

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, NOVEMBER 14, 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

Douglas Myers, Associate Member

Andrea A. Hickey, Associate Member

Ranjit Singanayagam,

Commissioner of Inspectional Services

Maria Pacheco, Zoning Secretary

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members Case #10477: Timothy Hughes, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

TIMOTHY HUGHES: As the Vice Chair, I'll open the BZA meeting tonight. And as is our practice, we will start with continued cases.

I'll call case No. 10477, 288 Norfolk Street.

I know you look familiar but refresh my memory anyway.

ATTORNEY SUSAN ROBERTS: We would be happy to. Susan Roberts from Anderson and Kreiger representing AT&T. With me is David Ford from Centerline Communications. As a reminder, we were here on September 12th and at that time we considered revised designs that AT&T had presented to Planning Board staff and Historical Commission staff for our facility at 288 Norfolk Street. The

facility at 288 Norfolk Street, if it is granted a Special Permit, would be the fourth carrier on the roof of that building. Three carriers having been approved by the Board beginning back in 2000, 2003, and 2008. And there were some modifications to those installations as well in 2010 and 2012. The design that we presented last time was found to be unsatisfactory to almost each of you I would say with some, you know, varying degrees of dissatisfaction among you. Some expressed dissatisfaction with the proliferation of cannisters. Some did not like the color. I've reviewed the transcript from last time, so I'm pretty familiar with what everybody said. And there was some discussion as well of different design altogether which would include chimneys and/or a penthouse in fact.

So after the meeting last time, it was suggested that we go back to Planning staff and Historical Commission staff, which David and I did. And what we did this time is perhaps a little bit of unusual, but we, what we did was we presented a total of eight designs that included the previously submitted designs, plus proposed designs for you as well. We put all of these on one page so that each photo location has a total of eight designs so you can see which ones you like from which -- you know, from each photo location. What we did was to, in some cases, simply paint the cannisters a different color. And in others we actually submitted proposed faux chimneys. And I will say that we can mix and match for you. So we do not tonight have Zoning drawings for you on any of these designs. Our hope would be that you

would choose a design tonight and that we would return with Zoning drawings that you would be able to review and compare to the photo simulations and at that time that we would take a vote. You may recall that the hearing was closed to public testimony last time and, Mr. Chairman, you asked that the design be reviewed. What I don't know and would raise is whether the public hearing needs to be reopened to the extent that there are people here from the neighborhood.

TIMOTHY HUGHES: I'll give the public an opportunity.

ATTORNEY SUSAN ROBERTS: That would be great. And we can answer your questions at this point.

DAVID FORD: So just to walk you through the photo simulations, because there's a lot going on. If you would turn to

page 4 of photo 1B. Photo 1, that's the originally submitted design. The Planning Board said that there were too many cannisters, that we redesign and drop a number of cannisters. So last time we presented to you guys, photo 2 was presented. Instead of four per sector cannisters, down to two.

ATTORNEY SUSAN ROBERTS: And by the way, if I may interrupt. Sorry.

DAVID FORD: Sure.

ATTORNEY SUSAN ROBERTS: The cannisters that's on the far left in photos 1 and 2 -- and actually in all the photos. One on the far left is actually an existing, it's an existing stack that is Sprint.

DAVID FORD: Verizon.

ATTORNEY SUSAN ROBERTS: Oh, Verizon?

DAVID FORD: Yes.

Just to repeat. One was originally submitted.

Two was revised per Planning's comments. Planning staff as well as Historical staff that's still their top choice, photo 2. So in all of the photos it's repeating designs so you don't need to go back and forth.

Photo 3, would be two faux chimneys per sector.

Photo 4 would be a faux penthouse.

[Photo] 5 would be the cannisters painted a brick color.

Photo 6 will be the cannisters painted black.

Photo 7 would be the cannisters painted brown.

And photo 8 would be the cannisters

painted blue.

So our goal was to break it down for each, you know, view on the rooftop so you guys can pick and choose, mix and match. You know, do you want two chimneys on one side two cannisters on the other? A penthouse on one side and cannister on -- you can mix and match however you see fit.

BRENDAN SULLIVAN: Going back to 8, I'm sorry, what was that color?

DAVID FORD: That's sky blue.

BRENDAN SULLIVAN: Sky blue.

DAVID FORD: And Planning and Historical, just to reiterate, their top choice was No. 2. And I believe their backup was any of 5, 6, 7 or 8, as long as they're cannisters and painted a certain color.

DOUGLAS MYERS: Can you explain to us, as you understand it, why the Planning and

Historical Boards preferred No. 2?

DAVID FORD: Sure.

ATTORNEY SUSAN ROBERTS: Actually, did we receive anything? I had spoken to Liza Paden on Monday or Tuesday -- no, on Tuesday, I believe, and she had said that she would send something to you. I did not get anything, but I'm wondering if she might have sent over a brief statement of their review. We met with Liza and Charles Sullivan on October 21st.

TIMOTHY HUGHES: This is August.

DAVID FORD: Yeah, I can explain. There's two visits that we made with Planning and Historical staff. They had the same determination each time. What you're looking at right now was presented to them. And their feeling was that due to the historical nature and the already existing

chimneys, they preferred the cannisters. They thought it blended better with the building. And they preferred the plain white or grey rather color. But also said that any of the 5, 6, 7 or 8 colors would also work. They didn't want to put chimneys on the building that were already existing in the past. That was Charles Sullivan's take. And they thought that photo 4, the faux penthouse, was just too large and obstructive to include.

DOUGLAS MYERS: Thank you.

TIMOTHY HUGHES: Any other questions?

ATTORNEY SUSAN ROBERTS: I think their second level choice was the chimneys.

DAVID FORD: No, it's any color.

TIMOTHY HUGHES: Any color cannisters being all first level choices you

mean?

ATTORNEY SUSAN ROBERTS: Right. Any of the cannisters and then the chimneys would also be acceptable.

TIMOTHY HUGHES: So the penthouse was on the bottom of the list?

DAVID FORD: Yes, that's correct.

So, it is possible to do, like I said before, two cannisters black for one sector, two cannisters blue, and the next one, two chimneys, two cannisters. As you flip through the full set of -- I don't want to just remain on 1B.

2B shows the same thing from a different view.

JANET GREEN: What's the difference between 5 and 7 before you go with that? One is a brick and one is a brick color?

DAVID FORD: Yes, 5 is painted the

color brick and 7 would be brown.

JANET GREEN: It's a different color?

DAVID FORD: Correct, yes. Keep in mind they're all cannisters though.

JANET GREEN: Yes.

DAVID FORD: So this way what's kind of like building your own cell site go through and pick whatever you like.

DOUGLAS MYERS: We have no one but ourselves to blame.

ATTORNEY SUSAN ROBERTS: Legos.

TIMOTHY HUGHES: Any other questions?

ATTORNEY SUSAN ROBERTS: I would add one point which is a point that, Mr. Chairman, you raised last time about the color of the existing cannisters, that they were supposed to be painted black. And

indeed you were correct.

TIMOTHY HUGHES: They were supposed to be painted black.

DAVID FORD: They didn't follow through.

ATTORNEY SUSAN ROBERTS: And the carrier did not follow through with that.

TIMOTHY HUGHES: Well, that may be a good thing. Seeing what black ones look like up there, you know.

ATTORNEY SUSAN ROBERTS: Yeah, your choice.

TIMOTHY HUGHES: Any other questions?

I'm going to open it up to public testimony.

Is there anyone wanting to be heard on this matter?

(No Response.)

TIMOTHY HUGHES: I don't see anybody.

Okay. Let's close the public testimony.

All right, discussion about this before we put it to a motion. Who likes what?

DOUGLAS MYERS: I'll speak up.

JANET GREEN: Go ahead, Doug.

ANDREA HICKEY: Or who doesn't like what? I don't like the penthouse.

DOUGLAS MYERS: I was the noisiest the last time so I'll speak first this time.

First of all, I want to commend you on what I think is a noticeable improvement to me aesthetically in the quality and appearance of this building under many of these alternatives. And to be brief, I would just say, just for the edification of other Board members so they know my preference as

we try to work towards a decision tonight, and notwithstanding the opinion expressed by the Planning and Historical staff, I prefer No. 3 as the least obtrusive to me. While the faux chimneys may not be the most historical in a pure sense of the history of the building, it seems to me they are more acceptable in terms of the -- a neighborhood and less obtrusive and less industrial looking in their appearance than cannisters, which to me resemble smokestacks. That being said, the others would certainly -- well, I'll speak on the others. My preference would be for No. 3.

And as to the colors, the next in my mind would be 5 or 7 either reddish brick cannisters or brown cannisters.

DAVID FORD: Just to clarify, you would want the chimneys for both sectors, for

both options?

DOUGLAS MYERS: Meaning?

ATTORNEY SUSAN ROBERTS: As opposed to a combination, one cannister, one --

DOUGLAS MYERS: That is correct. All chimneys. No. 3 exactly as it looks.

DAVID FORD: For each photo?

DOUGLAS MYERS: For each view. For each of the three views.

BRENDAN SULLIVAN: We're talking page 4 and page 6.

DAVID FORD: Correct. So it's 4, 6, and 8 and 10 as well.

BRENDAN SULLIVAN: I'm sorry, and 8, yes.

DOUGLAS MYERS: Yes, it's the same.

DAVID FORD: And No. 3 in each of those photos is the chimneys.

DOUGLAS MYERS: That's what your

cover letter said.

JANET GREEN: I find it really hard to tell the difference between whether 5 or 7 is the brown or the brick.

ATTORNEY SUSAN ROBERTS: I do, too.

JANET GREEN: And so it's -- I think in theory I'd prefer the brick, but as I say, I can't tell from the picture.

DAVID FORD: You prefer the cannisters over the chimneys?

JANET GREEN: I have a slight preference for the cannisters over the chimneys. Slight, Doug, very slight.

DOUGLAS MYERS: That's okay. It's always this way.

TIMOTHY HUGHES: Brendan?

DAVID FORD: 3 and 5 look very similar. One's cannisters and one's chimney.

ANDREA HICKEY: Yes, I agree with Doug, 3 and 5 are the two that I think are a best, that sort of blend in best. And I don't have a strong opinion faux chimney versus cannister. I would be okay with either.

TIMOTHY HUGHES: Yes. Well, I don't have a strong opinion on any of it to tell you the truth because none of these are visible from my house.

You know, I mean, it's like we're really talking about degrees of offensive, not degrees of, you know, aesthetically pleasing here. You know?

BRENDAN SULLIVAN: I think the first go round --

TIMOTHY HUGHES: Whatever we can agree on as a Board.

BRENDAN SULLIVAN: The first go round we didn't have a comfort level. Now I

think at least we're at a comfort level with something and we're narrowing it down to that something. I think that, you know, Doug's choice is fine by me, and I think that --

JANET GREEN: The reason I would speak for the cannister as opposed to the chimney is because it's the same shape as to what's up now as opposed to adding something different.

DAVID FORD: Just to clarify, there are existing faux chimneys on the roof.

JANET GREEN: I couldn't see them. They may be there.

TIMOTHY HUGHES: There's a little bit of everything up there you can guarantee that.

JANET GREEN: There is a little bit of everything.

DAVID FORD: There's two faux

chimneys existing.

TIMOTHY HUGHES: Look at this view. You get the actual view from here. See, there's already two faux chimneys up there.

JANET GREEN: Right. So I withdraw my comment.

TIMOTHY HUGHES: And antennas on the elevator head house.

ATTORNEY SUSAN ROBERTS: I can tell you --

TIMOTHY HUGHES: And probably on this chimney, too.

ATTORNEY SUSAN ROBERTS: -- in the past we have the antennas that are on the building, those are the first ones in 2000, all on the building and that's one facility. Then the stacks by Sprint in 2003.

Verizon actually has the faux chimneys, and that was permitted in 2008. And then in

2009 and 2003 -- actually, the decision was in 2010, those were modifications of the originals, but they didn't, they didn't change the appearance to any great degree. So we already do have a little.

JANET GREEN: A little of everything.

ATTORNEY SUSAN ROBERTS: Diversity up there. If you will.

BRENDAN SULLIVAN: One of my thoughts is that the chimney design has not caught up with technology and they probably have a million of these things sitting in a warehouse somewhere and they just want to use them up. Is there some reason why we have to stay with those antenna, No. 1? And this is somewhat of a rhetorical question. And can they not be sort of grouped a little bit closer together and possibly be put into a box

so that we don't see this proliferation -- it's almost like dandelions on a nice lawn where these things are popping up and being affixed all along the band and somewhat incongruous to building design as opposed to if a square panel were attached to the wall, painted the solid color of a brick or whatever that may be, that it might not be as standout-ish as this damn panels. You know, antennas. You don't have to answer that, but that's sort of where I'm leaning towards going down the road is that, I think we're using these antenna because we have them, but at some point we're going to need to nudge design to come up with something that -- to get away from these. You can take that thought back.

DAVID FORD: Sure.

ATTORNEY SUSAN ROBERTS: We do every

day talk to our guys.

BRENDAN SULLIVAN: And I'm sure the communities -- you know, I see these things all over the place. There's a building in Belmont which is absolutely awful, but -- and I also see other buildings that they have purposely -- Beacon Hill would not allow these, okay? So I go by that, you know. If this were in Beacon Hill instead of Hampshire Street, would they allow this design? And chances are they would not. Now, they have incorporated some very thoughtful designs that are antennas that you would not know they're antennas. But anyhow.

ATTORNEY SUSAN ROBERTS: Just to respond to that, again, not necessarily relating it to this case at all, but just, you know, to give you some ideas, I mean obviously Beacon Hill is totally residential and, you

know, you could imagine even, you know, bushes up there on the roof and so forth which we've considered on some buildings. This is an industrial commercial building and, you know, it's gonna look a little different than a building even on Brookline Street where we permitted something -- permitted a facility a few months ago that's a residential building. So we're all like always doing this in the context of building and the neighborhood of course, and, you know, personally myself I think 3 and 5 look very sort of within the building and not offensive.

BRENDAN SULLIVAN: Yes.

ATTORNEY SUSAN ROBERTS: That would be my view, personal view, for what it's worth.

BRENDAN SULLIVAN: Okay, yes.

TIMOTHY HUGHES: So, what do I want -- how do I want to frame a motion? Do we have a consensus on this?

BRENDAN SULLIVAN: That it is the sense of the Board or whatever I guess.

TIMOTHY HUGHES: But I'm not sure what the sense of the Board is, you know?

BRENDAN SULLIVAN: Well, I would concur with Andrea and Doug.

TIMOTHY HUGHES: You like the faux chimney?

BRENDAN SULLIVAN: Yes, that's fine. That's fine.

JANET GREEN: We could go with that.

TIMOTHY HUGHES: All right.

The Chair would move that a Special Permit be granted --

BRENDAN SULLIVAN: Well, you have to come back.

TIMOTHY HUGHES: Oh, that's right.

ATTORNEY SUSAN ROBERTS: We have to have Zoning drawings.

TIMOTHY HUGHES: So we're just going to continue this case. This is the change of the drawings. The Zoning drawings you have are for No. 1, right?

ATTORNEY SUSAN ROBERTS: For No. 2 actually.

TIMOTHY HUGHES: You had them for No. 2?

DAVID FORD: There's not a huge difference. We could certainly submit the drawings. But the only changes in the Zoning drawings that you have in front of you right now would be just the style of, same mounting locations, same height, everything. So what you have in front of you is showing two cannisters and we would change to two

chimneys. If you made a condition --

ATTORNEY SUSAN ROBERTS: Right. I was actually going to suggest that if the Board would like to vote on the Special Permit tonight and grant that, we could come back on an administrative basis and ask for your approval for the Zoning drawings.

TIMOTHY HUGHES: I'm not sure that we have the capacity in our procedures to do that, do we?

CONSTANTINE ALEXANDER: I don't think so.

TIMOTHY HUGHES: No. So I think we'll have to continue it and you'll have to bring in the drawings and we'll pass the Special Permit all in one sitting.

BRENDAN SULLIVAN: We really want a clean set that the Inspector can grant the permit on.

TIMOTHY HUGHES: What's the earliest date that we can get them back in here.

MARIA PACHECO: Well, you have four on the 5th.

BRENDAN SULLIVAN: We can do it quickly.

TIMOTHY HUGHES: We've agreed on the --

DAVID FORD: 5th of December?
Sure.

TIMOTHY HUGHES: The Chair would move that we continue this case until December 5th at seven p.m. on the condition that you change the posting to reflect the new time and date. And keep that posting up for two weeks necessary prior to the hearing date.

And that the plans be in our file by five

p.m. on the Monday prior to the Thursday meeting.

All those in favor?

(Show of hands.)

TIMOTHY HUGHES: Motion carries.

(Hughes, Sullivan, Green, Myers, Hickey.)

ATTORNEY SUSAN ROBERTS: Thank you.

* * * * *

(7:20 p.m.)

(Sitting Members Case #10488: Timothy Hughes, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

TIMOTHY HUGHES: The Board will hear case 10488, 22 Murdock Street.

Identify yourself for the record, please.

DAVID BLUMSACK: David Blumsack.

CHRISTOPHER BLAKE: Christopher Blake.

TIMOTHY HUGHES: All right. Tell us what changed.

CHRISTOPHER BLAKE: Okay, so when we met last time on, I think it was the 27th of September, the Board was uncomfortable with the massing of the -- and the height of the roof in the back facing the backyard. So we

have -- if you go to -- there's a comparative drawing, I think it was the fifth page, one page back. There's a three-dimensional view, yeah, that shows both the previous submission of the -- correct, thank you -- of the back elevation with the, with the single sloped roof. And now it has been brought down so that the back has a dormer and it addresses -- directly addresses the massing issue that was brought up last time. So I think there's one page, one more, and one more. There you go.

So that shows, there is the tinted one was the previous and the new one is with the slope -- the roof coming back down to a spring point and a dormer setting up above. This has the benefit of two parts:

One, is it shortens that back elevation, and it also brings down the square

footage on the inside of the house, reduces the closeness to the FAR back down to 0.71 as opposed to being three and a half -- 0.735 the last time. So I think that it's directly responded to the issues of size for that back elevation; streetscape, the front elevation, and all of the other constituent parts of the design the committee seemed to be very comfortable with. It was just in the back seemed too tall. So that was sort of the long and the short of it.

TIMOTHY HUGHES: Questions from the Board?

DOUGLAS MYERS: Inasmuch as your new architectural approach relies on the shed dormer, have you checked to make sure that the dormer's compliant with the Cambridge Dormer Guidelines?

CHRISTOPHER BLAKE: It's setback

from the street and it is under 50 percent.

DOUGLAS MYERS: Is it -- what are the setbacks with respect to the ridge line and the main wall of the house?

CHRISTOPHER BLAKE: Six inches off. It's not coplanar with the face of the house.

DOUGLAS MYERS: Right. You're aware that the dormer guidelines require a setback of one foot -- suggest, recommend a setback of one foot, six inches from the main wall of the -- by the front wall the dormer.

CHRISTOPHER BLAKE: Yeah, the -- pulling the -- yes, and in this case the situation for addressing the back was such that structurally and setting off from the front wall we were trying to stay in close proximity to the front wall because we -- we actually liked the continuation of the pieces along the back. I understand having done

dormers facing the street, we've always pulled them back so there's a significant distinction between the two. But we can pull the dormer a little further back, no problem, and make it directly deal with the 18 inches. We had really taken the position from -- by reducing the roof line and sort of taking some of the mass out of it that we had actually complied with the intent of sort of dealing with the massing issues. So if moving it back the additional foot beyond the six inches that it is now, it's not a --

DOUGLAS MYERS: It's not my position that I insist on that.

CHRISTOPHER BLAKE: No, I understand.

DOUGLAS MYERS: I noted the deviation from the guidelines. I wanted to ask you and listen to what you had to say.

CHRISTOPHER BLAKE: Yeah.

TIMOTHY HUGHES: Okay?

Other questions from the Board?

