the findings made regard to the Variance also apply to the Special Permit, therefore, the Chair moves that a Special Permit be granted to the Petitioner on the condition that the work proceed in accordance with the plans referenced as a condition to the Variance we previously granted.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor with regard to the Special Permit.

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

CONSTANTINE ALEXANDER: Good luck.

Hopefully this will all work out to the benefit of everyone. Time will tell.

* * * * *

(10:45 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: Your name and address for the record.

LARRY DONALDSON: Larry Donaldson,

94 Oxford Street, Cambridge, MA.

MICHAEL RESSEM: Michael Ressem,
R-e-s-s-e-m, at 28 Myrtle Ave.

CONSTANTINE ALEXANDER:

Mr. Donaldson, are you going to be the
operator of the business?

LARRY DONALDSON: No. I'm the
landlord.

CONSTANTINE ALEXANDER: That's what
I thought.

LARRY DONALDSON: So, I've owned the
property for 35 years and it's a I guess what
you call a mixed use property. So in other
words, I have a house at 94 Oxford Street, but
also within that property there is a
commercial building which is at 35
Sacramento, and that's at the corner of
Oxford and Sacramento which used to be called
the Aggassiz School.

JANET GREEN: Maria Baldwin.

LARRY DONALDSON: Now it's called the Baldwin School. They've changed the name. So because it's in a residential neighborhood, it's important that the usage be compatible with the neighborhood. So we want to have something in there that the neighbors will feel good about and have reasonable hours and not cause any excess problem that you might associate with some, you know, that might be associated with some commercial operations.

The building is a small building. It's 20 feet by 30 feet. It's about 100 years old. I live contiguous to the building. So my interest of getting a tenant in there is something that would be, you know, compatible with me and I'd like to think my idea of compatible is consistent with what the

neighbors would consider to be compatible. And the perspective tenant that I have is Julie Bane. This is Michael, her husband. And what they propose doing is having a retail store that would be selling housewares and linens. And the situation, my understanding of how the business would run, is that there's no requirement -- I know when I had the Aggassiz Spa, I had a dedicated delivery zone which has since been taken away from me and has now one permit parking and one meter parking. There's no requirement for a dedicated delivery zone for this business. Julie tells me she will use UPS and Fed-Ex for deliveries. And the UPS and Fed-Ex tend to be in the neighborhood all the time.

CONSTANTINE ALEXANDER: How do you plan to -- I mean, you had a spa there before. People who use the spa, they don't drive from

North Cambridge to use the spay, Aggassiz Spa.

LARRY DONALDSON: Right.

CONSTANTINE ALEXANDER: But you're talking about selling linens and other items. What's your market area going to be? Are you going to have people coming from other parts of the city, or out by the city, where are they going to park?

MIKE RESSEM: Mass. Ave. presumably.

CONSTANTINE ALEXANDER: On Mass. Ave.?

MIKE RESSEM: It's only a block away.

CONSTANTINE ALEXANDER: It's a long block.

JANET GREEN: It is a long block.

CONSTANTINE ALEXANDER: And they

don't have a lot of parking by the way.

MIKE RESSEM: Sure. I live in Cambridge. I drive nowhere. And I would expect people to come on their bike or take the T or walk.

LARRY DONALDSON: Julie tells me that she'll either walk or bike to the establishment.

CONSTANTINE ALEXANDER: It seems to me what your plan is going to be, and it's your call, it's your money, that you're going to just basically sell to the neighborhood.

LARRY DONALDSON: My understanding is that they do internet sales and they would be looking at walk-in type sales.

MIKE RESSEM: Our model is -- we have a store in Brookline.

CONSTANTINE ALEXANDER: Oh, okay.

MIKE RESSEM: And I'd like to say

it's 80 percent of brick and mortar and 20 percent online. And our motto for this store is 20 percent online and 80 percent brick and mortar.

CONSTANTINE ALEXANDER: Oh, okay.

The other thing is that the extent of retail operation of this sort brings traffic, either foot traffic or car traffic. We've got a school, an elementary school directly across the street.