I'm going to open it up to public testimony.

Is there anyone that wants to be heard on this case?

(No Response.)

TIMOTHY HUGHES: I don't see anyone. I'll close public testimony.

I don't think anything's been added to the file in that regard.

All right. Comments? Does it address the massing issue?

DOUGLAS MYERS: As far as I'm concerned, yes.

TIMOTHY HUGHES: Brendan, do you have thoughts on this?

BRENDAN SULLIVAN: No, I think that

they have softened the back considerably from what it was before. I sort of may be coming at it from a little bit of different angle, but I think my position has softened somewhat also from my uncomfortableness of the whole project from the beginning. And I guess I could be okay with this go.

JANET GREEN: I'm okay.

TIMOTHY HUGHES: Okay.

I'm going to put this to a motion.

The Chair would move that the Variance be granted to raise the roof and increase attic space and to add a two-story addition to 22 Murdock Street.

A Literal enforcement of the provisions of the Ordinance would involve a substantial hardship, financial or otherwise, to the Petitioner for the following reason:

The site shape causes a hardship to

renovate the existing structure. It being an L-shaped lot.

CHRISTOPHER BLAKE: It's narrow. It's short and long as opposed to the other direction.

TIMOTHY HUGHES: Right.

And the prevailing setback requirements overlap the existing footprint in such a way that less than 20 percent of this could be renovated by right.

The hardship's owing to the following circumstances: Relating to the soil conditions, shape, or topography of such lands and structures and as we've just said, it's the shape of the lot, the long, narrow kind of L-shaped part of the lot and the siting of the house forward to practically on the sidewalk that makes it, you know, relief necessary to expand this house in any

direction.

The hardship of the project owing to the shape of the site, the location of the existing house.

Desirable relief may be granted without substantial detriment to the public good.

The proposed renovation is in keeping with the scale and character of the neighborhood.

And relief may be granted without nullifying or substantially derogating from the intent or purpose of this Ordinance for the following reason:

Once again, it has to do with scale and character of the neighborhood.

And no adverse affect on the privacy of neighbors, and it makes for an easier streetscape in terms of by moving the main entrance to the side of the house, it makes

for an easier streetscape in terms of parking, snow removal, and --

CHRISTOPHER BLAKE: General safety.

TIMOTHY HUGHES: -- and general blocking conditions in the neighborhood.

All those in favor of granting the Variance?

(Show of hands.)

TIMOTHY HUGHES: That's five in favor.

(Hughes, Sullivan, Green, Myers, Hickey.)

TIMOTHY HUGHES: As long as it's all done in conformance with the plans submitted and initialled by the Chair.

And this is the final set of plans, correct.

CHRISTOPHER BLAKE: Correct.

TIMOTHY HUGHES: Okay.

CHRISTOPHER BLAKE: Thank you very
much.

* * * * *

(7:30 p.m.)

(Sitting Members Case #10511: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10511, 1343-1345 Cambridge Street.

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

(No Response.)

The Chair notes there is no one who wishes to be heard.

The Chair would report that there is a letter in our files from Mr. James J. Rafferty, Esq., with regard to this petition.

It states: Please accept this correspondence as a request on behalf of the Petitioner to withdraw the above-captioned

case currently scheduled for November 14th.

The Chair moves that we accept this request for a withdrawal and that this case be withdrawn.

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 Case #10515: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10515, 43-45 Saville Street.

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

These are the same ones that are in the file?

MARGARET CURRIER: Yes.

SAMUEL KACHMAR: Samuel Kachmar, homeowner, architect.

MARGARET CURRIER: Margaret Currier.

SAMUEL KACHMAR: When we were here last in front of the Board, we presented some

drawings and there were probably multiple issues in terms of with both the amount of FAR that we were requesting as well as the sizing of the dormers. There were some confusion probably on our part in terms of the presentation, in terms of whether the dormers were 15 feet or bigger than that. I tried to note it in every possible drawing that I could on these ones. They're 15 feet wide. Our home's a pre-existing nonconforming two-family structure, and what we're requesting is a Variance to raise the ridge height of our roof to be able to add dormers on the third floor and finish that space, as well as requesting a Special Permit for three windows along the west side because that part of the house is already within the setbacks. And so --

CONSTANTINE ALEXANDER: You heard

us loud and clear at the last hearing?

SAMUEL KACHMAR: Yes.

CONSTANTINE ALEXANDER: Which I'm glad. You reduced the size of the project by roughly 187 square feet.

SAMUEL KACHMAR: Yep. And the previous one we were requesting almost 500 square feet.

CONSTANTINE ALEXANDER: And now you're at 320.

SAMUEL KACHMAR: Right, exactly. So we pushed that down as much as we could. The FAR that we were requesting was 0.73 from a 0.62 FAR. And I was able to push that back to a 0.68 by steepening the slope, pushing that stuff in. It was like a 0.684, you know? So it's not exactly a 0.68.

CONSTANTINE ALEXANDER: And your dormer now complies with the dormer

guidelines?

SAMUEL KACHMAR: The dormer before we were breaking the eave lines by moving it across. And by increasing the steepness of the ridge which Tom had brought up at the last meeting, we were able to push those dormers to the point where we were able to leave the eave line there. And actually ended up working out kind of nicely for the design.

And I met with Sean O'Grady last week just to review some of the stuff, and he made a couple little tweaks and advisements that we tried to take into account before we submitted the drawings. And we tried to provide all the existing drawings which I think we had omitted last time. And so we made sure that we had all of those that we omitted last time. It was our error the last time.

CONSTANTINE ALEXANDER: At the last hearing Mr. Sullivan raised some questions about the front deck, and it wasn't strictly part of the Zoning issues because I don't think you need relief for that. And I notice you didn't make any changes on that. And so for Mr. Sullivan's benefit why don't you talk to that.

SAMUEL KACHMAR: Part of our reasoning for having that front deck in there is we were trying to find a way to bring daylight into the, into that third floor, especially in sort of that front room. And so by kind of generating that without pushing the mass of the house right up to the street -- on our street, there's kind of a bunch of houses that have second and third floor decks that kind of a lot of people sit out there in the course of the summer and then

they close off the street and they do the Saville Street block party and stuff. And so we thought that would be a good design element that might fit in within the typology of our neighborhood as well as be able to provide daylight into that front room without bringing the massing of the house right out to that street side and make it kind of like tower over the street, and that would increase our FAR more as well.

BRENDAN SULLIVAN: That was really the front deck and the size of the rear deck which, you know, I sort of felt was out of scale. I mean, this is pretty -- predates you, but I mean if you look at sheet A300, you can see the massiveness of that, and I thought maybe during the reconstruction of this whole thing whether that could be softened. But it appears you're going to leave that as is; is

that correct?

SAMUEL KACHMAR: Yeah. We're not planning to renovate that currently. I mean at some point in the future we might, you know, address that. But what we're looking to try to do right now is a stretch for us as is.

THOMAS SCOTT: But that's an existing condition, correct?

MARGARET CURRIER: Correct.

SAMUEL KACHMAR: Yes.

BRENDAN SULLIVAN: Can I see the architectural drawings that should be in the folder there. It's the same as this, right?

SAMUEL KACHMAR: The old ones have the black and the new ones have the white on the binder part. That's the old set and Tom has the new set now.

BRENDAN SULLIVAN: Go ahead.

CONSTANTINE ALEXANDER: While Brendan is checking, does anybody have any questions?

TIMOTHY HUGHES: No.

CONSTANTINE ALEXANDER: Go to public testimony, Brendan?

BRENDAN SULLIVAN: Go ahead.

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

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

(No Response.)

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

The Chair would note that at the last hearing there were a number of letters in support of the then proposal, all of which have been read into the record so I won't bother reading them again. But we have a new

letter which I will read into the record, to add to the record. It's a letter dated November 5th from Matthew and Miranda Gaudet, G-a-u-d-e-t. (Reading) We are writing to lend my support for the Variance application to allow for the renovation of 45 Saville Street to add dormers and raise the height of the existing roof. We live on 17 Saville Street in Cambridge and have lived in the neighborhood for two years. We have had the opportunity to review the plans and discuss the project the Kachmars and their architect regarding their renovations. After a thorough review of the plans, we believe the relief is appropriate in size and scale. They have taken great care to design the space that is in keeping with the other homes in our neighborhood. By enhancing their home in this manner, m-a-n-o-r, we strongly believe

it will only enhance the rest of the homes on the street. The Kachmars are active members in the Huron Village Community and we are confident that the proposed renovations were not merely drawn up to increase their quality of life but with the neighborhood in mind. We strongly urge you to grant the variance and allow full renovations of this property.

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

While Mr. Sullivan's checking, anything further you want to add? This is your last opportunity.

SAMUEL KACHMAR: I guess that we -- you guys have any questions in terms of --

CONSTANTINE ALEXANDER: We'll find out. So far we haven't had any.

SAMUEL KACHMAR: Yeah, we hoped that

we addressed with some of your guys' advisements.

CONSTANTINE ALEXANDER: You don't have to add anything more. But if you have anything that occurs to you that you forgot before you can say it now.

BRENDAN SULLIVAN: Are you raising the ridge the same height as the original proposal?

SAMUEL KACHMAR: Yes, that's correct. We're still raising the ridge but making it steeper just to reduce the mass as well as the FAR of the third floor there to make the smaller scaled edition and try to make it fit more into the neighborhood.

THOMAS SCOTT: I think you did a good job. You really listened and, you know, I'm very pleased with the results.

CONSTANTINE ALEXANDER: I would

second that.

THOMAS SCOTT: Thank you for, you know, being receptive to our comments.

SAMUEL KACHMAR: Yeah, I actually think it works out a little bit better because where the deck line comes back, it now almost meets where the roof line comes down to which is kind of works a little bit nicer.

MARGARET CURRIER: I agree, but I couldn't say that to my husband. So, thank you.

CONSTANTINE ALEXANDER: We just don't deal with Zoning matters here, we deal with family matters.

MARGARET CURRIER: Parent matters.

CONSTANTINE ALEXANDER: Brendan, still looking? I'm not rushing you.

BRENDAN SULLIVAN: No, no, that's okay.

CONSTANTINE ALEXANDER: All set for a vote?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: I believe everybody is set for a vote.

TIMOTHY HUGHES: Yeah, I'm good with it. I think, you know, that it's not a --

CONSTANTINE ALEXANDER: You have the wrong ones. You want the white ones?

TIMOTHY HUGHES: -- it's not a deal breaker. But I, you know, I don't know if that front deck is to scale, but you might want to think about softening it a little bit. The corner posts look a little big for, you know, what it's like.

MARGARET CURRIER: We do.

TIMOTHY HUGHES: And if they get a little smaller, I think it will be less obtrusive.

MARGARET CURRIER: We definitely want to scale them down. It was just sort of brainstorming, but we would definitely agree with that.

TIMOTHY HUGHES: I'm good.

CONSTANTINE ALEXANDER: Okay.

The Chair would move that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that they need additional living space for their family and can only do that by increasing the size of the structure.

The hardship is owing to the circumstances relating to the shape of the lot and the fact that this is a non-conforming structure now. So any relief would require Zoning -- any additions or modifications to

the structure would require Zoning relief.

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

In this regard the Chair would note that there's unanimous neighborhood support for the project. That the project complies with regard to the dormer, complies with our dormer guidelines.

That the relief, although it does increase the FAR, is relatively modest in nature. And as I've indicated before, it does allow a young family to continue to live in Cambridge and to increase their family which is certainly a goal of our city and of this Zoning Ordinance.

Therefore, on the basis of these

findings, the Chair moves that we grant a Variance to the Petitioners to proceed with the work requested on the condition that the work proceed in accordance with the plans submitted by the Petitioner. They are a set of plans prepared by Kachmar Design, dated November 9, 2013. The first page of which has been initialed by the Chair.

And before we take a vote, this is it. You modify these, you're going to have to come back before us. So you're comfortable?

SAMUEL KACHMAR: Yes.

BRENDAN SULLIVAN: With the caveat of possibly redesigning that front porch.

CONSTANTINE ALEXANDER: That's right. It's a suggestion, not a requirement, that the front porch, front deck --

BRENDAN SULLIVAN: Can be altered

and reduced in scope and scale if they deemed appropriate.

CONSTANTINE ALEXANDER: Fine.

Good.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

SAMUEL KACHMAR: Thank you so much.

MARGARET CURRIER: Brendan gave us a yes. Thank you.

* * * * *

(7:45 p.m.)

(Sitting Members Case #002489-2013:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
will call on our regular agenda case
number --

MARIA PACHECO: New case numbers.
We're on-line now.

CONSTANTINE ALEXANDER: I was going
to say -- 002489-2013.

Is there anyone here wishing to be heard
on this matter? Good evening. Please sit
down. And our procedure, we're taking a
stenographic procedure, as you can see, all
our proceedings, not just yours, and if you
give your name and address, whoever is going

to speak, to the stenographer.

VALERIE LIVINGSTON: Valerie Livingston, 8 Holden Street.

THOMAS DEWIRE: My name is Thomas Dewire. I live at 2 Holden Street. I'm a native Cambridgeidian.

CONSTANTINE ALEXANDER: Okay. This case is before us. It's an appeal of a Building Permit that was granted. And I want to, excuse me, I want to do -- approach this case a little bit differently than we often do because it's a little bit confusing as presented in the file. So I want to get the structure of the case clear before we get into the arguments and the back and forth. In that regard, let me tell you the case as I see it. And I ask you to correct me if I get it wrong.

I assume, Mr. Rafferty, you're here on

behalf of the developer?

ATTORNEY JAMES RAFFERTY: That's correct, Mr. Chairman.

CONSTANTINE ALEXANDER: You can weigh in or raise your hand first if you have any disputes with what I'm going to say. And the same with the Inspectional Services Department.

Okay. We have the property here at 93 Kirkland Street. A Building Permit has been issued to, I guess, involving a demolition of a portion of the building. And I guess it's with the intent that subsequently a second building will be built on the lot. It hasn't been done yet. And there's no permits pulled for that. But it is -- the first aspect of the case or the first step is the fact that this building is going to be modified. And plans were submitted and a Building Permit

was granted to allow that modification.

Now, at this point two things can -- the project going forward, two things can happen:

Either the Petitioner can proceed with the second building that apparently is contemplated at this moment, in which case you'll have to apply for a Building Permit for that second building. And at that point the building -- the Inspectional Services Department will take into account the entire structure and the development of this structure and would review the entire structure -- the entire lot, including the structures for compliance with the Zoning By-Laws. That would include parking, setbacks, whatever is required.

The other alternative is that the Petitioner may decide -- not the Petitioner, I'm sorry, the developer may decide not to

proceed with the second building. Just stays with one building. In which case they would go forward but they would eventually have to get a Certificate of Occupancy from the building -- from the Inspectional Services. In which case before, presumably before granting the Certificate of Occupancy a Zoning review of the entire lot and this development would be made and would only be granted if, in all respects, including parking and any curb cuts, whatever, in the opinion of the Inspectional Services Department, the project complies with the Zoning By-Law and also with whatever the terms are other permits that are required. That, as I understand -- and that is the way the case proceeds.

Does anybody disagree with that?

RANJIT SINGANAYAGAM: Let me say the

Building Permit is one is the dimensional form permit on September 13th --

CONSTANTINE ALEXANDER: Right.

RANJIT SINGANAYAGAM: -- and

Building Permit to move the building to make it conforming on the 17th. I understand that the building for the second permit for the building relocation of the building.

CONSTANTINE ALEXANDER: Thank you.

VALERIE LIVINGSTON: I have a clarification on that as well.

CONSTANTINE ALEXANDER: Go ahead.

VALERIE LIVINGSTON: The Commissioner and I have been talking about this for several months throughout a very complex permitting process.

CONSTANTINE ALEXANDER: Excuse me, Mr. Rafferty wants to come closer because your voice is so soft.

BRENDAN SULLIVAN: If you can use the microphone.

VALERIE LIVINGSTON: You can sit back.

ATTORNEY JAMES RAFFERTY: I can sit right at the table.

VALERIE LIVINGSTON: Hello?

CONSTANTINE ALEXANDER: Okay, here we go, much better.

VALERIE LIVINGSTON: The Commissioner and I have been talking about this case for many months throughout a very complex permitting process. And my understanding from him throughout numerous meetings was that there's a process involved with regard to when and how determinations can be appealed. And one of the things that he has consistently told me is that we cannot appeal or we cannot question a determination

which has not yet been made. So, for example, I have been bringing to his attention various concerns that we've had regarding Building Code and Zoning issues. And, you know, he's consistently said to me that this is part of the process and, you know, we're taking this under advisement, and when the permits issued, then we can start talking about it. And the permits issued in September. The permits issued separately. The demolition permit issuing on the 13th as he said, and the 17th for the Zoning Permit for relocation and renovation. And also I should point out, building of a new structure, the parking structure, along with the tenant driveway.

You can't have one without the other with regard to this particular case, and it was impossible to appeal the demolition

permit without first appealing the Building Permit. Furthermore, the Commissioner and I continued to talk about some of the various issues that we've been discussing about the case because per Massachusetts' Building Code and per Massachusetts' laws, he actually has the authority to act on his own in this situation. If information is brought to his attention which causes him to call certain aspects of a construction set into -- into question, then he can make that determination on his own. And for whatever reason he was unable to do so. We waited until the last minute because we wanted to provide every piece of information to him, every opportunity for him to make that consideration, and it was not done. And so on October 17th we submitted this application to you.

CONSTANTINE ALEXANDER: My point is and why I laid out the alternatives is what Mr. Singanayagam has told you is correct. I don't think we're at the point yet, seems to me, when we can really rule on this case from a Zoning point of view.

VALERIE LIVINGSTON: Okay.

CONSTANTINE ALEXANDER: The project is not done yet.

VALERIE LIVINGSTON: Okay.

CONSTANTINE ALEXANDER: It will be done, as I said before, if they abandon the second structure and a Certificate of Occupancy is being sought. And then it's -- if there are questions, or challenges can be made. Or alternatively if they go forward with the second building, when a Building Permit for that building is sought, because at that point the whole picture will

be clear to Mr. Singanayagam and he can assess the Zoning issues with respect to the entire lot.

VALERIE LIVINGSTON: Where in the Zoning Ordinance does it say that you need to demolish and move a building in order to determine Zoning compliance for the entire project?

CONSTANTINE ALEXANDER: I'm not sure how to answer that. Let me try.

VALERIE LIVINGSTON: Okay.

CONSTANTINE ALEXANDER: The fact of the matter is that there's nothing in the Zoning Ordinance that requires you to demolish a building. Say for the fact that you've built a building that doesn't comply with the Ordinance, and we say take it down. But when someone wants to take down a portion of a building, and -- or relocate the

building or do both, that's, that's not a Zoning issue until it's the end of the day, where are you going to relocate the building to. And with respect to demolition, you have to deal with Historical Commission and get demolition permits and the like.

Again, I don't see this case as being right, the legal term, right for decision tonight. It strikes me that if there is going to be a controversy to be decided, it's down the road when either the whole project is sort of unfolded, we know what the Building Permit is going to be for the second building or we know what the Certificate of Occupancy is going to be and you can challenge it at that point. And the developer's got the risk, going forward, if there is a risk, of spending a lot of money demolishing a portion of the structure and moving the structure, and at

the end of the day can't get Zoning relief, assuming Zoning relief is needed, and stuck with a building that cannot be occupied. That's the time, it seems to me, that this case is to be decided. Not tonight.

Because, for example, one of the issues you raise is parking; both bicycle and automobile. You point out correctly that the plans that were submitted with respect to the permits now obtained don't lay out exactly the right parking spaces, they don't specifically correct with regard to bicycle parking. But that's because it's not necessary to do that right now. When they want to get their occupancy permit, if they're -- or if they want to get the second Building Permit or the Building Permit for the second structure, then they will have to -- the developer will have to be very

specific in the plans as to what it plans to do with regard to these parking. And Mr. Singanayagam will make a decision on that. And you will have a right, if you don't agree with that decision, to take an appeal at that time. But today, you know, for example, if they don't build a second building, there's loads of property space in the backyard for six parking spaces.

VALERIE LIVINGSTON: Absolutely.

CONSTANTINE ALEXANDER: And so they'll have to come up with a plan, when they look for the Certificate of Occupancy showing six marked parking -- at least six marked parking spaces. Now it makes no sense to require that or to have it done. It's not necessary. And that's another reason why I think Mr. Singanayagam did what he did. He's taking this case as it unfolds. And

when decisions have to be made, he will make them. But today we're in an interim stage, and the final decision doesn't have to be made by him on the issues you've raised.

VALERIE LIVINGSTON: If I might bring to your attention some -- an incident from yesterday which may or may not have involved you.

CONSTANTINE ALEXANDER: Go ahead.

VALERIE LIVINGSTON: I was at Inspectional Services for related purposes when I was approached by Sean O'Grady, who is the Zoning Officer for the City of Cambridge. You may be familiar with him. And he advised me that Mark Boyes-Watson had submitted a new set of drawings for this project that would address the concerns that we raised to the BZA. He mentioned that he had been in touch with the Chairman of the BZA with regard to

this --

CONSTANTINE ALEXANDER: That's me, okay. And I did -- and I was concerned at that time when I learned that you were going to be getting information that I would consider at the twelfth hour that you might want to continue the case to give you time to assess whatever those plans are. But when I got into the file, it strikes me there's no need to decide anything tonight anyway.

VALERIE LIVINGSTON: Well, one of my concerns is this: Is that -- a couple of things.

First of all, this information was brought to the City of Cambridge at the very last moment and that is fine. If they, if there is an opportunity to address these concerns, then we should have an opportunity to look at them.

CONSTANTINE ALEXANDER:

Absolutely.

VALERIE LIVINGSTON: However, when I spoke with Sean O'Grady in the morning, he said to me that I could not look at the plans at that time and to come back at 3:30 that afternoon to meet with him to answer questions, review the plans, and obtain a copy. I came back at 3:30 yesterday afternoon to speak with him and was told that I could not have a copy of the plans, that I was not able to look at the plans, however, he would answer my questions, which he did. And I can get to that in a few minutes as well. He referred me to the Commissioner for copies, you know, of these documents. The Commissioner had already left for the day by the time we finished our conversation at approximately four o'clock. And I made an

appointment for the Commissioner this morning at 10:00. The Commissioner and I spoke at 10:00. We reviewed the issues. I again asked for a copy of the documentation to review it, because I cannot make a determination as to whether or not, you know, we can continue this case without being given the opportunity to review it against the information that we have. He said he'd get back to me by noon. And it was 1:20 before he sent me the message saying: Spoke to Sean, we've not received any plans from Mark Boyes-Watson regarding this case. So the plans existed. I, again, I wasn't allowed to look at them and then suddenly they don't exist. And it's a question that I -- there may have been a point of confusion, but this is, this is indicative of the type of process that I've come to expect at least from the

development team. The City of Cambridge has, you know, quite a bit to deal with. I've seen, you know, from stepping to the counter on numerous occasions, I have enormous respect for what they do, but their ability to protect the safety and well-being of our neighborhoods is subject to the information that is provided to them. And without good information, they cannot make the best decisions for us. And public safety is one of the current concerns that I'm bringing to the table this evening.

CONSTANTINE ALEXANDER: But, again, I agree with everything that you just said.

VALERIE LIVINGSTON: Sure.

CONSTANTINE ALEXANDER: The fact of the matter is that nothing that needs to be reviewed at tonight's hearing. This project is still in its development stages. And I

think the reason, I have no idea why, but it's quite likely the plans were submitted on a for-your-eyes-only basis, just for informational purposes and not part of a formal submission. And if they were not part of a formal submission, they would not be necessarily made available to you or any other citizen of the city.

VALERIE LIVINGSTON: This is a formal submission. Building Permits were issued.

CONSTANTINE ALEXANDER: I know that, but I just tried to explain to you, yes, a Building Permit was issued. But that Building Permit, and you've raised some questions about you're not sure whether all the Building Permit took into account all the various issues that are related to Zoning. You identify eight items in your submission.

I'm saying that this is not the time to answer those questions. This is -- not to deny you your relief.

VALERIE LIVINGSTON: Okay.

CONSTANTINE ALEXANDER: -- it's just that this is to be continued.

VALERIE LIVINGSTON: Okay.

CONSTANTINE ALEXANDER: To be continued to a time when we know, you know, Inspectional Services know, we know exactly what's involved here. And we can really focus in on the Zoning issue rather than, if you will, guess at them right now which is where we are, which is where we are.

VALERIE LIVINGSTON: Mr. Chair, are you suggesting that we continue this case?

CONSTANTINE ALEXANDER: Yes, I do.

VALERIE LIVINGSTON: Okay. I have a question for you.

CONSTANTINE ALEXANDER: Yes.

VALERIE LIVINGSTON: I would like to understand the relationship between these proceedings and the potential demolition of a historically significant building which is on the site right now. In my -- from my perspective I have been handed an issue at the last moment which could have an impact on these proceedings, and I don't believe that the development team should be allowed to introduce new information or at least confused information at the last moment simply to beg a continuance and then turn around and proceed with demolition if they can address the other -- I should mention to you, numerous outstanding issues, you know, that they need to accommodate before being able to proceed with that demolition. If that makes sense to you.

CONSTANTINE ALEXANDER: You wanted to --

ATTORNEY JAMES RAFFERTY: Just a brief response. James Rafferty on behalf of the property owners.

The property owners are not suggesting or begging a continuance. That is entirely within the purview of the Chair and the Applicant. I do think, however, this might be one of the rare instances where I find myself more in agreement with Ms. Livingston than at any other point in the many months that I've been engaged with her. Having said that, I think her appeal has enormous deficiencies which should allow the Board to dismiss it this evening, and I would like the opportunity to address those. To Ms. Livingston's credit she has appealed a Building Permit, and the Building Permit

exists and the Building Permit is what will give my client the authority to relocate and renovate the existing structure on the property. That structure has to be relocated before the second structure can be built so as a matter of sequence, the Building Department will not issue a Building Permit for the second structure because it would be occurring -- there isn't room in the area until the house is relocated. But having said that, I think there are significant procedural issues that need to be addressed by the Board, which I would ask that it's a jurisdictional question before the Board even gets into the merits and continuing the case and around this Building Permit. Section 7 of Chapter 40-A allows literally anyone to seek an enforcement action through the Building Commissioner. You think

there's a Zoning violation, you're driving to work one day, you can call up the Building Department and say check that out.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: There's a special category, though, of those enforcement requests have to be responded to. They have to be submitted in writing and then responded to by the Commissioner. And then and only then a select group of individuals known as persons aggrieved can then make an appeal to this Board. But that standing requirement, unlike in Section 17 cases, applies right here at this hearing. I've brought a copy of the Massachusetts Zoning, and I expect most of the Board is familiar with it, but the question of standing has an enormous amount of relevance because the applicant in this case that's appealing is

the Dewire Family Trust. And they would have to demonstrate today how their property interests are adversely affected. But even more fundamentally and significantly, if you review the submission by Ms. Livingston who, whose role in the appeal I'm not certain of. She's not a trustee of the trust. She is not a beneficiary. And contrary to what she stated on the record here, she does not live at or reside at 6-8 Holden Street. That is an unoccupied two-family house. The records of the Water Department show that in three years not a drop of water has been turned on in that house.

The Dewire Family Trust owns a series of unoccupied abandoned two and three properties in the area.

VALERIE LIVINGSTON: Mr. Chair,
this is --

CONSTANTINE ALEXANDER: Let him finish.

VALERIE LIVINGSTON: Sure.

CONSTANTINE ALEXANDER: You've had your opportunity. Let him finish.

VALERIE LIVINGSTON: Absolutely.

ATTORNEY JAMES RAFFERTY: They have been cited by the Somerville Building Department for abandoned properties.

CONSTANTINE ALEXANDER: That's not relevant.

ATTORNEY JAMES RAFFERTY: It's relevant because it goes to the issue of how are they aggrieved by this? Putting that aside for the moment, the submission here does not cite evidence as is required under the statute where the Building Commissioner made an error. It has a curious introduction. It says, that there is no

concrete proof in the record of compliance with the following. That is not a standard for appeal. She has succeeded in shifting the burden and saying that now the Commissioner has to come before you and justify everything he's done in this case. What an appellant needs to do is to identify what sections of her claim that the driveway is within 25 feet of a crosswalk. It isn't, or an intersection. But she says she can find no record of that. It isn't the Building Commissioner then has to go out and justify his determination. Her obligation is come before you and produce evidence through some form of measurement, that the proposed driveway, which is a necessity element of the Building Permit, is within 125 feet of an intersection. Well, it's clearly not. But there's nothing in the submittal

here. So to continue the case, to talk about that issue, to continue the case to talk about other issues, I'll leave it to the Board, and she's the Applicant. But the next site, all of this, by the way, has little to do with the Building Permit and more to do with the sign off on the curb cut, which is another matter for which the Dewire Family Trust has filed litigation against the City Council for approving that if the Board is not aware of that.

But in her second issue that she cites, she says there is not adequate site lines for the driveway. Well, that's not an issue for the Building Commissioner in the sense that the site line question, that's why in the curb cut application process the Traffic Department and DPW are required signatories. So for her to come here and express a view in

her writing tonight that there is inadequate site line, yes, her submittal shows no evidence to that effect. And the sign off of the Traffic Department would suggest evidence to the contrary. So she continues to go on and list eight issues that she takes exception with and suggests that what's necessary here is for the Commissioner to defend his decision making, and that's not what appeal process is about.

I contend that the applicant here, the Dewire Family Trust lacks standing because they are not aggrieved by the issuance of a Building Permit. This Building Permit, as you correctly stated, at the moment the only permit -- two permits have been issued; a demolition permit, for which there has been ongoing efforts at the Historical Commission by Ms. Livingston and presumably on behalf of

the trust to undo that. That was unsuccessful. Last Thursday the Historical Commission denied her request to have the property landmarked. They acknowledge that the -- it had been done, that the matter had been held before them, they had found the building not to be preferably preserved in the contents of the placement. So -- but I don't want to take too strong exception with the Chair, but there is a Building Permit in place here and the Building Permit, the only thing that that Building Permit is allowing at the moment is the relocated house and the renovation of the house. For the applicants to succeed tonight, they need to demonstrate, the Dewire Family Trust, needs to demonstrate how that action aggrieves them. How it affects their property interest. That's why I brought up the condition of their property.

A renovation of an older house in a relocation, the second Building Permit which as the Chair has correctly noted, has yet to be issued, that will introduce more GFA into the site. And perhaps they might want to make a claim that more GFA, even though it's compliant GFA, somehow aggrieves them. I don't think that's a sustainable position, but perhaps that's the case.

But what's before you tonight is an appeal of a permit. And I think it would be unfair to my client to proceed under a permit with some type of a cloud hanging over it. If this were to be continued to suggest that there are issues associated with that permit, this applicant has made a case tonight, has filed a case, has said that the Commissioner has failed in his responsibilities to interpret the Zoning Ordinance and that he

improperly issued a Building Permit.

There's no question the permit exists. So I do think there's some validity to the notion that there is a ripeness here. The permit is here. What's not correct here is the approach that's being taken here. The assertion for which there is no basis in the record that the Commissioner has done any of these things, nor is he required to do many of them frankly. The fact that they exist in the Zoning Ordinance aren't particularly relevant to the issue of the Building Permit.

In fact, the question of parking is a rather interesting one because there are six units on the property now. And from a Zoning perspective there's no parking. And if all this project ever involved was the relocation and renovation of the house, it would continue to enjoy the grandfathered aspects

of the lack of parking. So the whole rationale here as it affects the Building Permit in question is moot. This building, if the property owner elected not to provide parking, would comply with the Zoning Ordinance because it was a six-unit building before, I believe it was eight before. Six. There's no increase in the number of units in that building. So the requirement to provide parking from a Zoning perspective doesn't even exist with this Building Permit, but yet the curb cut application did show both structures and the parking plan. So I think that perhaps all parties' interest would be served for the Board to make a decision in this case because the alternative leaves the Commissioner and perhaps Ms. Livingston or whatever interest she does represent, a continued battery of engagement with the

Building Department with the belief that there are issues in her appeal that are meritorious and will be taken up at a later point in time. I think given my client's rights, this case should be heard this evening and it should be summarily dismissed.

CONSTANTINE ALEXANDER: Thank you. I have a comment. But let Ms. Livingston speak first.

VALERIE LIVINGSTON: First, if you -- Mr. Chair, I have a vision impediment and my left eye responds to motion, especially repetitive motion, so I apologize for having to cover this eye.

CONSTANTINE ALEXANDER: Don't -- no apologies are necessary.

VALERIE LIVINGSTON: And I'd just like to start by summarizing that these are all things that Mr. Rafferty is saying and

not things that I have said and I don't believe that the Commissioner for a moment thinks that I have meant any disrespect in this process whatsoever. In fact, I think he would agree that we have taken a great deal of care and attention to discuss these issues at great length before coming to you today. And circumstances today -- between today and yesterday transpired against perhaps having more of a determination of how he and I would respond to you before the Board this evening. So that as a preamble.

Mr. Rafferty has made numerous allegations against me and against the Dewire family throughout this month-long process. And while he's certainly free to express his opinion, that's what it is.

CONSTANTINE ALEXANDER: Okay. Let me stop you right there. I think

Mr. Rafferty's remarks were improvident with regard to your background or the occupant and this structure. That's not before us. I don't want you to respond to it. That's not going to be on the table before us.

VALERIE LIVINGSTON: Yeah, okay.

ATTORNEY JAMES RAFFERTY: I'd like to say for the record that my comments were directly related to the requirements associated with Section 8 appeals involving standing and persons aggrieved. They're not personal in nature, and the characterization is improvident, you're welcome to that, but it's highly relevant in this forum or later forums whether or not the Petitioner, which in this case is the Dewire Family Trust, is aggrieved by a Building Permit that has been issued that allows for the renovation and relocation of a six-family house next door

where they have an unoccupied two-family house. That is simply the facts. That is not opinion. And with all due respect, I think it's highly relevant and I don't think --

CONSTANTINE ALEXANDER: The one issue -- and I'll let you finish. The one issue you haven't identified is the fact of the matter is the way this case should have proceeded, Building Permit was issued, the Petitioner here challenges -- the Building Permit, the building or notifies the Building Commissioner, you should not have granted that Building Permit in so many words. The Building Commissioner then makes a determination in writing saying, yes, I did it right and I'm not changing my mind or not. Then an appeal is made. And if he says no, I said what I said.

ATTORNEY JAMES RAFFERTY: I agree.

CONSTANTINE ALEXANDER: That hasn't been done.

ATTORNEY JAMES RAFFERTY: I agree. But that doesn't --

CONSTANTINE ALEXANDER: That means we can't hear the case tonight.

ATTORNEY JAMES RAFFERTY: No, that means you dismiss the case because the case isn't properly before you.

CONSTANTINE ALEXANDER: We could dismiss it but -- you're right, I could dismiss the case. I see this case as unfolding down the road. It's not done yet. I don't want to prejudice anybody's rights by dismissing a portion of the case yet. That's my -- I may be wrong, but out of fairness to the process, and I want to make sure that everything is put on the table until we know

all of the facts. I don't want to take this case piecemeal by dismissing part of this case now and then later on there may be issues, well, they can't raise that because it was dismissed. This is not -- in my judgment, this is not the time to do that. I want to --

ATTORNEY JAMES RAFFERTY: With all due respect, I don't see how that's the role of the Chair to protect the legal interest of the Applicant here given the issue we've raised. My client has a Building Permit. The system relies upon the integrity of those permits. I have raised substantive questions and procedural questions about this appeal, and the suggestion that we should continue and allow this uncertainty to hang over this project for months, it affects financing, it affects buildability. It

seriously damages my client's interest. And I have raised the question as to how it is that her interest or the trust's interest, which she's required by law, or the applicant is required by law to demonstrate. That's the issue that's before here. And I appreciate the overall sense of comedy and it wouldn't be nice if we all had a single hearing on this thing. This is, this is a real source of danger and financial ruin to my client, and to allow for this proceeding to continue, it's not simply deficient because of the failure to respond the letter. You can act. You can waive that requirement essentially because the Board has done it in several cases, and sometimes frankly the opinions are given in writing, sometimes they're given orally. You may recall the Foster Street case years ago whether it was in writing or

not. But the issue is, the Applicants, when they come here under Section 8, needs to provide you with evidence of Zoning violations; mistakes, errors made by the Building Commissioner in issuing the Building Permit. The burden of proof is on her this evening, and I think to suggest that we just simply wait until this project could be done, which could be a year from now, I don't know whose interest that would serve. I don't think it serves the system's interests, I don't think it serves the department's interest. It certainly doesn't serve my client's interest who is attempting to proceed pursuant to a Building Permit that's been issued by the Building Department. And for the reasons I cited, and the Board can take acknowledgement of, a pre-existing six dwelling unit that doesn't

have any parking isn't required under the Zoning Ordinance to introduce parking at this stage. So to the extent that every one of the issues even raised here, as ineffectively as they are raised, merely citing the absence of concrete proof, even if none of those are relevant in the sense that the permit that my client is spending money on now and about to renovate and move a house, is being suggested that that's been issued improperly and I think my client is entitled to a ruling unless some compelling reason exists not to go forward this evening.

CONSTANTINE ALEXANDER: Okay.

Thank you.

You wanted to -- sorry I interrupted you.

VALERIE LIVINGSTON: Yes.

I hope you'll give me a chance to

respond to all of these issues. I had begun my response to his first set of issues before you and he's brought additional issues that I would also like to address. I may as well start by going backwards.

One of the things that Mr. Rafferty is saying is that this potentially could have a financial impact on his clients. I'd like to point out some readily public information to you that first of all, this property was assessed at a little over a million dollars, you know, for tax purposes at the time that this property was sold for \$2.52 million back in February of this year. The mortgage is only a million and a half dollars. From my perspective, and I'm only a layperson, that's a substantial down payment signalling to me that there's a significant amount of funding, you know, behind this. I certainly don't

want to be -- I'm not sure how to describe it.

Certainly financial concerns are in play here depending on how this project moves forward, but to suggest that they will be harmed as a result of this delay, which has been essentially imposed by their actions or lack of actions, I think is dis -- I want to say disingenuous but I think that it surrounds from some of the central issues here which I would like to return to which is Zoning and compliance in general. This is a case of our rules which defines the land use in our city. And when these are broken or they're applied inconsistently, it's to the detriment of the health, safety, and welfare of the residents and visitors of our neighborhood and has the potential for having adverse impacts on adjacent land uses.

The construction documents that have

been submitted for obtaining these permits, and as they were provided to me by the City of Cambridge, appear to be insufficient to allow --

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, excuse me.

CONSTANTINE ALEXANDER: Please let her finish. Let her finish.

ATTORNEY JAMES RAFFERTY: I welcome her. But what I'm suggesting is that with the Applicant not seeking the continuance --

VALERIE LIVINGSTON: Mr. Chair.

ATTORNEY JAMES RAFFERTY: -- and addressing her case in chief, I welcome that, but I think we should --

BRENDAN SULLIVAN: We're starting to get into the merits of the case, and I guess I'm not even to the point of getting to the merits of the case. Now, I have read this

thing and have gone through this for the last two weeks, and to me I really feel as if the Applicant -- there is hardly any substance to the Applicant's proposal before us to appeal the Building Permit. It is woefully lacking in substance, and I really feel as if you could say it could be premature, I think it's procedurally lacking and --

VALERIE LIVINGSTON: Mr. Chair.