LARRY DONALDSON: I understand that. The alternative right now is that the building is empty.

CONSTANTINE ALEXANDER: That's true.

LARRY DONALDSON: So I'd like to get something in there. I don't want to keep it empty. So I'm trying to get something that would be compatible.

CONSTANTINE ALEXANDER:

Understood.

LARRY DONALDSON: And I believe the hours you're -- why don't you tell him the hours you're talking about.

MIKE RESSEM: Well, in Brookline it's 11:00 to 6:30, till 7:00 on Thursday. On the weekends 12:00 to 5:00.

LARRY DONALDSON: And are you closed any time during the week?

MIKE RESSEM: We're closed Mondays in Brookline and then in the summers on Sundays.

CONSTANTINE ALEXANDER: You're seeking at the end of the day is a Use Variance.

LARRY DONALDSON: Yeah. And the other thing I point out to you is that in terms of, of course, when you have a retail

operation, you have things coming in and things you have to dispose of. And there's no requirement here that there be any type of waste hauling or --

CONSTANTINE ALEXANDER:

Understood.

LARRY DONALDSON: And no requirement for a dumpster, for example. And I understand that the recycle bins that we have will be sufficient for what they're going to turn back to the city.

CONSTANTINE ALEXANDER: Janet?

JANET GREEN: I was just going to ask where your store was in Brookline?

MIKE RESSEM: It's in Brookline Village next to the Town Hall.

JANET GREEN: So it's in a more walkable retail area than this?

MIKE RESSEM: It is, but it's set up

to be a neighborhood store.

JANET GREEN: It is.

MIKE RESSEM: And I would guess most of our customers are from Brookline, and we would much rather have customers from Cambridge.

CONSTANTINE ALEXANDER: I was starting to say before this is a Use Variance with a commercial establishment in a residential area that doesn't permit --

LARRY DONALDSON: Exactly.

CONSTANTINE

ALEXANDER: -- commercial areas. And you heard Mr. Sullivan read you from the court decision that Use Variances are difficult to obtain. Don't panic. On the other hand, the fact of the matter is this structure, this is a case for a Use Variance. This is it. This structure cannot be used for residential

purposes. It's too small.

LARRY DONALDSON: Exactly.

CONSTANTINE ALEXANDER: Unless that fellow on Oakland Street who has a 625 square foot house, maybe he can do something with it. This is not going to be used for -- it can't be used for residential purposes.

LARRY DONALDSON: Exactly right.

CONSTANTINE ALEXANDER: The other question is whether this is the right commercial use of this structure in this location. And that's what I was probing a little bit with regard to parking with regard to traffic and its impact with the school across the street. Tell me how long is the lease going to be for?

LARRY DONALDSON: One year.

CONSTANTINE ALEXANDER: Just one year?

LARRY DONALDSON: One year. And I might point out that the Planning Board --

CONSTANTINE ALEXANDER: I'll read that.

LARRY DONALDSON: Okay. We're hoping it will go beyond that, but you know --

CONSTANTINE ALEXANDER: My view, and very early on, and I'm probably going to get shot down from my fellow Board members, if we grant you relief, it will be for one year.

LARRY DONALDSON: Yeah.

CONSTANTINE ALEXANDER: And we'll see how everything works out a year from now.

LARRY DONALDSON: Yeah.

CONSTANTINE ALEXANDER: If the lease were going longer, I would say the longer, I wouldn't want to have the Variance

run out before the lease ran out. You would be stuck.

LARRY DONALDSON: Right.

CONSTANTINE ALEXANDER: Anyway, that's -- I'm jumping ahead of myself.

LARRY DONALDSON: I guess my dilemma is I've got to put something in there.

CONSTANTINE ALEXANDER: I know. But the question is this the right thing to put in there?

LARRY DONALDSON: Sure thing. And I would say if I went back to, for example, a spa, I would have situations where a dumpster might be a requirement. I might have a situation --

CONSTANTINE ALEXANDER: But you can put an office in there. There are a lot of other uses --

LARRY DONALDSON: I could put an

office in there.