BRENDAN SULLIVAN: -- and as far as the Petitioner, Dewire Realty Trust, may have some rights, I also agree with counsel that the property owner has equal amount of rights to be considered here, too. Because to have a cloud, as Mr. Rafferty said, hanging over their head is quite substantial and cannot be measured in just dollars and cents. So you can say that what is before us is premature, I think it's procedurally and legally

lacking, and we can get into this back and forth all night long. It's a he-said/she-said type of thing and yet new information has either come forward, not come forward, something that the Petitioner has not reviewed, and may change the entire tone and color of these proceedings.

CONSTANTINE ALEXANDER: Certainly I agree, and I was going to make the point at an appropriate time. Is that you, all you have done -- Mr. Rafferty's correct and Mr. Sullivan's correct. You're throwing a lot of smoke up in the air. You've said well, you know, the Building Commissioner issued the Building Permit, but there's no proof that it complies with distance -- the width of the driveway or distance from intersections or across --

VALERIE LIVINGSTON: May I respond

to that?

CONSTANTINE ALEXANDER: No.

VALERIE LIVINGSTON: Okay.

CONSTANTINE ALEXANDER: Let me finish.

VALERIE LIVINGSTON: Absolutely.

CONSTANTINE ALEXANDER: You just threw those notions up in the air. You didn't say that the Building Permit should not have been issued because: Too close to a crosswalk, too close to an intersection, the driveway is not -- is too, is too wide. You just said these dealt with -- well, in fact, there is evidence from the Traffic Department that the -- that all of these requirements have been met. There are no Zoning issues here. So, you know, you threw these up and there's nothing -- there's no substance to them. That makes it very

difficult for us as a Board to evaluate the case. We don't know what we're evaluating. You are -- again, I think Mr. Rafferty's right, you are trying to shift the burden, if you will, to the Commissioner to justify when it's your job to point out why the Building Commissioner -- I mean, the Commissioner did not comply with the requirements of the Ordinance. I think in your defense, it would have been better if had there been a written response to you dealing with each of your eight points and then you could either come take an appeal and bring your evidence to us tonight or whenever saying why he is wrong, but you haven't done that. And you haven't done that in part because he hasn't given you all the information you need to do that. And that's my dilemma.

VALERIE LIVINGSTON: Mine, too.

CONSTANTINE ALEXANDER: You know, we're sitting here with a lot of vague charges on your part. Completely unsubstantiated by what you submitted to us. But I am a little bit sympathetic to the notion that you don't have an opportunity since you don't have anything in writing, and I am sympathetic, I am sympathetic to the point of view as Mr. Rafferty and Mr. Sullivan have pointed out, that there is something hanging over the owner of the property. There is a disservice to the owner or a cloud, however you want to describe it, if we don't decide the case tonight. I don't get as worked up about that personally, just me personally, because this case is not over tonight. And it seems quite clear.

VALERIE LIVINGSTON: Yes.

CONSTANTINE ALEXANDER: And so

although the other clouds and other problems down the road, and I still would like as a matter of maybe just neatness and maybe I'm anal, but to get it all at one time and one time, if I can see the whole case, and not dismiss this now and then have to face an issue later on because you can't raise that because it was dismissed before. That's my concern.

I'm also concerned about one other thing. You mentioned it tonight or wherever otherwise, litigation brought up by you or your client against the City?

VALERIE LIVINGSTON: It's not my client. I'm an authorized representative. I'm a spokesman.

CONSTANTINE ALEXANDER: Okay. But there's litigation on behalf of the Dewires against the City of Cambridge. Some of that

litigation involves what's in this appeal tonight, I think. That, I don't want to -- we're not going to get into deciding a Zoning case if this case is pending in the courts. That part no way we're going to consider tonight. I'm not going to dismiss it, but I just have to put it in abeyance until I know what's going on.

VALERIE LIVINGSTON: Okay. And there are actually several things like that which I was attempting to get to. I've been interrupted a couple of times and I would like an opportunity to respond to these things, at least to put a couple of the most important things on the table for you to consider. I won't address every single thing that --

CONSTANTINE ALEXANDER: You want to get into the merits, and the argument right now -- the issue before us right now is should

we be getting into the merits? Mr. Rafferty says we should. I think Mr. Sullivan says we should and we may. If that's what you want to do, we'll spend sometime, we'll get into the merits, and then we can decide whether we want to decide the case tonight on issues you brought or we can decide not to decide it tonight and to defer it to another night when the case, this whole project becomes clearer in its development and is the a case tonight.

All right, do you want to go forward?

VALERIE LIVINGSTON: Please. And I appreciate the opportunity.

BRENDAN SULLIVAN: Well, can we --

TIMOTHY HUGHES: Yes, I'm -- I'm not sure that Brendan said he was ready to listen to this on the merits. And I thought he said it was lacking procedurally for us to proceed to open this on the merits.

BRENDAN SULLIVAN: I said should not rather than should.

JANET GREEN: And my question is about the proof of standing as an aggrieved party.

CONSTANTINE ALEXANDER: Yes.

JANET GREEN: And I think we need to address that question as well as far as whether it's, you know, how it goes forward or whether it goes forward.

CONSTANTINE ALEXANDER: Well, the section of the statute that Mr. Rafferty has cited to us doesn't -- it says -- well, I'll read it again. (Reading) Although anyone may request enforcement under Section 7 -- that's enforcement with the regard to the issues of Building Permit -- only aggrieved persons may appeal the Building Inspector's action, or inaction, considering

such request to the Board of Appeals under Section 8. The aggrieved person status is no less a jurisdictional position to maintaining an appeal to a Board of Appeal under Chapter 41A, Section 8, then it is to maintaining judicial review under Section 17.

That doesn't help me, and I'm not familiar with all these sections as to whether they are an aggrieved person or not. My gut reaction would be that they are -- they are abutters, but I may be dead wrong. You'll have a chance to speak to that and you will, too.

You want to --

ATTORNEY JAMES RAFFERTY: Yes. I would just like to assess most respectfully what is before the Board at the moment? There is a Building Permit that has been

issued. My client is proceeding to construct under that Building Permit. There is an appeal, to use the term loosely, before this Board. There are actually time constraints with those appeals -- within 30 days. There's a reason you have to make your appeal within 30 days for the reasons Mr. Sullivan cited, because of the injury to the permit holder. In this case, I think there are significant procedural defects as I noted. But at the end of the day, the issue raised by Ms. Green is relevant because what has been issued by the Building Commissioner is a Building Permit that allows for the partial, a partial demo and a relocation or renovation of a six-family dwelling.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And it is highly relevant as to how that act, which is

authorized for the permit that is before you and being challenged, by how the issuance of that permit aggrieves even an abutter. If we were introducing a six-family dwelling that didn't exist, but you've got to recognize that there's a six-family, and there's been a six-family dwelling on that lot since the 1920s. So it is relevant. But the fundamental question is I think the Board is well within its authority to conclude that having reviewed the submittal, and tonight is not the night where we introduce evidence. It's supposed to be a part of the appeal. But as you correctly noted, where is the evidence that says the curb cut is too close to the crosswalk? It is totally, it's more -- it's less than speculative. It's just pure assertion citing sections of the Zoning Ordinance. And the other issue that I think

the Board can take notice of is the fact that we have the benefit of Mr. Singanayagam who is present, so there's no need to rely upon my assessment, but a six-family house that doesn't have any parking isn't required to produce any parking. So to the extent there are deficiencies associated with parking, it would not fundamentally alter the Building Permit that was issued, and that is a fact that should not go ignored by the Board in deciding what to do tonight.

CONSTANTINE ALEXANDER: Who do you think is an aggrieved person with respect to this project?

ATTORNEY JAMES RAFFERTY: Someone who would be able to show -- and an aggrieved process is spelled out -- how their property interest -- persons aggrieved is a very fundamental concept in land use litigation.

And the Section 17 references that for Section 8 appeals it's the same standing requirements to come here as it is to go to court when they appeal your decision. And that is not typically the case. Usually an applicant comes here and one is free -- any abutter or anyone as we all know can come and express their view and allege violations, whatever they want. But if you look at the Zoning section under appeals, it cites Section 8. And it says, it uses the person aggrieved language in our Zoning Ordinance and references Section 8. And says anyone aggrieved by the decision. So the Dewire Family Trust, which owns a series of properties, two of which abut -- admittedly abut this site, but in the greater, a few blocks around this site, they own a series of multi-family dwellings, I have photos of

them, those and some were here, we're renovating and -- my client's renovating and relocating a six-family dwelling. There is no evidence here, and the Petitioner can demonstrate or can be asked to suggest that that Building Permit creates a -- infringes upon a property right of the Dewire Family Trust which as I said, that's the standard even here. And it's a jurisdictional standard. So if there's no evidence that they are aggrieved, there's no need to spend a night here listening to a whole range of issues. But if the Board were to do that, there are still the other deficiencies that I noted.

CONSTANTINE ALEXANDER: I want you to address the issue of aggrieved person. Mr. Rafferty's point is very well taken. If you cannot convince us that you or your client

or your -- whom you're representing is an aggrieved person, then in fact there is no jurisdiction before us tonight. So why do you feel that you are or you're -- the person you're representing, an aggrieved person within the meeting of the statute?

VALERIE LIVINGSTON: I am not an attorney so I am not -- I'm not qualified to speak to you in those terms. However, if I may address your question.

CONSTANTINE ALEXANDER: Don't get into the merits.

VALERIE LIVINGSTON: No, no. If I can address your question in my own words.

CONSTANTINE ALEXANDER: Sure.

VALERIE LIVINGSTON: Okay?

CONSTANTINE ALEXANDER: Let me help you a little bit. How is your clients -- not necessarily your client. How is your

client's property rights affected by demolishing a portion of the building and relocating the remaining building to a different portion of the lot all of which will be in compliance, I take it, with the setback and the requirements of our Zoning Ordinance? How is your client injured by that? Why is your client aggrieved by that?

VALERIE LIVINGSTON: The project as it has been described has the potential to have adverse affects on the land use on the Dewire Family Trust.

CONSTANTINE ALEXANDER: That's down the road though.

VALERIE LIVINGSTON: Exactly.

CONSTANTINE ALEXANDER: When the property gets fully developed --

VALERIE LIVINGSTON: Even this project as it is right now.

CONSTANTINE ALEXANDER: Well, tell us. You haven't told me yet. If everything stopped after this Building Permit, they tear down a portion of the building, they relocate it and they run out of money and they have better things to do with their life, nothing more happens.

VALERIE LIVINGSTON: Sure.

CONSTANTINE ALEXANDER: How is your client aggrieved by that action that happened?

VALERIE LIVINGSTON: Okay. This is going to reconfigure the property above ground and also below ground.

CONSTANTINE ALEXANDER: Right.

VALERIE LIVINGSTON: When the property is reconfigured below ground, a lot of different things happen. You have different water flow properties. You have

retaining walls. And you have foundations that are in different locations on the property which have a habit of redirecting water flow. And you also have the excavation that is required, even if they were just to do this, this project as it's permitted, there's a significant amount of excavation required to support this project that could have --

BRENDAN SULLIVAN: But that is all conjecture on your part. I mean, just to throw this out and just say, you know, yeah, well, this could, this could, that's all I'm hearing is that it could.

VALERIE LIVINGSTON: May I continue?

BRENDAN SULLIVAN: The sky could fall tomorrow on you.

VALERIE LIVINGSTON: It absolutely

could. And no disrespect, I mean, a lot of different --

BRENDAN SULLIVAN: And so again I get back to in reviewing this file, I'm looking for some substance to this appeal and I absolutely positively saw no substance to the appeal. And the legal threshold of which Mr. Rafferty alluded to and also elaborated on which have not been met.

VALERIE LIVINGSTON: The public is always at a disadvantage --

BRENDAN SULLIVAN: And the fact that I believe that it is woefully lacking.

CONSTANTINE ALEXANDER: You still have to get to --

VALERIE LIVINGSTON: The public is always at a disadvantage in this particular case and I'll explain what I mean by that. With regard to this permitting process the

information, and this has been a repeated refrain from the Commissioner, and I'm sure he'll agree, that when the information that they're reviewing for the purpose of issuing Building Permits is under active review, that information is not available to the public, including aggrieved parties, including abutters. And so information that was critical for us to determine whether or not we could be an aggrieved party was not available to us until after the Building Permit's issued. And I am specifically referring to the geotechnical report, the hydrology study, the storm water management system. I couldn't get any of that information until the Building Permits issued. And now during a meeting that Mr. Dewire and I attended with Rianne Glenmullen (phonetic) and Mark Boyes-Watson

back in June. I was allowed to read the copy of the geotechnical report in their presence. However, there's a big difference between being able to read that report and being able to have a copy of that report to turn over to professional consultants for peer review. We have not had adequate opportunity to have those reviews done. We have --

TIMOTHY HUGHES: I have to interrupt you.

VALERIE LIVINGSTON: Yeah.

TIMOTHY HUGHES: If you haven't had -- I mean, there was no being aggrieved until the permit was issued. No possibility of being aggrieved until the permit was issued. And now that it has been issued, you have access to that report. Now, if you haven't had a chance to go over it, then this case is premature. Once again it's

premature. You go over there and ask the Building Superintendent why he issued the permit and then show evidence as to why he shouldn't have.

VALERIE LIVINGSTON: And I'm being asked --

TIMOTHY HUGHES: In which case then you can bring the appeal. But for now by your own admission you haven't even gone over the plans enough to know whether you have been aggrieved, then why are we listening to this?

VALERIE LIVINGSTON: What I'm attempting to do is to tell you why we don't have that information because we are constantly kept at a disadvantage.

TIMOTHY HUGHES: You should get that information.

CONSTANTINE ALEXANDER: Stop, stop, stop.

TIMOTHY HUGHES: You should get that information and re-file.

CONSTANTINE ALEXANDER: Stop with the victim bit, okay, please. We have a legal process in the city --

VALERIE LIVINGSTON: Certainly.

CONSTANTINE ALEXANDER: -- and every other community. The process is as fair as it can be drawn up by the City --

VALERIE LIVINGSTON: As a reality. I'm sorry, sir.

CONSTANTINE ALEXANDER: -- City Council. And to say that it is not fair, take your complaint to the City Council and get them to change the procedure or the state legislature. The fact of the matter is the Building Commissioner got certain data. Based on that data, he made a decision to grant the Building Permit. You now have your

rights to challenge that. But you can't -- you haven't challenged it. This is the first time this geotechnical stuff and the ground water, that's not mentioned in any of your appeal documents. This is first time we're hearing it.

VALERIE LIVINGSTON: Because you've only asked me about it today. It was Mr. Rafferty that brought up the issue of whether or not we were an aggrieved party, and I was simply responding to your question. And I will remind you I am not a professional that is --

CONSTANTINE ALEXANDER: You get no credit for that, Ma'am. You have the right to -- and your client to retain counsel.

VALERIE LIVINGSTON: Sure.

CONSTANTINE ALEXANDER: And I'm not going to cut you slack for that. You've been

taking a very legalistic approach throughout this and challenging what the Building Commissioner did. I want to stop with the victim bit. All right?

VALERIE LIVINGSTON: And that's not my intention.

CONSTANTINE ALEXANDER: Let me finish. Let me finish, okay?

VALERIE LIVINGSTON: Sorry.

CONSTANTINE ALEXANDER: You have -- a Building Permit was issued. If you're going to challenge it, take an appeal, you have to do it, and you have to be an aggrieved party. That's a fundamental step that gets you into -- I can't, I don't live near these people. I can't take an appeal from the Building Commissioner determination regarding this property. I'm not an aggrieved person. You have to demonstrate

to us why you are an aggrieved person. And what's puzzling me is I don't see how you can be an aggrieved person when all that's involved here is taking off a portion of a building and moving it to a portion of a lot where it's going to be in compliance with the Zoning By-Laws in terms of setbacks and the like. You throw up smoke about the ground water and the like. That's just smoke. You have no evidence beyond that. You're just, maybe it will happen or maybe not. At Brendan said, maybe the sky will fall tomorrow. You've got to do better than that if you want to come before us and challenge a decision of the Commissioner. And you haven't done that. And that's why, in my clumsy way, I suggested continuing the case but it is premature. We don't know. We don't have a case before us.

VALERIE LIVINGSTON: And if I may respectfully remind you, this was what we were talking about when I was interrupted for the first time, and I was not able to make my comments before you. So in my mind an awful lot has been brought, and these, I'm sure are substantive issues and I don't want to downplay them. However, they kind of muddied the water with regard to what we need to be discussing right now for today and this evening. And one of the issues was, you know, this issue of seeking that continuance because there are so many other things in play, issues to be resolved. And with regard to my contention of these Zoning issues that I have brought to your attention, I would respectfully like to point out that I have been guided through this process and I responded, and I can only -- I try to ask the

best questions that I can. And certainly there may have been times when I asked the wrong questions or didn't ask the question properly. However, when I submitted this paperwork, I asked whether or not I would be allowed the opportunity to amend the information. And at the time I submitted it, I was told that I could. And then when I returned to talk about the procedure to add information, I was told I could not. So there's a little bit of confusion there. My apologies. Perhaps there's no excuse for it.

With regard to the issue that is on the table today, it's whether or not we have Zoning compliance here. The message that I'm getting from you is that it's too early to tell. But one of the complaints that I'm bringing before you is that there doesn't

appear to be a document in the construction set which would allow a professional to determine Zoning compliance because the information does not exist on the document. You don't have the offsets to all public and private ways, which would allow you to check all of these dimensional requirements. You don't have the indication of important boundary line information which would allow you to check site lines and to check all of the issues that are put forth in the Traffic, Parking and Transportation brochure which also speak to the dimensional requirements and the Zoning Ordinances. And so this is really the basis for perhaps the, you know, this list of Zoning issues that we have brought to your attention. They are open issues because the documentation simply doesn't exist.

TIMOTHY HUGHES: You're saying that there's no documentation to support the permit that was issued by the Building Department?

VALERIE LIVINGSTON: This is a project over 35,000 cubic feet requiring construction control. You should know that the construction document appears to be insufficient and/or incomplete for other reasons.

CONSTANTINE ALEXANDER: What are you reading from?

VALERIE LIVINGSTON: Just some notes that I prepared.

TIMOTHY HUGHES: So the answer to my question is yes, you're saying that he issued a permit --

VALERIE LIVINGSTON: Yes.

TIMOTHY HUGHES: -- not based on

legitimate architectural drawings and engineering surveys.

VALERIE LIVINGSTON: If you -- may I continue reading this?

TIMOTHY HUGHES: Just a yes or no will do it for me. That's all I need.

VALERIE LIVINGSTON: The short answer is yes. And they're insufficient or incomplete, including but not limited to --

TIMOTHY HUGHES: And then you're thinking, your belief in that system was brought up to Mr. Singanayagam and his response to you was?

VALERIE LIVINGSTON: Yes. He and I have been discussing these issues for a very long time. Since June would you say? And there is -- there's a notion in the Massachusetts Building Code about, you know, being able to correct information in the

construction documents that's, you know, with regard to information that has not yet been submitted. And in this particular case all of the documents were submitted and the Building Permits were issued, and this is all information that is required by Code to be submitted before Building Permits are issued. And that information is an asbestos certificate in order to comply with --

ATTORNEY JAMES RAFFERTY: These are not Zoning issues.

CONSTANTINE ALEXANDER: Let her finish.

VALERIE LIVINGSTON: Lack of architectural Affidavit. There's no architectural Affidavit on file for Building Permits that have been issued. There's no demolition plan for the demolition permit, although the Commissioner did show me some

documents just this afternoon which I would like to review.

The registered design professional listed, you know, per Section 107 of the Massachusetts Building Code is practicing on an expired license.

Furthermore, the certified plans, as I was explaining to you before, don't contain the boundary information such as fencing and screening, offset to the public and private ways, and roadway features improved including sidewalks. So it's impossible, as Sean O'Grady told me the day before I filed this appeal, it's impossible to determine Zoning compliance without that information. And I guess that's one of the basic reasons that I wanted to bring this forward to this Board. You know, the Commissioner and I have been talking, you know, very diligently about

this. And for some reason he was unable, although he is authorized to do so, he was unable to make this determination on his own. And so I decided let's bring it to you and have your interpretation.

CONSTANTINE ALEXANDER: Okay, thank you.

Mr. Rafferty.

BRENDAN SULLIVAN: Mr. Chairman, if it's impossible to determine Zoning compliance because of insufficient documentation, then it is equally impossible to ascertain an appeal in a wrongful decision by the Commissioner based on some information that was not provided.

VALERIE LIVINGSTON: Okay. So continuance --

BRENDAN SULLIVAN: And that is the only thing that we can do is to decide whether

or not the Commissioner interpreted the Zoning Code in the issuance of a Building Permit. Ms. Livingston has said that that information is either lacking or insufficient. Hence again I go back to that this appeal before us is insufficient, woefully lacking, and has no merit.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, let us understand what the Applicant's representative has now said.

That the Building Commissioner issued a Building Permit without adequate understanding of fundamental dimensional requirements in the Zoning Ordinance. Now this Board is familiar with the process associated by the Department before a Building Department is issued. So she can't have it both ways. She took exception with my saying she was criticizing the

Commissioner. If that information is lacking, then the permit should not have been issued. And -- but that would suggest that Mr. Singanayagam ignored, and he isn't the only official as you know charged with Zoning review before these permit issues.

Mr. O'Grady does a very thorough examination of these applications, and this Building Permit holder is a very experienced Building Permit -- with the Building Permit process.

So what this appeal comes down to in the fundamental level is that the Building Permit that currently exists that has been issued by the Building Commissioner, the assertion here is that the information is missing and, therefore, he couldn't have been able to lawfully make a determination. That would be negligence on his part, and this commission has to -- this Board needs to

conclude whether there's any evidence to suggest that Mr. Singanayagam chose to ignore the dimensional requirements of this Zoning District and merely issued a Building Permit on some whim or fancy. Because the suggestion here is that there's nothing in the plans or the record that would allow her to reach that conclusion so, therefore, as Mr. Sullivan says quite correctly, than how can Mr. Singanayagam have reached that decision? Well, that means he just issued it for the heck of it. And I think that's the crux of this.

CONSTANTINE ALEXANDER: No, no. You've had plenty of time to talk. I'm going to get to Mr. Singanayagam in a second to speak.

Sir, you wanted to say something.

THOMAS DEWIRE: No, I just wanted to

say one thing. It will affect the property if those people will occupy. On the hill on Dana Street from the time of the Memorial has been underground water that was a stream, came down across Cambridge Street down Harvey Ave. across Kirkland Street and went through their property, out the back side across where Holden Green is, down Properzi Way to the railroad. The B&M Fitchburg, Boston/Fitchburg. There's water still flows through. Out back in that big store and residential building on Kirkland Street between Commercial Avenue and Roberts Road there was and still is a cleaning establishment.

CONSTANTINE ALEXANDER: And I want to, and I don't want a long answer to this, I want a short answer. Did you bring any of these issues to Mr. Singanayagam's attention

before he issued the Building Permit?

You've known about this thing.

VALERIE LIVINGSTON: Yes.

CONSTANTINE ALEXANDER: You did?

VALERIE LIVINGSTON: Yes.

CONSTANTINE ALEXANDER: You did?

I'm glad to hear that.

Ranjit, did you speak to --

THOMAS DEWIRE: I have --

CONSTANTINE ALEXANDER: Wait, sir,
you've had your opportunity.

Just speak to me about the process of
which you granted this Building Permit.

RANJIT SINGANAYAGAM: They applied
for a whole set of Building Permit for two
buildings to construct, make the existing
building conforming by moving it to the right
location so that it conforms the setbacks and
(inaudible). And also they wanted more

portion of the building, demolish it, that's a different permit. That is no implication of Zoning at all. And they also wanted the building in the back. So and though that's -- we don't issue a Building Permit unless the fact -- the existing non-conforming building becomes conforming. So we have plans in the computer system they just took it this morning, showing the setbacks for the proposed new location of the building which conforms to Zoning Law. And when building is conforming, you can't bring it back to non-conforming status. They applied for the permit to move the building, which was issued and the plans was stamped by the registered architect at that time.

CONSTANTINE ALEXANDER: You followed the regular procedures that the Department follows with respect to any

Building Permit application that you get, that's your testimony?

RANJIT SINGANAYAGAM: Yes.

CONSTANTINE ALEXANDER: Okay.

And that is your plans, as you said, architectural plans and you reviewed them and you granted a permit only for the relocation and demolition part of the building?

RANJIT SINGANAYAGAM: That's what we did.

CONSTANTINE ALEXANDER: Everything else is yet to come.

RANJIT SINGANAYAGAM: I have a set of plans here I brought it in case you want to see it for the rest of the building which is not approved yet.

CONSTANTINE ALEXANDER: Not approved yet. So they're all (inaudible)?

RANJIT SINGANAYAGAM: Yes.

CONSTANTINE ALEXANDER: The
Petitioner could change them tomorrow?

RANJIT SINGANAYAGAM: Exactly.

CONSTANTINE ALEXANDER: And that's
why they've not been made available to
anyone. They're just working, if you will,
in a sense, working drawings.

RANJIT SINGANAYAGAM: Right.

CONSTANTINE ALEXANDER: With the
conceptual ideas at this point. Until they
submit a request that you'll accept.

RANJIT SINGANAYAGAM:
Unless -- yes. And we work on these plans,
they can change the plans if they want.

CONSTANTINE ALEXANDER: Okay.

It seems to me that, and of course all
we're talking about is nothing that you
raised in your eight points that you have
there, you know. We don't have anything

before us to allow -- so you wanted to say one thing.

RANJIT SINGANAYAGAM: One thing about storm water, usually storm water it's set by the DPW. They won't sign the demolition permit or any other Building Permit with storm water issues.

CONSTANTINE ALEXANDER: I think what they're saying is because of the relocation of the building and whatever excavation you do with regard to that, that might happen, might have an impact on their property. That makes them aggrieved. I think that's what I'm hearing. I think that's what I'm hearing. It's hard to understand what I'm hearing because the ground keeps shifting under me. It seems to me --

VALERIE LIVINGSTON: Me too.

CONSTANTINE ALEXANDER: Well, it seems to me we're back where we started.

VALERIE LIVINGSTON: Exactly.

CONSTANTINE ALEXANDER: We have an appeal that you've made, it's extremely vague in nature. It doesn't allow us -- on its face it's not a basis for us to grant relief. It doesn't even allow us to really adequately analyze the issues because you haven't told us anything. You've thrown, my same metaphor again, you're throwing a lot of smoke in the air and now you're hoping for us to take the ball and do your job and we're not going to do that. The only question in my mind still is whether we just dismiss the appeal -- I'm not sure what the consequences of that are other than the Building Permit is done. It's okay. They can demolish. They can relocate. Everything else is yet to come

because nothing else has been decided by the Commissioner. That's one approach.

The other approach is to allow you a very short period of time now that you've heard, you've heard information, you've gotten plans to now do -- don't, don't give me, don't do that. Let me just finish my comments, please.

Is to give you a little bit more time to give -- and only a little bit more to, to craft an appeal that makes some sense. The appeal we have before us tonight doesn't make any sense. And that's where we are. I think I sense the views of my -- at least some of my members of the Board who have heard this case said we should just throw the case out tonight. Deny the appeal. It's not over yet in terms of the whole project because the Building Permit yet to come, Certificate of

Occupancy yet to come with regard to this property.

The other is to give you more opportunity to come up with a better case than you've given tonight.

VALERIE LIVINGSTON: We'd be grateful for that opportunity.

CONSTANTINE ALEXANDER: You know, I walked in here tonight of a mind to give you that opportunity because I'm always a belief of giving people as much time and try to make a fairer process as possible even at the risk of being unfair to another party. But I'm -- I've heard tonight doesn't give me comfort that I should -- my vote would be to give you more time. I just --

VALERIE LIVINGSTON: May I give you a letter?

CONSTANTINE ALEXANDER: Say again?

VALERIE LIVINGSTON: May I give you a letter?

CONSTANTINE ALEXANDER: What does the letter say? You want me to read it into the record?

VALERIE LIVINGSTON: Yeah, if you want to read it into the record. It's a certified letter.

CONSTANTINE ALEXANDER: I've been handed a letter from Thomas A. Downer, D-o-w-n-e-r, is an architect. Addressed to Ms. Livingston and the Dewire Family Trust. (Reading) At your request I have reviewed the documents you have provided me with respect to certain Cambridge Zoning requirements for the proposed development at 93 Kirkland Street, Cambridge. The documents as submitted to Cambridge's Inspectional Services Department include information that

in some instances refers to a single relocated existing building, building No. 1, and other instances to a new second building, building No. 2.

It is my understanding that the permit application was for building No. 1 only and my review was limited to Zoning related to that building.

As to the Zoning Sections 6.43.3A, 6.43.4B and 6.43.4C there is insufficient information to determine compliance as the drawings have not been submitted with the information required per Cambridge Traffic, Parking and Transportation Department Building Permit review guidelines. As to Section 6.63.6.1G, six parking spaces are required for building No. 1, but only five spaces are shown as part of the work being permitted.

Let me stop right here in the letter. That's been addressed by Mr. Rafferty I think conclusively. They don't need to have any. And certainly as I said earlier, if they are going to have to have six spaces, that will be on the plans with regard to the second building or with regard to the Certificate of Occupancy if they choose not to build a second building. So that to me is irrelevant. Let me finish. And then they go on to the bicycle spaces.

(Reading) But the single will bicycle space located in the garage does not appear to meet the requirements for accessibility and protection from damage by cars as part of the required space and located -- in located in the parking driveway.

And then more about the bicycle space.

Again, these are things that can be and

will be addressed when the Certificate of Occupancy is granted or the Building Permit for the second structure. If they're not in compliance at that time, either the Commissioner will turn down, whichever certificate it is, or if he does not, you can take an appeal from that decision and would have a specific issue before us. We know exactly what's at stake, what your position is, what the Commissioner's position is. We don't have that today. So I don't find this letter at all --

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, I would say I would caution the legal advice you just provided the applicant as to whether that's a correct statement of appellate rights around Zoning questions.

CONSTANTINE ALEXANDER: No, go ahead.

ATTORNEY JAMES RAFFERTY: I'm not sure it's the role of the Chair to provide such advice.

What I would like to suggest, I apologize for my earlier body language, is I've been coming here a long time and I know the Chair and the Board has a policy with regard to the two bites of the apple. The applicant clearly wanted to go forward this evening. We encouraged her to do so. She has laid out her case. There have been occasions when one is before the Board seeking relief, and this is not relief as we know, but if there seems to be some opportunity or a path to success, a continuance is warranted. There is, I would suggest, not a single suggestion of a Zoning violation in the record, either through the testimony of Ms. Livingston or for any of her

submittals, and to suggest that we simply continue and give her a period of time to perhaps go out and create or better prepare her submittals, I think does a terrible disservice to my client, frankly, to the process involved in the issuance of Building Permits. Because the appeal here says that the dimensional requirements of the Zoning District were ignored. And to continue this case to allow more evidence when there's not the slightest bit of evidence to suggest that it is remotely correct, I think is a disservice. I would urge the Board to act upon the appeal.

CONSTANTINE ALEXANDER: Thank you.

VALERIE LIVINGSTON: The information is there in the documents that you were presented.

CONSTANTINE ALEXANDER: Fine.

VALERIE LIVINGSTON: And I think that the issue is --

CONSTANTINE ALEXANDER: That's fine.

VALERIE LIVINGSTON: -- that I didn't phrase it well.

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

Does anyone here else wishing to be heard.

THOMAS DEWIRE: I wanted to finish what I started to say with your permission.

CONSTANTINE ALEXANDER: Okay.

THOMAS DEWIRE: There was a laundromat there and dry cleaner shop in the first floor of that building that's located on Kirkland between Roberts Road and Myrtle Ave. And he had a pal who also was in the dry cleaning business and they rented stalls in

the backyard over there. And they used to dump their cleaning fluids out on the earth in front of the stalls right where that underground stream, creek, brook, or whatever you want to call it, flows. And it flows through that area.

CONSTANTINE ALEXANDER: Sir, thank you. But it's not relevant to our case tonight.

THOMAS DEWIRE: That should be investigated.

CONSTANTINE ALEXANDER: It's not relevant. I'm sorry.

Sir, you wanted to speak? Give your name and address, please.

GERALD HOLDEN: Thank you very much. My name is Gerald Holden. I have lived in Cambridge for 70 years so I have seen some wonderful things happen including the way

things are being handled. And some not so good things. And something I have to add to your discussion hasn't come up at all and it might be interesting. It has to do with the fact that Grace Norton --

CONSTANTINE ALEXANDER: I'm sorry, say it again, please?

GERALD HOLDEN: Grace Norton, who has not been mentioned tonight as I know, was the one who has a play, has something to play in this consideration. She was born in 1834, lived 92 years, was not allowed to vote for most of her life until the last six years. Was not allowed to go to college. It was one of those women whose gift you're discussing here. One of these great women of Cambridge like Elizabeth Agassiz who founded the (Inaudible). Like the ones that did the Shady Hill. The enormous number of very

talented and underprivileged women of great culture of which Norton is one. Harvard has many, many of her books in its libraries. She was extremely interesting and wrote in French as well as in English of course. Now, the point I'm getting to is she gave this apartment house, not her home, not the kind of home where you say "William James lived here" so let's make a landmark. She gave a gift to Cambridge for a very specific purpose which is still hot; namely, for people to be able to live decently even if they are just poor workers in Cambridge. That was her idea. This is a very important thing in our history, in our souls those of us who live here. Therefore, all I'm saying is in memory of that and maybe of future gifts that the city might get under the right circumstances, be very careful how this complex thing is

being handled.

I'm not giving any advice to you very experienced and wonderful people, but I who teach history know that these things resonate in history. People will look back on this case. So please do brave Grace Norton a favor by doing this extremely carefully.

Thank you.

CONSTANTINE ALEXANDER: Thank you, thank you for taking the time to come down and speak to us. I'm going to close public testimony.

Ranjit, do you have anything further you want to add?

RANJIT SINGANAYAGAM: No.

CONSTANTINE ALEXANDER: All of you have had plenty of time to speak. I'm going to close public testimony. I think we should discuss this. And I'm going to start by

saying that I've now been persuaded that this case should be -- the appeal should be denied tonight, and that -- I don't think we've heard the end of it. But I don't think you've met the burden of proof by any means. And I don't see any improprieties on the part of the Commissioner. I've heard none. I think he followed the usual procedures that applies to every Building Permit that's been granted, and you haven't cited anything specific in your appeal that would warrant us overturning the Building Permit that was granted. That's my personal.

Others? I think I know -- some people have already spoken, but I open it up to other comments among members of the Board or have you said what you're going to say.

TIMOTHY HUGHES: I've said what I'm going to say.

BRENDAN SULLIVAN: No, I've spoken.

CONSTANTINE ALEXANDER: Okay, ready for a vote?

VALERIE LIVINGSTON: Is there one --

CONSTANTINE ALEXANDER: I'm sorry?

VALERIE LIVINGSTON: I'm sorry, is there one last opportunity for just expressing my concerns over --

CONSTANTINE ALEXANDER: No. You've had your opportunity for the last well over an hour. No, you've had your -- no.

VALERIE LIVINGSTON: No, no, no, I was -- just a breath, that's all.

CONSTANTINE ALEXANDER: Okay.

This is just an appeal that the Chair would move that the appeal of the Building Permit that was granted with respect to this permit, this property be overturned, and a

determination that the Building Permit was improperly granted.

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

Granting the appeal?

BRENDAN SULLIVAN: I'm sorry, to grant the appeal?

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Oh, no.

CONSTANTINE ALEXANDER: We have to vote on the appeal in the affirmative.

TIMOTHY HUGHES: Is this words like improvident so I can follow along.

CONSTANTINE ALEXANDER: Okay. The question is do we -- let me rephrase it?

Do we grant the appeal that was made which in turn seeks to -- the effect of which will be to overturn the Building Permit that was granted and is the subject of this case.

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

(No Response.)

CONSTANTINE ALEXANDER: There are none in favor.

All those -- we don't have to take an opposed. The appeal did not --

ATTORNEY JAMES RAFFERTY: I think with all due respect I do think you need to take a --

CONSTANTINE ALEXANDER: We're not done yet. I think we have to make some, we have to substantiate why we denied. The only vote before us is to grant whether we grant the appeal or not. We don't have to deny. We're not granting the appeal by definition the case is over.

ATTORNEY JAMES RAFFERTY: I think the record should reflect that -- not saying

you're denying, but if there are zero votes in favor of the motion and motions are either Yea or Nay, I think a Nay vote is warranted for the record.

TIMOTHY HUGHES: Okay, I vote no.

CONSTANTINE ALEXANDER: All right. I'm going to get into more.

All those that want to say Nay, say "Nay."

(Nay.)

CONSTANTINE ALEXANDER: Five in favor.

More importantly --

JANET GREEN: Five Nays.

CONSTANTINE ALEXANDER: Five Nays.

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

CONSTANTINE ALEXANDER: More importantly for the record, we have to

establish why we denied the appeal.

BRENDAN SULLIVAN: There were no four affirmative votes for the appeal. The reason for the denial was lack of sufficient evidence that the -- was citing specific instances where the Commissioner failed to properly interpret the Zoning Code Ordinance with regard to the project on the subject property.

CONSTANTINE ALEXANDER: I would just --

TIMOTHY HUGHES: With regard to the issuance of the permit on the subject property.

CONSTANTINE ALEXANDER: I would add a second item in that the petitioner has failed to demonstrate or the appellant, I guess, has failed to demonstrate that the Dewire Family Trust is an aggrieved person

which is required to bring a challenge to the Building Permit.

So you haven't demonstrated you're an aggrieved person, and you haven't demonstrated proof that the Building Permit -- you haven't submitted proof that the Building Permit was improperly granted. That's the reason why the vote was as it was.

Thank you very much.

ATTORNEY JAMES RAFFERTY: Thank you.

VALERIE LIVINGSTON: Thank you for the opportunity.

* * * * *

(9:10 p.m.)

(Sitting Members Case #002373-2013:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 002373-2013, 25 High
Street.

Is there any one here wishing to be
heard on this matter? Hello. Now for the
record, name and address, please.

MEGAN GEORGE: Megan George. My
current address is 11 Orchard Street in
Cambridge.

CONSTANTINE ALEXANDER: Okay. And you want a Special Permit to relocate windows and doors?

MEGAN GEORGE: Yes.

CONSTANTINE ALEXANDER: Okay. Anything more?

MEGAN GEORGE: Um, my architect told me you would have copies of everything?

CONSTANTINE ALEXANDER: We have plans that were prepared by Tiny Desk Designs?

MEGAN GEORGE: Yes. If you like me to explain it, our house sits just over the setback line. The front picture shows how close it is to our neighbor's driveway, and we're going to be renovating the house and the windows and surrounding with the black line are the windows that we're going to be altering and we're going to be centering the

front door.

CONSTANTINE ALEXANDER: Have you spoken to the neighbors or your client spoken to the neighbors?

MEGAN GEORGE: I have spoken to our neighbors that live in this house.

CONSTANTINE ALEXANDER: The one most directly affected by it?

MEGAN GEORGE: Yes.

CONSTANTINE ALEXANDER: And?

MEGAN GEORGE: And they're both fine with it. I think they're happy to see any positive changes to the house.

CONSTANTINE ALEXANDER: Questions from members of the Board?

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

JANET GREEN: Is this a single-family or two-family?

MEGAN GEORGE: It's a two-family.

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

Is there anyone wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that there is no one is wishing to be heard.