CONSTANTINE ALEXANDER: -- that would have much less of a neighborhood impact. You wouldn't have any of this trash removal or delivery issues. So you're giving a false analogy. This is not saying you're wrong or we're going to vote against it, but I'm not buying your argument about a spa would be worse.

LARRY DONALDSON: Okay.

CONSTANTINE ALEXANDER: Anyway, I've talked enough. Any questions from members of the Board at this point?

BRENDAN SULLIVAN: No, just it appears rather benign.

CONSTANTINE ALEXANDER: It should be. I would still like to see a time frame to make sure it turns out to be benign.

BRENDAN SULLIVAN: Yes.

JANET GREEN: I think it's really a good fit in many ways. I think not needing a dumpster, not needing extra trash, not needing a delivery truck, and yet providing something that people in the neighborhood would be able to shop and use. I mean, it's not my understanding of where the market is or how much, many customers are going to have so I can't comment on that at all. But the, it seems to me that to have it is sort of an alive area where people are coming and going is a good idea.

BRENDAN SULLIVAN: Is the Planning Board report in there?

CONSTANTINE ALEXANDER: I'm going to read it.

BRENDAN SULLIVAN: I didn't see it.

CONSTANTINE ALEXANDER: Here you go. Take a look at it.

BRENDAN SULLIVAN: Pretty simple.

CONSTANTINE ALEXANDER: I'm also puzzled. You're kind of putting 80 percent of your business being of an internet, why bother opening up another store?

MIKE RESSEM: Well, we like stores. This is --

TIMOTHY HUGHES: So do I.

MIKE RESSEM: This is a spot that we walk by everyday and we wanted it.

CONSTANTINE ALEXANDER: It's none of my business. I was just curious.

TIMOTHY HUGHES: There's still a bunch of people like me who like to touch and feel something before and then go order it on the internet.

JANET GREEN: He's got the internet, too.

CONSTANTINE ALEXANDER: Any further

comments?

LARRY DONALDSON: No.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Is there anybody here wishing to be heard on this matter.

(No Response.)

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

We are in receipt of a memo from the Planning Board. (Reading) The Planning Board supports the reuse of the existing commercial space at this location where previous non-residential uses have operated. The proposed hours of operation and type of use appear to be in keeping with the abutting residential uses.

And that's it. Anything further you want to add?

LARRY DONALDSON: No.

CONSTANTINE ALEXANDER: Okay, I'll close public testimony.

Are there any sentiments for a time frame or other conditions with regard to the Variance being sought?

TIMOTHY HUGHES: I would allow for a lag time past the one year to get through the Variance process without losing any traction.

CONSTANTINE ALEXANDER: Two years.

TIMOTHY HUGHES: So whatever it is, you know. So if he's getting ready to renew his lease after a year and then he has to go through the Variance process again, he's going to need a few months after that. Two months, whatever you want to do, but something more than the one year.

CONSTANTINE ALEXANDER: Fair

enough, good point. But, therefore, you were in support of some sort of time frame.

TIMOTHY HUGHES: Yes, I mean, why not?

LARRY DONALDSON: So in other words, possibly like two-year time frame?

CONSTANTINE ALEXANDER: Two years sounds right.

TIMOTHY HUGHES: That would be fine, yes. That way if he doesn't renew, you've got a year to find somebody that does a similar retail kind of thing or find a new tenant to come back.

LARRY DONALDSON: Now if he wants to renew let's say beyond two years, do we have to go to the Planning Board again?

CONSTANTINE ALEXANDER: No, to the Planning Board.

LARRY DONALDSON: The BZA.

CONSTANTINE ALEXANDER: Come before us. If we can do anything, we can turn you down, which I don't think would happen.

LARRY DONALDSON: Okay.

CONSTANTINE ALEXANDER: We could make it perpetual. We would take out any time frame.

LARRY DONALDSON: Okay.

CONSTANTINE ALEXANDER: Or we could put a new time frame on it.