The Chair is in receipt of a letter from City Councilor David Maher saying: I am writing in support of Stephen and Megan George's application for a Special Permit to alter windows and doors with the setbacks of their home at 25 High Street. Stephen and Megan recently purchased their home on High Street and have quickly become familiar faces in the neighborhood. Stephen and Megan are committed to raising their family in

Cambridge, and these minor alterations to their property will insure that their home will meet their needs for many years to come. This investment in the property is encouraging to me because it reflects the couple's commitment to improving their neighborhood and to their community. In addition, there is no opposition to this request for a Special Permit from the abutters of 25 High Street. I urge the Board of Zoning Appeal to approve Stephen and Megan's request to alter the windows and doors located within the setback of their home. I believe this project will enhance both their property and the character of the neighborhood.

I'm going to close public testimony.

Anything further you want to say besides what you said?

MEGAN GEORGE: No.

CONSTANTINE ALEXANDER: Which is not, which is not much to be said frankly.

Questions or comments from members of the Board?

Tom, you're satisfied?

THOMAS SCOTT: Just one question. The photograph shows on the second level to the right of your boxed in area, a double window. And in the elevation it shows a single --

JANET GREEN: A single.

THOMAS SCOTT: -- a single window: Are you eliminating a window?

MEGAN GEORGE: Yes.

THOMAS SCOTT: Shouldn't that be part of the --

CONSTANTINE ALEXANDER: Yes.

THOMAS SCOTT: This window is being

eliminated.

CONSTANTINE ALEXANDER: Why isn't that marked on the plans?

MEGAN GEORGE: I don't know. My understanding is that -- I don't know for sure. We were -- I think my understanding was that --

CONSTANTINE ALEXANDER: Yes, this is the one right here.

JANET GREEN: I assumed --

MEGAN GEORGE: -- you can remove a window, but if you're changing it or making something bigger or if you're altering --

CONSTANTINE ALEXANDER: Right now, the photograph as Tom points out shows a double window.

MEGAN GEORGE: Yes.

CONSTANTINE ALEXANDER: Your drawings show a single window. There's no

indication that you changed -- you're planning to change that double window to a single window. Is that just an error on your drawing or are you planning to do that?

MEGAN GEORGE: I believe we're just making that a single window.

CONSTANTINE ALEXANDER: So there is an error in the drawings?

MEGAN GEORGE: So is that an error?

CONSTANTINE ALEXANDER: Yes, I think so.

MEGAN GEORGE: Okay.

CONSTANTINE ALEXANDER: Are there any other things that we should be -- now that you've -- it looks like everything else you've picked up. I didn't notice it.

Thank you, Tom.

THOMAS SCOTT: Is that something you can mark on the plan and correct?

MEGAN GEORGE: I'm sure. I'll do whatever you want.

CONSTANTINE ALEXANDER: Can you do it right now?

MEGAN GEORGE: Sure.

BRENDAN SULLIVAN: Are you taking out a double window and putting in a single, is that the deal?

MEGAN GEORGE: We're not having that second one there.

BRENDAN SULLIVAN: You're going to take out the double and maybe the single will get positioned somewhere in the middle of it?

MEGAN GEORGE: That will stay in the place it's at. So what should I be writing?

CONSTANTINE ALEXANDER:
Mr. O'Grady is going to have to, when you finally go for your Building Permits, he's going to see whether what you've done

complies with the plans that we've approved.

MEGAN GEORGE: Yes.

CONSTANTINE ALEXANDER: You better draw on there some approximation of what that window treatment's going to look like.

THOMAS SCOTT: Put a dashed line where the window was and just say "Window to be removed."

JANET GREEN: Make sure it doesn't point at the single window.

CONSTANTINE ALEXANDER: Say "Double window removed."

JANET GREEN: Exactly.

CONSTANTINE ALEXANDER: Thank you.
Ready for a vote?

TIMOTHY HUGHES: Yes.

CONSTANTINE ALEXANDER: The Chair moves that this Board make the following findings with respect to this Special Permit

being sought.

That what is being proposed is the relocation of windows and doors 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 what is being proposed.

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

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

And with regard to the latter, the changes being made are modest in nature.

They, to the extent they affect the privacy of abutters, the abutters have approved this project nevertheless. And what is being involved here is basically an improvement to a residential structure in the city and an improvement in the housing stock of the city all of which are desired goals of our Ordinance.

So on the basis of these findings, the Chair moves that a Special Permit be granted to the Petitioner to alter windows and doors within setbacks on the condition that the work proceed in accordance with the plans submitted by the Petitioner. They are A0.0, A1.0, A1.1, A2.0, A2.1, A7.0. The first page of which has been initialled by the Chair, and it is noted that these plans do reflect a modification made by the representative of the Petitioner as marked on A2.1, not

initialled by them, but I'm going to put the initial there as well.

So you understand the work he's got to do has got to comply with this?

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

MEGAN GEORGE: Thank you.

* * * * *

(9:15 p.m.)

(Sitting Members Case #002383-2013:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 002383-2013, 250 Monsignor
O'Brien Highway.

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

These are the same as are in our file?

DAVID FORD: Correct.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY SUSAN ROBERTS: Good evening, Mr. Chairman. My name is Susan Roberts from Anderson and Kreiger representing AT&T. With me tonight is David Ford from Centerline Communications. We're here to present on Route 28 Monsignor O'Brien Highway, the Holiday Inn Express building, in order to site a facility that will have 12 antennas. And we are submitting Zoning drawings and photo simulations for you to show that we are taking over a new decommissioned site from Nextel.

Nextel previously had a site on this hotel and AT&T will go into two locations where Nextel was located. In addition AT&T will install an additional four antennas on the rear site of the building of -- Nextel hadn't been on the rear side before, but we

are proposing to go on the rear side of the building as part of our facility.

Again, 12 antennas, four per sector. Alpha sector is the front of the hotel. Those antennas are a little bit shorter than the other antennas that you'll see that are on the side of the buildings. Those are six-foot antennas. There are eight-foot antennas on the side of the building. And what we've done is to, again, as I said, go on the concept -- go on the basis of the Nextel concept for the facility so that the antennas will be mounted on the building facade itself generally within some grey concrete panelling that appears as a sort of decorative, a decorative building facade if you will. The antennas are going to be painted to match the color of that panelling. And in addition we will have an equipment area

in the basement of the hotel. So the cabling will run down the side of the building where the Nextel cabling had been previously.

DAVID FORD: It's actually internal.

ATTORNEY SUSAN ROBERTS: Pardon me.

CONSTANTINE ALEXANDER: I was looking to where the cable is running down.

ATTORNEY SUSAN ROBERTS: Thank you.

So in addition to the facade mounts, on the building we'll have some equipment on top of the roof, some remote radio head units, surge arresters, those will be ballast mounted on the roof.

DAVID FORD: They're not visible from the street.

CONSTANTINE ALEXANDER: You can't see them, they're not on the photo sims.

ATTORNEY SUSAN ROBERTS: Right.

DAVID FORD: To further clarify, the existing -- the equipment area in the basement is already there. There's no modifications being done. Nextel is moving out and we're moving in. It's 120 square feet. And there is 12 antennas existing. We're proposing 12, so we're not changing the number of antennas. It's just that one of the mounting locations, right here, doesn't work for AT&T. Two of the three mounting locations are the same as Nextel. So the third is -- and as I'll show.

THOMAS SCOTT: Can you point to those?

DAVID FORD: Right here. This one is not the same. This is existing Nextel. We're proposing the other side that doesn't work for orientation. So these will come down. Here is exact same location. And

here, exact same low case. So two of the three work.

CONSTANTINE ALEXANDER: And for the record this is not in a residential-zoned district.

ATTORNEY SUSAN ROBERTS: Correct, it is not.

CONSTANTINE ALEXANDER: Special issues that relate to that do not apply here.

ATTORNEY SUSAN ROBERTS: Also there were three other buildings that were considered, but the landlords were not interested in leasing to us. The other ones were residential. Anyway, this is a superior location for any number of reasons, not the least of which is the fact that Nextel already had a facility there. It's not a commercial -- it's not a residential building for residents.

CONSTANTINE ALEXANDER: Just out of curiosity, did they put get a Special Permit from us to put those up or is that the city --

ATTORNEY SUSAN ROBERTS: Nextel?

CONSTANTINE ALEXANDER: Yes, Nextel.

ATTORNEY SUSAN ROBERTS: I'm not certain.

DAVID FORD: They did.

CONSTANTINE ALEXANDER: I don't remember seeing anything in the file.

DAVID FORD: The Global Power Partners, they were the manager of the roof. So they were the ones that told us Nextel is coming down and they informed me --

CONSTANTINE ALEXANDER: I'm not questioning that.

DAVID FORD: Yeah. They informed me that Nextel did in fact --

CONSTANTINE ALEXANDER: Get a Special Permit?

DAVID FORD: Yes.

CONSTANTINE ALEXANDER: Oh, okay.

ATTORNEY SUSAN ROBERTS: Does the Board have any questions about the design of the facility and maybe alternatives?

BRENDAN SULLIVAN: Yes. If we go back to photo 1B. And, again, this is where I keep going back to these things as sprouting up like dandelions on a nice lawn. You take these four antenna here, is there any way that two of them could be mounted on the side of this? This is a stairwell. And maybe two on the other side? I mean, I'm just trying to tuck these things out of the way somehow.

DAVID FORD: Those are coming down.

ATTORNEY SUSAN ROBERTS: Those are gonna be gone.

DAVID FORD: Those are gonna be gone.

BRENDAN SULLIVAN: All right. So those are going. Well, it says proposed view.

DAVID FORD: Proposed view, look to the left.

ATTORNEY SUSAN ROBERTS: The arrow was just pointing to the proposed one.

BRENDAN SULLIVAN: Those are coming out. That's good. That achieves one goal.

Then if we go to photo 2B, the proposed view and, again, that's sort of where I sort of get if there was sort of a like a screening in front of that. To sort of hide those, I think something that would look like a building element even though obviously it's going to stick out a little bit, but if it were the shape of that parapet or something, it

would just, you know, hide the God awful look.

And then we get proposed view. Again, your proposed facade-mounted gamma section mounted to replace the existing. I guess that is an elevator shaft I think. I don't know. It's --

CONSTANTINE ALEXANDER: Are you suggesting that we ask them to come back with --

BRENDAN SULLIVAN: Well....

CONSTANTINE ALEXANDER: I know it's a screening. The answer is no, and I suspect what you're going to say. The risk then is that we allow them to put screening on. In other words, we don't hold them to these photo sims, we don't know what's going to go up there.

BRENDAN SULLIVAN: I'm just expressing frustration.

CONSTANTINE ALEXANDER: I know.

BRENDAN SULLIVAN: Thinking that,
you know.

CONSTANTINE ALEXANDER: Either we
approve these photo sims or we say come back
with new ones and continue the case. I vote
for the former myself.

BRENDAN SULLIVAN: You vote for
what?

CONSTANTINE ALEXANDER: The former.
In other words, let's decide tonight and not
require them to come back.

BRENDAN SULLIVAN: Yes.

DAVID FORD: Just to comment on the
screening, I know the Meridien Hotel has a
similar screening that Sprint got through.

CONSTANTINE ALEXANDER: Where?

DAVID FORD: The Meridien Hotel.
It's 18 Sidney Street.

CONSTANTINE ALEXANDER: I know where Sidney Street is. I don't know the Meridien Hotel.

TIMOTHY HUGHES: It was called something at MIT before.

DAVID FORD: It's called the Meridien now. Anyway, Sprint has similar like that. They have facade mounts with the screen all over it, but it's set back. So if you were to put a screen wall here, on the street you look up, you would see something coming up --

CONSTANTINE ALEXANDER: That's my reaction as well which is why I would go with this.

BRENDAN SULLIVAN: Yes, it's --

JANET GREEN: I had a question. I thought I understood that you said the cables were inside that went down?

DAVID FORD: The cables are running right along here, you can't even -- they're inside of the building, any existing chase.

JANET GREEN: So this one here where it indicates where the cable channel is --

DAVID FORD: Correct.

JANET GREEN: -- then that's inside even though it's --

DAVID FORD: Correct, shown. Right. It's transparent, right.

JANET GREEN: It's shown outside but it's inside?

DAVID FORD: Correct.

The same path that Nextel has right now.

BRENDAN SULLIVAN: The only way that we're going to get a design change that really make them go away is if we start saying no.

CONSTANTINE ALEXANDER: Well, we have said no.

BRENDAN SULLIVAN: And then push it back to design and then engineering is going to say it's going to get more expensive and it's going to be a, you know.

CONSTANTINE ALEXANDER: Sounds like you're describing the Concord Avenue case.

THOMAS SCOTT: I mean for the record, these things are hideous looking on the building. That's just my opinion. There's so many of them. They're placed in prominent areas of the facade. They're, you know, there is no attempt to put them any place where they, you know, are in corners or concealed in any way. And I know they have to have a certain, you know, visibility in order for the range to work. But they're just put in such prominent -- I mean right on the front facade of the building, you know.

ATTORNEY SUSAN ROBERTS: I hear you

on that. And that's what it looks like now.
I mean that's, that's -- we were just --

CONSTANTINE ALEXANDER: Well, I
know that's the point. That's the point.

ATTORNEY SUSAN ROBERTS: We were
just going on the basis of what was there.

THOMAS SCOTT: I understand why you
did what did. I guess my point is --

CONSTANTINE ALEXANDER: Tom, you
might be interested in knowing I'll read the
letter now, a letter from the Planning Board.
Have you seen it?

THOMAS SCOTT: No, I didn't.

TIMOTHY HUGHES: What did they say?

CONSTANTINE ALEXANDER: (Reading)
The Planning Board reviewed the Special
Permit application to take over existing
equipment and install equipment antennas on
the building and recommends that this is an

improvement to the character of the building.

THOMAS SCOTT: Hard to believe.

CONSTANTINE ALEXANDER: So do I. I agree. I second that.

DAVID FORD: I could elaborate on that if you'd like to know why they said it was an improvement.

THOMAS SCOTT: Because you're removing a few?

DAVID FORD: These are updated antennas. So they're the type of the newer version of the antennas which are more slender and fit better with the --

CONSTANTINE ALEXANDER: I'm with Tom. I think he's right.

TIMOTHY HUGHES: You know, the longer antennas where they go where there's a slatted kind of faux mansard kind of thing going on, don't bother me. But the ones on

the arch right out front, I just wish there was a better way for that. Can you split them to outside, you know, the bump out, you know. That's garish.

ATTORNEY SUSAN ROBERTS: You mean put them here and here?

THOMAS SCOTT: Yes, equally spaced either side.

TIMOTHY HUGHES: Yes. Do you think that's possible from an engineering standpoint?

DAVID FORD: Right here, right here. I don't think it will work because it's shadowed by the bump out. I'm not saying that maybe here and here won't work. I don't know.

ATTORNEY SUSAN ROBERTS: Yeah.

DAVID FORD: And plus the height as well will come down, keep as much height as

possible.

TIMOTHY HUGHES: Yes, but you're not losing -- they're not any lower than the other ones.

DAVID FORD: Correct, yes.

TIMOTHY HUGHES: On the other parts of the building even.

ATTORNEY SUSAN ROBERTS: We can maybe do longer ones here. These are shorter ones.

CONSTANTINE ALEXANDER: Same question --

TIMOTHY HUGHES: They really do stand out on that arch.

THOMAS SCOTT: Oh, yes, it's the most prominent feature of that building and then you're putting these things here.

BRENDAN SULLIVAN: Then I will be the first to say no.

THOMAS SCOTT: What about the dish,
the dish that sticks up?

DAVID FORD: That's the hotel's.

THOMAS SCOTT: That's not -- oh,
that's the hotel's?

TIMOTHY HUGHES: That probably has
to do with TV reception.

THOMAS SCOTT: I don't know.

CONSTANTINE ALEXANDER: The
question now is we could vote on it tonight
as submitted and you might get a no vote. Or
you can go back and continue this case to see
whether you can do something better with
regard to the arch.

DAVID FORD: Yeah, just I mean --

CONSTANTINE ALEXANDER: I don't
think you're in a position tonight to commit
to changing those antennas, are you?

ATTORNEY SUSAN ROBERTS: I can tell

you one thing. I can tell you one thing. With respect to the arch and the four antennas that are there now, so -- because I did talk to our RF guy, and actually he asked whether or not he had to come tonight, and I told him he could go home. So now I'm feeling like I wish he had said he should come. And I if you want I could actually call him because he's supposed to be standing by, and we could ask him right now whether or not, you know, we could move those -- assuming he's reachable, whether we can move them. The other thing we can do is shorten them a little bit so that they --

CONSTANTINE ALEXANDER: That would be very desirable.

ATTORNEY SUSAN ROBERTS: They would be 55 inches instead.

DAVID FORD: They would be the same

as the existing.

CONSTANTINE ALEXANDER: Right now they're a little bit bigger than the existing.

DAVID FORD: Right here, but these are four foot. These are six foot. So if we went down to four, it would look exactly the same.

ATTORNEY SUSAN ROBERTS: It would be pretty much looking like it does now, but I think our panel antennas are a little bit slimmer. But I did talk to him about that and he did say yes, we can do the 55-inch one if that works.

CONSTANTINE ALEXANDER: Why didn't you come before us with just that? Why -- if you could do it, why did you come by and try to give us bigger ones?

ATTORNEY SUSAN ROBERTS: Honestly

it's hard to tell from the pictures as to whether or not it overhangs. I was concerned with the overhang as to whether or not it was coming down low, and I didn't get answers on that actually because it was raised at the Planning Board meeting. And it kind of looks like it's fitting within that grey panelling. But I wasn't sure. I wanted to be sure for tonight. And so it wasn't until today that I understood -- earlier today that I understood that they were in fact a little bit taller than the grey panelling. And I asked if we could shorten them to get it fit within the grey panelling? I thought that would be something that we could do. So that's why these were submitted the way they were.

CONSTANTINE ALEXANDER: Why don't you -- why don't we recess this case so you can call this fellow.

ATTORNEY SUSAN ROBERTS: Yes.

Deepak, you know him. He's been here -- he has said the shorter ones are okay.

CONSTANTINE ALEXANDER: The shorter ones, yes, I got that. I'm talking about locating them outside arch. You don't have an answer to that.

ATTORNEY SUSAN ROBERTS: No.

DAVID FORD: I can call him right now.

CONSTANTINE ALEXANDER: Why don't we take another case in the meantime.

DAVID FORD: Sure.

CONSTANTINE ALEXANDER: We'll recess this case and come back with the answer.

DAVID FORD: Thank you.

TIMOTHY HUGHES: Hey, ask him while you're talking to him, if you go the shorter

ones, can you stagger them so that they go with the arch rather than having them straight across?

DAVID FORD: Yeah, yeah.

TIMOTHY HUGHES: Okay.

DAVID FORD: But then again these are the same size, and once you go out farther, they're going to be on the roof line.

TIMOTHY HUGHES: No, I'm not -- I'm talking about if you can't go outside of the space that they're in, but you can go to a shorter one that's on the arch --

DAVID FORD: Right.

TIMOTHY HUGHES: -- and you group them in a way that can -- instead of having them straight, because it looks -- you know, the photo sim makes it look like two of them stick up above the arch. I'd rather see them go into the --

ATTORNEY SUSAN ROBERTS: No,
nothing will.

TIMOTHY HUGHES: I'd rather see them
go into the second color then to see them
stick up above.

ATTORNEY SUSAN ROBERTS: I did
confirm, nothing is going above the arch.

DAVID FORD: It's only below right
here where it goes from grey to beige, that's
where it sticks out. Nothing's going above
it.

CONSTANTINE ALEXANDER: What you
can do is have antennas on the arch, if they
stay in the arch, no bigger, no longer than
the ones that are there now.

DAVID FORD: Correct.

CONSTANTINE ALEXANDER: They would
stay within the arch.

DAVID FORD: Correct. If the

other --

ATTORNEY SUSAN ROBERTS: I don't know how long the site, the ones are that are there.

DAVID FORD: Four feet.

ATTORNEY SUSAN ROBERTS: No, but I want to say -- I know like ours cannot be shorter than 55 inches.

TIMOTHY HUGHES: So we don't know how much arch space there is.

ATTORNEY SUSAN ROBERTS: I don't know what those are. None of us do.

THOMAS SCOTT: My question to him would be can they be separated so that there's two here and two here?

DAVID FORD: That's the No. 1 option. This is a backup.

ATTORNEY SUSAN ROBERTS: That's what we're going to ask.

DAVID FORD: So we'll be back after
the next case.

(Case recessed.)

* * * * *

(9:35 p.m.)

(Sitting Members Case #002472-2013:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 002472-2013, 199 Prospect
Street, Unit A.

MARIA PACHECO: We have old cases,
do you want them?

CONSTANTINE ALEXANDER: I'm sorry?

MARIA PACHECO: You want the old
cases?

TIMOTHY HUGHES: You want the old
file for the Prospect Street?

CONSTANTINE ALEXANDER: No.

For the record, give your name and address for the stenographer, Please.

ADRIAN PIRVU: Adrian Pirvu and this is 199 Prospect Street, Unit A.

CONSTANTINE ALEXANDER: And you want a Variance to convert this unit A, which I assume you own?

ADRIAN PIRVU: Yeah.

CONSTANTINE ALEXANDER: From office to residential?

ADRIAN PIRVU: Correct.

CONSTANTINE ALEXANDER: Okay.
Why?

ADRIAN PIRVU: Because (inaudible) the poor design the regular apartments.

CONSTANTINE ALEXANDER: They're not designed for commercial use?

ADRIAN PIRVU: Yeah.

CONSTANTINE ALEXANDER: And how many units are in the building?

ADRIAN PIRVU: How many?

CONSTANTINE ALEXANDER: How many units are in the building?

ADRIAN PIRVU: Eight.

CONSTANTINE ALEXANDER: Eight. And your's is the only commercial?

ADRIAN PIRVU: Yes, and the basement and they look like regular apartments.

CONSTANTINE ALEXANDER: You would be bringing -- not only would you be bringing the property in conformance with our Zoning Law, because this is supposed to be residentially zoned district, but you would make the building itself totally residential rather than having a mixed use in the building right now.

ADRIAN PIRVU: Correct. And even

the residents will be happy with that. I discussed with them, they don't like to mix commercial use.

CONSTANTINE ALEXANDER: What was the office use before?

ADRIAN PIRVU: I don't know. It's just two-bedroom, kitchen.

JANET GREEN: In the basement there are two apartments?

ADRIAN PIRVU: Yeah, it's like a two-bedroom and a studio.

JANET GREEN: And this is the two bedroom that --

ADRIAN PIRVU: Two bedroom and the studio, because one deed on both.

JANET GREEN: They were both offices?

ADRIAN PIRVU: Yes.

JANET GREEN: And now they're both

going to be apartments?

ADRIAN PIRVU: Yes.

JANET GREEN: So you're adding two more apartments?

TIMOTHY HUGHES: One apartment.

ADRIAN PIRVU: One apartment but one deed, but it's two separate --

TIMOTHY HUGHES: Oh, I see, it's one deed.

ADRIAN PIRVU: One deed on two separate units.

JANET GREEN: But it's two separate units?

ADRIAN PIRVU: That's correct.

JANET GREEN: So it's going from two offices to being two units?

ADRIAN PIRVU: That's correct, yes.

CONSTANTINE ALEXANDER: Why is the FAR changing if we grant you the relief?

Your form shows that FAR, floor area ratio, shows that you're currently at 1.5 of these units. You're going to diminish the 1.15 and the district only allows 0.75. Why is that? What are you doing that's going to diminish --

ADRIAN PIRVU: That's sometimes I was discussing with Commissioner and he kind of guided me through this process, so I'm not sure exactly what is the answer.

CONSTANTINE ALEXANDER: Give me your best guess why, what he told you.

ADRIAN PIRVU: Probably that was -- we looked at all the old files and the new files, and he said I think that's the correct way to go.

CONSTANTINE ALEXANDER: Are you changing -- if we grant you --

ADRIAN PIRVU: I'm not changing

anything whatsoever. There's no need to change.

CONSTANTINE ALEXANDER: Why is the FAR changing at all, though?

ADRIAN PIRVU: There's no change at all.

CONSTANTINE ALEXANDER: All right. One of life's great mysteries I guess.

JANET GREEN: So the parking that exists now is -- how many parking spaces are there?

ADRIAN PIRVU: Nine parking spaces.

JANET GREEN: There are nine.

And how many units are there before this conversion?

ADRIAN PIRVU: That's eight.

JANET GREEN: So you're coming before us for two parking spaces?

ADRIAN PIRVU: I'm not looking for

any.

CONSTANTINE ALEXANDER: He's coming before us because if we grant him the relief, he will need -- the property needs to have 10 parking spaces, and he's not going have 10. He'll still be at the nine. If he's going from conforming as to parking to non-conforming as to parking if we grant him the relief to convert.

JANET GREEN: So you had one more than you needed before?

ADRIAN PIRVU: Yes.

CONSTANTINE ALEXANDER: And now you have one too few.

JANET GREEN: Too few.

CONSTANTINE ALEXANDER: Questions from members of the Board?

JANET GREEN: So where are you going to get -- oh, that's a separate question.

CONSTANTINE ALEXANDER: That's part of the relief that they're seeking.

JANET GREEN: That's the second question.

CONSTANTINE ALEXANDER: And they're not seeking a Special Permit to reduce parking which is what we usually see, but that's okay.

JANET GREEN: So the parking is off site?

ADRIAN PIRVU: It's around the building.

JANET GREEN: It's around the building?

ADRIAN PIRVU: Yeah.

CONSTANTINE ALEXANDER: While you're looking at the file, is there anyone here wishing to be heard in this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. There are no letters in the file.

So I will close public testimony.

We'll give Janet a chance to look at the file.

Anybody else have questions at this point?

JANET GREEN: So why is it --

CONSTANTINE ALEXANDER: Yes, go ahead.

JANET GREEN: Yes. I just want to understand this parking because it says approved for 199 Prospect Street. And then it shows the parking. But this says with 180 Prospect Street, off site parking. I didn't understand what that meant.

ADRIAN PIRVU: It would be next to the building. I'm not sure.

CONSTANTINE ALEXANDER: I suspect, just guessing, that this property and this property were one property at one point in time.

TIMOTHY HUGHES: The number doesn't seem to suggest that because it's odd and even. It would be opposite sides of the street.

CONSTANTINE ALEXANDER: That's a good point, yes, I don't know. But there are nine parking spaces on that plan.

JANET GREEN: But the plan is somewhere else.

TIMOTHY HUGHES: Show me a picture. Do you have a picture of the property?

ADRIAN PIRVU: I do have pictures, yes.

CONSTANTINE ALEXANDER: He has photos there.

TIMOTHY HUGHES: Well, there's definitely parking next to the building. That's the building, right?

ADRIAN PIRVU: Yes, that's the building. And I have picture from the back as well.

JANET GREEN: That's why it was confusing.

TIMOTHY HUGHES: Yes. I don't know what that particular parking plan means.

CONSTANTINE ALEXANDER: But the relief being sought tonight whatever parking that is now available for the residents of this building, will continue to be the same number of spaces.

ADRIAN PIRVU: That's correct.

CONSTANTINE ALEXANDER: So it's a mystery as to where they are, they're not likely to change.

JANET GREEN: But you don't know if you'd be able to get another parking space in there.

CONSTANTINE ALEXANDER: Why not? If it's laid out the way it is, I assume that these are --

ADRIAN PIRVU: For me I wouldn't even need any parking spaces basically.

JANET GREEN: Well, you need it. You need it. You need the permission. However you use it.

ADRIAN PIRVU: Okay.

CONSTANTINE ALEXANDER: Well, someone back in '83 when this was approved, someone determined that these are non-functioning parking spaces. It's odd.

JANET GREEN: It's not 10. They had to stick nine over there.

CONSTANTINE ALEXANDER: There's

nine over there.

JANET GREEN: And this is the new file, not the old file; right?

ADRIAN PIRVU: That's the new one.

CONSTANTINE ALEXANDER: Yes.

JANET GREEN: Okay.

CONSTANTINE ALEXANDER: Well, I guess what I'm trying to say is that since he's not -- whatever the parking situation is there now is not going to be changed.

ADRIAN PIRVU: That's correct.

CONSTANTINE ALEXANDER: And in as much as we're talking about residential use, I just don't think, I just don't see the impact, particularly since the city's got a policy of, as you know, not pushing parking to be as much as it used to in terms of required on-site parking.

Anyway, I wish I could answer your

question, Janet. I don't think I have an answer. I don't think you have an answer, and it's not clear from the file. What about the photos, Tim, did you find anything?

TIMOTHY HUGHES: No, I just saw the --

CONSTANTINE ALEXANDER: Why don't you give them back to me so I can put them back in the file.

Any further questions? Janet, any further questions?

JANET GREEN: No.

CONSTANTINE ALEXANDER: Ready for a motion?

Did I indicate that -- yes, I think I indicated there are no letters in the file. No one has wished to -- has offered to speak on this matter so I think we're ready for a vote.

The Chair moves that this Board make the following findings with respect to the Variances being sought.

That a literal enforcement of the provisions of the Ordinance will involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner will not be able to use these units for the purpose designed or encouraged by our Zoning Ordinance by residentially Zoning District. In other words, the Petitioner will be forced to continue a non-conforming use which is not in the City's interest nor desirable as a matter of Zoning. We tend to want to discourage or convert non-conforming uses to conforming uses.

The hardship is owing to circumstances relating to the -- basically the nature of the structure, the shape of the structure.

Simply that.

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.

As I indicated before, this is being satisfied by virtue of the fact that we're going to eliminate a non-conforming use, a commercial use in a residentially zoned district, which is a desired goal of our Ordinance.

So on the basis of these findings, the Chair moves that Variances being granted to the Petitioner as sought with respect to converting the unit A at 199 Prospect Street from office to residential.

All those in favor of granting Variances, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Scott.)

CONSTANTINE ALEXANDER: One opposed.

(Green.)

(9:45 p.m.)

(Sitting Members Case #002383-2013: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: Case No. 00283.

TIMOTHY HUGHES: And the answer is....

DAVID FORD: So we spoke to Deepak and he said that basically there's no existing site that AT&T has where ---

CONSTANTINE ALEXANDER: I'm sorry, say it again? I missed that part.

DAVID FORD: There's no existing AT&T site that where one sector's antennas are split by that far apart. So we're guesstimating between --

CONSTANTINE ALEXANDER: Right. He doesn't say whether you can do it?

DAVID FORD: No, we can't. He said no.

CONSTANTINE ALEXANDER: You can't do it?

DAVID FORD: As background. And for a performance issue, no, being that far apart. He did agree, however, to reduce the size 55 inches -- it's six feet currently. We'll go down to 55 inches and they'd be more or less what you see there, existing, unless you like longer antennas.

CONSTANTINE ALEXANDER: So that the antennae will not go below --

DAVID FORD: Go below this -- yeah. They'll stay within the grey.

CONSTANTINE ALEXANDER: Okay. Questions?

TIMOTHY HUGHES: All one color that way you won't have to hire that special painter.

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

(No Response.)

CONSTANTINE ALEXANDER: I have read into the record the letter of support from the Planning Board whose judgment on this, I think, with regard to aesthetics may be questionable.

I think we're ready for a discussion

unless you have anything further you want to add.

ATTORNEY SUSAN ROBERTS: No, all set.

CONSTANTINE ALEXANDER: Discussion or ready for a vote.

TIMOTHY HUGHES: I'm ready for a vote.

JANET GREEN: Ready.

CONSTANTINE ALEXANDER: Okay.

THOMAS SCOTT: I'll just say for the record I'm still opposed to the antennas that are on the front of the building like that.

CONSTANTINE ALEXANDER: You can vote against it.

THOMAS SCOTT: Right I'm just stating that.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: And I'm also -- I

there's got to be a better alternative.

CONSTANTINE ALEXANDER: Well, before I take a vote then is what you've heard is two people are going to vote against the relief being sought which means you'll be denied which means you can't do anything for two years. Do you want to continue this case to see whether you can come up with a solution that satisfies at least two members of the Board?

ATTORNEY SUSAN ROBERTS: Okay. Let's just talk about it for a second. We have some potential alternatives.

So initially this site was one where Nextel was going to be on the building as were we. Okay? And sort of during our design process we found out that Nextel was going to be leaving so that's why we went into their position, taking over the facade areas,

including the front facade.

Initially -- David can talk to you better than I can, but initially we were thinking of a rooftop type of cannister which could be seen from the street. So if that's something that you prefer or you prefer to see that, we can definitely bring that back to you as something else that we had considered. We thought that this was, you know, we thought this was preferable. In other words, to basically not change the scenery in Cambridge on this building and so that's why we went forward on the basis that we did. But if you're not liking what you see now there and you want us to entertain something else, we're perfectly happy to try and do that. I'll tell you what, you know, David can talk more about what was considered, but what was considered was very difficult because we

needed to go higher on the roof and we're getting into height issues on the roof there and setback issues as well. Those were problems. And this site, frankly, was in discussions internally with AT&T for quite a long time, and it was fortuitous from our standpoint that Nextel came forward and, you know, was going to decommission because we were not thinking that our other potential design was going to work from a Zoning standpoint. So that's a problem.

DAVID FORD: Before I elaborate just to clarify, this is the only sector that you two have issues with? Only the front facing?

THOMAS SCOTT: Yes. At least for me anyway.

DAVID FORD: And same with Brendan?

BRENDAN SULLIVAN: Yes, correct.

DAVID FORD: Okay.

So the first option was to try to mount them behind the screen wall as kind of an existing screen mount. But unfortunately because it's not strictly fiberglass, we can't shoot our emissions through there. So basically the other option was, as Suzie said, Nextel was still remaining, they just put the papers in to decommission. So when we knew they were still remaining, our goal was we couldn't facade-mount because they were taking up the space. Our goal was to go on top with cannisters as we showed you on Norfolk Street. The problem is that the parapet wall is five feet, more or less. And in order for us to get up and over the parapet wall and project out in the direction shown here, the cannister had to be above ten feet. So we've, obviously for the Ordinance we try to keep all cannisters, chimneys to a 10 foot

max. So that in order to clear the wall, and with the 55-inch antennas at the minimum would be over 10 feet. And we try to keep, as you know, within 10 feet of the roof line. That wasn't probable either. Because in order to project, again, over the actual parapet, needed to be as close as possible to the roof line, not allowing the 10-foot setback, and not allowing for a 10-foot maximum of the cannister.

So a backup for this sector would be -- is available, but obviously we would probably need a Variance for the fact that we're not meeting the setback requirements and height requirements. We would be extending the rooftop over 10 feet.

THOMAS SCOTT: Could you group them to the right or the left, put all four of them be placed, you know, two on the far right and

then two adjacent there?

DAVID FORD: Here you mean?

THOMAS SCOTT: On the right.

There's two blue lines that extend down, at least they appear blue. Right. Could two be there and two be adjacent?

DAVID FORD: Oh, right here you mean?

THOMAS SCOTT: Yes.

DAVID FORD: I don't see why not. I can't really make that call. But I understand what you mean.

ATTORNEY SUSAN ROBERTS: Here and here?

DAVID FORD: Right.

So you would have it here and here or here and here.

THOMAS SCOTT: My issue is they're front and center prominent piece of

architecture, not that it's a wonderful, you know, statement in terms of what's architecture. But, you know, you're taking the pediments of the building and plastering them right on the front of the facade, and I find that offensive. And I think there's a better place to position them, and I think it just needs a little more thought. That's my opinion.

BRENDAN SULLIVAN: Well, no, I concur. Yes.

CONSTANTINE ALEXANDER: I think this case sounds like a continuance to give you more chance to go back. You've heard very amply the concerns of at least two members of the Board.

ATTORNEY SUSAN ROBERTS: Can I just -- before we, before we actually go to a vote on a continuance, can I just ask the

Board's opinion about a rooftop installation? Would that be preferable or --

THOMAS SCOTT: If it's going stick up substantially above the roof, no.

ATTORNEY SUSAN ROBERTS: Okay.

DAVID FORD: So we will look into as you said.

ATTORNEY SUSAN ROBERTS: Let's see what we can do on the facade mounting.

THOMAS SCOTT: Is there another place on the facade that you can find where they're not front and center?

ATTORNEY SUSAN ROBERTS: My only concern about the, you know, the way the building juts out and to put an antenna there, it's like you're, you know, the antenna's going to be blocked by the building. You know, that's what I can say will be a problem.

THOMAS SCOTT: That's for your engineer to determine I guess.

CONSTANTINE ALEXANDER: Yes, exactly.

ATTORNEY SUSAN ROBERTS: Yeah.

DAVID FORD: I know this will work but this -- as Suzie said, shadow issues just because of the face right there.

CONSTANTINE ALEXANDER: You need to go back and talk to your engineers to see if you can come up with a solution that's suggested or suggested by both Tom and Brendan. If you can't, you can't and you'll come back and tell us that.

ATTORNEY SUSAN ROBERTS: Okay.

CONSTANTINE ALEXANDER: And then we'll take a vote.

You may find that if you can't -- you come back and say you can't, the vote you're

going to get is not going to be one that allows you to go forward.

ATTORNEY SUSAN ROBERTS: Okay. So one thing that occurs to me just while I'm looking at this, if we are going to be using the 55-inch -- so let me ask you a question. If we were to go on either the far left or the far right and we were to do vertical, you know, four like in a box, two on top of the other, shorter antennas, the 55-inch but we might have to go down on the brown part of the building a little bit, would that work for you?

BRENDAN SULLIVAN: Well, I don't know how to answer that. But if we take the four here and the four are going to project in this direction.

DAVID FORD: Straight up.

BRENDAN SULLIVAN: Right. Can we

do one here, one there; one there, one there.

DAVID FORD: No, too far apart.
They need to be closer.

CONSTANTINE ALEXANDER: What you're suggesting is --

ATTORNEY SUSAN ROBERTS: What I was suggesting --

CONSTANTINE ALEXANDER: I know, it gives me a bit of heartburn.

ATTORNEY SUSAN ROBERTS: -- 1, 2, 3, 4, but maybe there's -- some of them might be a little bit --

CONSTANTINE ALEXANDER: I'm not crazy about that. But we're going too far. You've got to come back, try -- come up with alternatives like you did with the case that was continued on Norfolk Street. Different approaches. You've heard where we're coming from, where certain members coming from.

The archway, that arch is not a great idea. Come up with whatever you can.

I would suggest as Tom said and I would concur, putting on a roof is not the solution. I think you're not going to get any further with that than what you have before us tonight.

ATTORNEY SUSAN ROBERTS: Okay.

CONSTANTINE ALEXANDER: Try and see what you can do.

ATTORNEY SUSAN ROBERTS: We'll see what we can do.

BRENDAN SULLIVAN: Do these four, do they have to work in unison, is that why you have to put four of them together?

ATTORNEY SUSAN ROBERTS: Correct.

DAVID FORD: They could be spaced a certain amount a few feet, but they can't be 40 feet away from each other.

BRENDAN SULLIVAN: Because they're not independently sending out, they are collectively sending out.

DAVID FORD: Each one is different frequency. One might be LTD, the other LTS. So they have to work in unison as a four pair, correct. We understand what the recommendation is, we'll go back and investigate.

CONSTANTINE ALEXANDER: That's the safest way from your perspective.

DAVID FORD: Understood.

CONSTANTINE ALEXANDER: Maria, when would be the first time -- I don't know what you need. What's the first date available?

MARIA PACHECO: You can do December 19th. That will close up the --

CONSTANTINE ALEXANDER: Does that give you enough time, December 19th?

DAVID FORD: Yes.

CONSTANTINE ALEXANDER: Okay.

19th. That's a case heard. So can everybody can make it?

JANET GREEN: Yes.

THOMAS SCOTT: Yes.

TIMOTHY HUGHES: Yeah.

CONSTANTINE ALEXANDER: He says enthusiastically.

The Chair moves that this case be continued as a case heard until seven p.m. on December 19th on the conditions that the waiver of time for a decision be signed, as we've done in the past.