LARRY DONALDSON: Okay. And then 24-month period --

CONSTANTINE ALEXANDER: It could be 24. We might say five years, whatever. We'll decide then.

LARRY DONALDSON: That's what I'm saying, but you'll decide like within a 24-month period how it will be extended out if it will be extended out.

CONSTANTINE ALEXANDER: At the end of 24 months, the two of you will be back before us --

LARRY DONALDSON: Right.

CONSTANTINE ALEXANDER: And then we would discuss it and we would put a new time frame, if any at all.

LARRY DONALDSON: Okay.

CONSTANTINE ALEXANDER: Ready for a motion?

TIMOTHY HUGHES: Yes, sure.

CONSTANTINE ALEXANDER: The Chair moves that this Board, will make the following findings with regard to the Variance being sought to convert existing commercial space with a retail shop offering home furnishings in this Residence C-1 Zone.

First, that a literal enforcement of the provisions of the Ordinance would involve

a substantial hardship. Such hardship that being is that the structure is 100 years old is not suitable for residential use.

Suitable only for commercial use. And in fact, has been used commercially on and off for a good number of years.

The hardship is owing to the shape of the structure. The structure, as I said before, is not amenable to residential use, only to commercial use.

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

In this regard the Chair would note that if we did not grant relief, we would continue to have a vacant storefront in an areas that's not desirable to the residential area or to

the city in general. And that the potential here is to create a viable vibrant business that will add to the street life of the City of Cambridge.

So on the basis of these findings the Chair moves that we grant a Variance to the Petitioner to operate a retail shop offering home furnishings at 35 Sacramento Street on the condition that the Variance will extend two years from the date of decision. Thereafter, the Variance would lapse. And if you wanted to renew it, you'd have to come back before us.

LARRY DONALDSON: Okay.

BRENDAN SULLIVAN: Two years from the date it becomes effective.

CONSTANTINE ALEXANDER: Okay, becomes effective.

BRENDAN SULLIVAN: Date of decision

would be tonight. You're basically going out six weeks from now.

LARRY DONALDSON: Great.

CONSTANTINE ALEXANDER: All those in favor granting the Variance say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted. Good luck.

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

* * * * *

(11:00 p.m.)

(Sitting Members: Constantine Alexander,

Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10476, 50 Pemberton Street.

Is there anyone here wishing to be heard on this matter? Your name and address on for the stenographer, please.

ERIC PARKES: I'm Eric Parkes, the architect. 54 Vinyl Avenue, Somerville, Mass. And to my right is....

CREIGHTON ELDRIDGE: Creighton Eldridge, 50 Pemberton Street.

ERIC PARKES: So to cut to the chase, on the left side of Creighton's and his wife Andrea's house there is a sliding glass door set pretty far back, and it has an existing landing, three-feet, six by eight feet. As I mentioned, there's steps leading down to

the yard and they would like to construct a roof overhang for the landing matching the footprint of the landing, three-feet six by eight feet. The reasons are obviously weather protection, keeping away build up of snow and ice, keep the rain off. It's the door that leads from the parking area to the kitchen so it gets a lot of use.

CONSTANTINE ALEXANDER: And the reason you're here before us because you're going to add 29 feet, that increases your FAR from 0.66 to 0.67 in a district that only permits 0.5. So you're non-conforming now and you'll be slightly more non-conforming should we grant you the relief you're seeking.

ERIC PARKES: That's right. It's very wide shallow. So the rear setback closes out half the site. So it's those two

issues. And that's the, you know, to speak to those two matters, it does technically increase the floor area. It's not practically speaking usable floor area because it means of egress for the door. There's no way to set up tables and chairs there. So the use of that space will remain the same. And as for the setback, it does face the left side of the structure which faces out over pretty large -- it's probably the only part of the house that doesn't actually have a great setback, I think, 27 feet from the side lot line where it meets seven-feet, six. So the visual effect will be that it's on the side of the house rather than the back of it. It wouldn't have an affect of crowding the site at all. They did construct a rough mock up of the perimeter of the overhang, and sat with it for a few months

to see how it affected the neighbors and things like that. It didn't seem to have any shading affect on anybody behind them. And he did speak with his neighbors and the back neighbor was in support of that.

There's also, I think, an aesthetic thing to be gained from it because right now that sliding glass door floats on an elevation. Obviously in congruence with the original fenestration type of that house. By building a traditional an appearance overhang, our hope is that it will help tie it in with the house, give it a purpose.

The design as you see in there is a pretty straight forward traditional overhang with brackets. The one little thing we would request is the bracket design is still being hashed out because they need to be a bit load bearing, and is being discussed with a mill

worker. It's pretty close to likely what we're seeing there in that drawing, but it might need to get tweaked a little bit.

CONSTANTINE ALEXANDER: Give me that again?

ERIC PARKES: The brackets would like to be supporting some of the overhang.

CONSTANTINE ALEXANDER: You're not going to change the dimensions of the overhang?

ERIC PARKES: No, the overhang would be the same, but the brackets themselves --

CONSTANTINE ALEXANDER: That's a design issue. We're not going to get into that with the Board.

ERIC PARKES: Okay.

CONSTANTINE ALEXANDER: We would get into if you wanted to decide to have a bigger overhang or a different location or

whatever.

ERIC PARKES: Okay.

CONSTANTINE ALEXANDER: That's not the case. If we approve tonight, you'll not be able to -- you can change the bracket design, but you can't otherwise make changes to the plans you've submitted without coming back before us so you understand.

ERIC PARKES: Exactly.

Is there anything else? I don't think so. I know Creighton has spoken with the neighbors. They've had positive feedback.

CONSTANTINE ALEXANDER: We have one letter of support which I'll read in a second.

ERIC PARKES: Let me just look at my notes. That's really it in a nutshell is the project.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TIMOTHY HUGHES: That's all I need.

CONSTANTINE ALEXANDER: I'll open to public testimony.

Sir, do you want to make any comments?

No.

There's no one who wishes to be heard. We are in receipt of a letter from Peter Kim, K-i-m who resides at 37 Fairfield Street. (Reading) I am right be to you regarding a petition by Creighton Eldridge in care of Eric Parkes, architect, for a Variance to construct a new roof overhang over the existing door landing at 50 Pemberton Street in North Cambridge. I live directly behind them at 37 Fairfield Street and can argue that we would be the most impacted neighbor. I fully support their application for a Variance. I believe it is a hardship for a family to have no coverage over this door,

forcing all foot traffic through the front door. Especially with multiple children. In addition, I have seen their plans and believe it will improve the look of the house in line with the character of the neighborhood. I am sorry I am unable to be there to voice this in person.

No, you wouldn't. You'd be here at eleven o'clock at night.

(Reading) You can see the area in question from our property from various vantage points. And there are some pictures here. Obviously the letter is in support. And that's it.

I assume you have nothing more to add to what you've said?

ERIC PARKES: No.

CONSTANTINE ALEXANDER: Ready for a vote?

The Chair moves that we make the following findings with respect to the Variance being sought to construct a new roof overhang over an existing door landing.

That an literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being is that this would not be able to shelter the area over the door frame making it not as nearly as usable or desirable from the point of view of inhabitability of the structure.

The hardship is owing to the fact that this is a non-conforming structure and, therefore, any changes require Zoning relief.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from

the intent and purpose of the Ordinance.

In this regard the Chair would note that the relief being sought is very modest in nature. It is not at all unusual for the City of Cambridge to have roof overhangs over exposed doorways. That the only -- the neighbor most affected by this relief being sought is in favor of the project.

Based on these findings, the Chair moves that we grant the Variance on the condition that a Variance being sought, on the condition that the work proceed in accordance with the plans submitted by the Petitioner. They're prepared by Eric Parkes architect. They're numbered of A1, A2, and A3, all of which have been initialled by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: All good things come to those who wait.

(Whereupon, at 11:05 p.m., the Board of Zoning Appeals Adjourned.)

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