That the posting sign be modified to reflect the new date and the new time, seven p.m. Otherwise we'll have to hear it -- if you don't change the time, the time as was scheduled for tonight. If you want to get on

the agenda early, make sure you change it to seven p.m.

And on the last condition that the new plans that you're going to be submitting to us presumably, must be in our files by the Monday -- by five p.m. on the Monday before December 19th, whatever date that is.

DAVID FORD: Agreed.

CONSTANTINE ALEXANDER: 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.)

CONSTANTINE ALEXANDER: See you early Christmas celebration.

ATTORNEY SUSAN ROBERTS: Thank you.

* * * * *

(9:55 p.m.)

(Sitting Members Case #002470-2013:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 002470-2013, 1001
Cambridge Street.

Does anyone here wishing to be heard on
this matter? Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank

you, Mr. Chairman. For the record, James Rafferty appearing on behalf of the applicant VNG Company. Seated to my immediate right is Rob Blake, B-l-a-k-e. Mr. Blake is the director of retail development. And Michael Russo is a colleague at VNG. He is the director of construction. And the project engineer is William Goebel, G-o-e-b-e-l. And Mr. Goebel is seated at the end.

So this is an application of which is perhaps a unique. This is the Shell Gas Station located on Cambridge Street. The gas station has been in that location for decades. In fact it predated the requirement for a Special Permit. That's now a Business A Zoning District. It's probably been that way for 20 years. But it was a pre-existing gas station. It was a full automotive service station run by the

Vantugo (phonetic) family. And then over the years it morphed into a self-service, and they've actually received a Special Permit some years ago to, they operate an accessory Dunkin' Donuts in the space as well.

But VNG is a company that is involved in -- an emerging business involving the sale of compressed natural gas in motor vehicles. And this -- there are approximately, at the present time, this concept is gaining popularity, there are approximately 20 or 30 of these locations in the Greater Boston Area. The likely consumer in the short term is going to be NStar. They have a fleet of vehicles that operate on compressed natural gas. The city actually has a couple of vehicles at DPW that does that. The MBTA has busses that do that. So the technology is emerging. And what, what Mr. Blake's

company does is he finds locations, service stations, where they can install a compressor in a dispenser, and that's what would be involved here. And as you'll see in the plan, the Mr. Goebel can show you, the compressor is going to be located on a pad towards the rear of the site. It's going to be fed by a gas line that comes in from the street, a natural gas line. And the compressor, then, will have a lot --

CONSTANTINE ALEXANDER: Excuse me, the gas line will run from the street through the whole length of the property?

ROB BLAKE: All underground.

CONSTANTINE ALEXANDER: Well, I understand that. They'll be underground, yes. And even though there are gas tanks underground if you will --

WILLIAM GOEBEL: The underground

storage tanks are in the --

ATTORNEY JAMES RAFFERTY: We ought to check that. Someone advised us, we thought it was a great suggestion.

So the gas, the gas line gets fed into the compressor. And then from the compressor runs another line out to the dispenser, and the dispenser, Mr. Goebel can show you, is out by the area where the gas tanks are. So a vehicle will pull up into the area where presently fuel is dispensed. But they would go to a special dispenser, and then that dispenser would be the natural gas.

CONSTANTINE ALEXANDER: Like a diesel if you went to the gas station.

ATTORNEY JAMES RAFFERTY: Yes.

So it's funny you make that analogy because when I first reviewed this with Mr. O'Grady, the question was well, does this

require relief? Because if a gas station operator were to go to expand their offerings to include diesel, and he agreed that that wouldn't be an enlargement, but the conclusion was that the introduction of the compressor and such, that the conclusion was that the -- this represents an expansion enlargement of a non-conforming use which I think is a valid interpretation. And so we are seeking a Special Permit to allow that to occur. We've identified what the criteria -- and frankly in the near term the expectation is that the NStar facility -- we've been working closely with NStar. The NStar facility in Somerville, their vehicles will use this, but it shouldn't be high volume, but it's the hope in years to come that this will become part of a product mix. A couple auto

manufacturers are introducing vehicles like this. And I think Ford has --

ROB BLAKE: Ford, GM has a few vehicles.

ATTORNEY JAMES RAFFERTY: So before we even submitted the application given the unique aspects of this, we -- I contacted the fire department and the fire chief Mr. Reardon and the captain, Captain Cahill of the fire prevention department met with us at the site. Mr. Blake and Mr. Russo came up from New Jersey, and we had probably a meeting of nearly an hour where we went through the specifics and provided them with an understanding. They were -- it was all acceptable to them. I made it clear that if there were reservations, I didn't wish to file it. We had hoped to have a communication from the fire department and I

contacted the fire department this week and discovered that Captain Cahill is on extended leave. So I spoke directly with the chief today and asked if someone else might be able to provide just some summary. And he, he didn't have the opportunity to prepare that, but he did authorize me to represent -- I said well, I'll be there tonight and they don't always take what I say at face value, so if you could confirm that. So he said -- I said would it be fair to represent that you're comfortable with this? He said, I would say that we have conceptually approved this. We would expect part of the issuance of the Building Permit that we would review the final details. He said, and this is his quote, but as far as we're concerned, the fire department, you're good to go. And I said am I authorized to make such a representation to

the Board? And he said yes.

I did receive a call from Councillor Toomey's aide Mr. Alves (phonetic) and I directed him to the fire department, and the fire chief did say to me that he had a conversation with Mr. Alves earlier this week and explained that he was fully familiar with it, that these represented the way of the future and he saw this coming and that he had no problem. And so I'm not aware of any concerns voiced by abutters or others. There's nothing in the file.

CONSTANTINE ALEXANDER: Is there any other -- I would assume that this kind of installation has regulated by the state. You need a lot of other improvements, am I right? Or is it just the fire department takes jurisdiction or concerns itself with regard to safety?

ATTORNEY JAMES RAFFERTY: Well, I'll let -- Mr. Blake knows all the details and Mr. Russo. But there isn't a lot of gas stored on the site. It comes in through the gas line. And so in fact when I initially did some due diligence on behalf of Mr. Scott, my initial thinking was that we would need to obtain a license from the License Commission for the storage of fuel which is what gas stations have.

CONSTANTINE ALEXANDER: That's what I'm getting at, right.

ATTORNEY JAMES RAFFERTY: The fire chief on the site visit said, no, he didn't think quantities here required that and it's not the type of fuel. So the equivalent of about 100 gallons of gas that are here at any one time.

ROB BLAKE: That's right.

ATTORNEY JAMES RAFFERTY: But I'm not aware of any other --

CONSTANTINE ALEXANDER: But what about the fact that you're going to be compressing the gas? Does that change the equation in any way that raises safety issues?

ROB BLAKE: No, it does not. We actually met with the state fire marshall's.

CONSTANTINE ALEXANDER: State fire marshall?

ROB BLAKE: We did. We did.

CONSTANTINE ALEXANDER: Okay.

ROB BLAKE: Two months ago I think. One of the local fire chiefs out in Marlboro had accompanied us to that meeting as well, and what we found is that we fall below the thresholds of storage of natural gas. So we don't foresee any state permits or fuel --

CONSTANTINE ALEXANDER: And the compression element doesn't change the equation?

ROB BLAKE: No, it does not.

THOMAS SCOTT: Is it self-service or does it have to be attended?

ROB BLAKE: It is self-service. That dispenser, it's a credit card swipe. However, there will be a clerk inside the convenience store.

ATTORNEY JAMES RAFFERTY: The same clerk?

ROB BLAKE: That oversees the gasoline pumps.

THOMAS SCOTT: And it appears as though it's outside the canopy of the other pumps. Does it require any special fire suppression?

ROB BLAKE: It does not.

THOMAS SCOTT: No?

ROB BLAKE: And the real reason for that is natural gas, if it does leak, it actually dissipates into the environment very rapidly. It's actually safer than gasoline. It doesn't pool, it doesn't create any type of fire hazard so to speak. So being outboard of a canopy actually helps us in that we don't have ventilate. If we had it underneath the canopy, we would have to have vent, you know, turbine vent fans installed to properly ventilate that area.

ATTORNEY JAMES RAFFERTY: Wasn't Captain Cahill's suggestion that it be outside?

ROB BLAKE: Yes, it was.

ATTORNEY JAMES RAFFERTY: When we had the site visit, it was Captain Cahill who recommended that it be beyond the canopy line

for the ventilation issues that Mr. Blake just spoke of.

BRENDAN SULLIVAN: The pertinent section, Section 436.G refers you then to sub note 32 so I guess that's sort of why you're here is it says that (reading) Provided that in business, this is just all lubrication and repairs are carried out within the building. So this would be considered lubrication?

ATTORNEY JAMES RAFFERTY: No.

BRENDAN SULLIVAN: I'm just wondering why that section is cited.

ATTORNEY JAMES RAFFERTY: Well, that's the use section for auto gas stations where no major repairs are being done.

BRENDAN SULLIVAN: And it says Special Permit. Hence that's why you're here. And then also under 8, the expansion of a non-conforming use. But I'm wondering

why you cite 436.

ATTORNEY JAMES RAFFERTY: Because that's the use category that's currently there. So....

BRENDAN SULLIVAN: And that just says Special Permit.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: But it refers you to sub note 32.

ATTORNEY JAMES RAFFERTY: Well, yes, but sub note --

BRENDAN SULLIVAN: That does not apply in this instance.

CONSTANTINE ALEXANDER: That's the point. It doesn't apply.

BRENDAN SULLIVAN: Okay. That's what I'm trying to say, it's there but it does not apply in this instance.

CONSTANTINE ALEXANDER: That's the

answer.

BRENDAN SULLIVAN: All right.

CONSTANTINE ALEXANDER: And in reviewing the file before the hearing tonight, there were two things that occurred to me that might be, might be issues. One is safety. And you've addressed that certainly with the state fire marshal and the fire chief and your representations. And I'm perfectly satisfied. It's their jurisdiction, that's their expertise, not ours.

And the other -- and I don't know if it's an issue or not but I'd like you to speak to it. You're going to compress the gas. Compressors make noise.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Tell me about the noise that might be emitted that might affect adjoining properties. Keeping

in minds that, you know, adjoining this is a very large residential development.

ATTORNEY JAMES RAFFERTY:

Absolutely. Public housing.

ROB BLAKE: We're cognizant of that. We think we've placed the compressor on --

CONSTANTINE ALEXANDER: Oh, my goodness, is this the compressor, C&G in a box?

ROB BLAKE: Yes.

ATTORNEY JAMES RAFFERTY: The point being the compressor itself is in a container and then there's going to be a concrete wall around that.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So a number of sound attenuations.

THOMAS SCOTT: So there's a sound attenuating box?

ROB BLAKE: Yes, it is. Yes, it is.

CONSTANTINE ALEXANDER: So if you were in the apartment houses with the window open, you wouldn't hear the compressor running?

TIMOTHY HUGHES: But it's on the other side of the building from the apartment houses and it abuts up against --

ATTORNEY JAMES RAFFERTY: The apartment houses is over on the right.

CONSTANTINE ALEXANDER: Yes, you're right.

ROB BLAKE: We're cognizant that there's residential across Windsor and so we've located the box far enough away that we will comply with the City's Noise Ordinance.

ATTORNEY JAMES RAFFERTY: We did ask -- I did ask Mr. Blake, it might be helpful, the extent to which the compressor

comes on. Is it every time one fuels? He said, no, in total it's only on cumulatively a 24-hour span --

ROB BLAKE: For a couple hours.

CONSTANTINE ALEXANDER: I want to pursue this. Maybe in an inopportune time with abutters, now doesn't have to be residential abutters. There's abutters on the side that's closest that might be affected. Now you said it will comply with the noise ordinance --

ATTORNEY JAMES RAFFERTY: By necessity it will. And the engineer will have to provide an Affidavit to the Building Department of compliance, and it's been a significant focus of the preparation work and the design work to meet the noise ordinance requirements in this.

CONSTANTINE ALEXANDER: For my

information, the noise ordinance, I'm not at all familiar with it in the city, is it the same ordinance for all property or is there different levels allowed noise for residential as opposed to business?

ATTORNEY JAMES RAFFERTY: In the commercial district there's one standard. It's 60 DBs. And in the residential district it's 50 DBs.

CONSTANTINE ALEXANDER: So they allow a little more noise in the business district?

ATTORNEY JAMES RAFFERTY: Right.

And then it's also impacted by ambient noise. And then you begin with the ambient noise. And the few readings that have been taken already, the ambient noise matched against this. Wouldn't -- there's no cumulative increase in noise.

ROB BLAKE: We think we'll actually be below ambient at this property.

CONSTANTINE ALEXANDER: Okay.

THOMAS SCOTT: So this gas station is not open 24 hours?

ROB BLAKE: I believe it is.

THOMAS SCOTT: Oh, it is?

ROB BLAKE: I believe it is.

CONSTANTINE ALEXANDER: That's my issue inopportune times if the compressor makes noise.

ROB BLAKE: Like Mr. Rafferty said, the compressor really kicks on only when there's demand to do so. So most of the time it's not running. It's --

CONSTANTINE ALEXANDER: Okay.

TIMOTHY HUGHES: I can think of a third problem. How is the donut truck going to make his deliveries?

ROB BLAKE: Well, he's going to have to get a smaller donut truck.

TIMOTHY HUGHES: He's going to have to walk them in from the street and the crates of milk. The chocolate milk.

THOMAS SCOTT: I have another question. I know you're saying it meets the criteria, but let's say after you get this thing up and running, this compressor's kicking on at two or three in the morning and you get complaints from the neighbors. Are you prepared to do anything additional to mitigate that issue?

ROB BLAKE: Sure, we would.

THOMAS SCOTT: And what would you do?

ROB BLAKE: Well, first of all, I don't think the fleets would be utilizing this dispenser that early in the morning.

Fortunately they're on the same time schedule as most of us and they would be filling up typically, you know, in the morning or midday or maybe on the way home from work. So I -- you know, to me I don't think the compressor would be on probably after eleven p.m. all the way through the, you know, the night into the early morning.

CONSTANTINE ALEXANDER: There is a way -- I don't think this is comment. There is a way to deal with the noise issue or the potential risk. And that's to grant the Special Permit for a limited period of time, two years, three years, one year and see what the experience is. And if nothing happens, no problems, no neighbors complain, we'll know and we can grant the -- renew the Special Permit indefinitely.

THOMAS SCOTT: I don't want there to

be a problem after we grant this and then you come back and say well, we have, you know, we have a Special Permit to do this so we don't have to do anything additional.

ROB BLAKE: Well, we --

THOMAS SCOTT: If I were living there and the noise came on at three in the morning, I would be a little irritated especially mid-summer when the windows are open.

ATTORNEY JAMES RAFFERTY: And the ambient noise would be low at that point. So yes, you're correct. The Noise Ordinance would require compliance or I would respectfully suggest that one could have a contingent in the Special Permit as well. And if one, if this doesn't comply with the Noise Ordinance.

CONSTANTINE ALEXANDER: As an

alternative to a period of years for the Special Permit.

ATTORNEY JAMES RAFFERTY: Period of years I know you've heard is difficult in terms of making commitments signing leases. They're going to be signing a lease with the gas station operator. They don't own the facility. They're just leasing the space. And it does raise a level of uncertainty. They're going to make a contract with NStar as well.

BRENDAN SULLIVAN: I think the Noise Ordinance is really the hammer here and, you know, you think of a compressor, I mean, I have two or three compressors that I use at work. But then there's also condensers that come on for air conditioning equipment. I'm not sure if what's, you know, whether condenser --

ROB BLAKE: We don't have any condensers.

WILLIAM GOEBEL: It's not much louder than the condenser.

BRENDAN SULLIVAN: That's the other point I was thinking, is that they're probably not much louder than a condenser.

ROB BLAKE: We feel like we have enough sound attenuation measures in place that like I said, we will comply fully with the city.

CONSTANTINE ALEXANDER: Well, you have to.

ATTORNEY JAMES RAFFERTY: It's necessity and I think there is a belt and suspenders where a condition could exist so that one could seek enforcement. Enforcement of the Noise Ordinance currently is through the License Commission, but one

could -- and it happens and it -- it happens typically in Planning Board decisions involving life science companies.

Conditions are routinely applied saying that the use will comply with the Noise Ordinance. And it allows one if they were to bring a complaint, to do so both at the Zoning level and the Licensing.

CONSTANTINE ALEXANDER: Exactly.

That's right.

BRENDAN SULLIVAN: I think that one of the conditions could be that the testimony has shown that it will be fully in compliance with the Noise Ordinance currently that exists for this district. Failure to comply were the Noise Ordinance would render it null and void.

CONSTANTINE ALEXANDER: Well, I think it's a condition that it does that.

You don't need to go on to say that. In other words, if we grant the Special Permit, it would be on the basis -- on the condition that the Petitioner at all times complies with the Noise Ordinance as from time to time in effect. I mean if the city for some reason decides next month to change -- to make the standards much more difficult, you're going to have to comply with those new difficult conditions.

ATTORNEY JAMES RAFFERTY: And the standard condition is essentially that. Compliance with the Noise Ordinance is a condition. And it's proven effective in the life science area with the large mechanical equipment. I would think it would serve an effective safeguard here as well.

CONSTANTINE ALEXANDER: Questions or comments from members of the Board?

Ready for a vote. Okay.

The Chair moves that this Board make the following findings with respect to the Special Permit being sought. And these findings are based on the compliance and the imposition of the condition that will be made on the substantive vote to grant the Special Permit.

That traffic generated or patterns of access or egress will not -- what you're proposing 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 what is being proposed.

That no nuisance or hazard will be created to the detriment of the health, safety, and welfare of the occupant of the

proposed use or the citizens of the city.

And that the proposed use, the storage of compressed natural gas will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

On the basis of these findings, the Chair moves that a Special Permit be granted to the Petitioner as requested on the condition that at all times the compressors used -- to be used on the property will comply with our Noise Ordinance, the City's Noise Ordinance as from time to time in effect. This is not today's. Whatever it is, if it gets more generous, you can go up. If it gets more onerous, it goes down.

ROB BLAKE: Understand.

CONSTANTINE ALEXANDER: All those in favor of granting the Special Permit with

this condition say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

ATTORNEY JAMES RAFFERTY: Thanks very much.

* * * * *

(10:20 p.m.)

(Sitting Members Case #002459-2013: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: We'll take the last case. The Chair will call case No. 002459-2013, 7 South Normandy Avenue.

Is there anyone here wishing to be heard? And obviously there is.

EDRICK VAN BEUZEKOM: My name is Edrick Van Beuzekom. I'm the architect for the future. These are my clients, Becky Harmon and Robert Harmon, H-a-r-m-o-n. The new owners of this property.

So I have some photos. I did submit some photos as well, but here's a series of photos that you can pass around of the existing house and also some photos taken in the neighborhood showing few examples of other structures. Just to give you a sense of the neighborhood for the other structures with dormers.

And so Becky and Robert have a two children and they purchased this house. It's a very small, modest house. So we're planning on a series of renovations; some of which are as of right, some of which require a Special Permit and a Zoning Variance.

So we are, we have already applied for a Building Permit for the as-of-right portions of the project.

The primary things we're trying to do is make use of the third floor attic space which is an -- it's unfinished attic space and it's pretty low. It's basically eight feet tall at the center. The intention is to basically try to get a master bedroom and a bathroom up there. And the house is currently nonconforming to the rear yard setback. We're comfortably okay with the front yard setback and the side yards. Just the rear yard setback cuts through just very slightly into the site. And we have a drawing here which basically shows the rear yard setback comes right across here. So it's basically this thin slice of the house here in the back which is nonconforming. Had

the house been built five feet forward, we wouldn't have an issue.

The proposal involves adding a dormer on the front and a dormer on the back of the house. The one on the front is in order to make adequate room for a bedroom, and the one on the rear is to get adequate space for a stair and bathroom. And the issue with the dormer in the rear, the difficulty and challenge has to do with where in a small house like this you can bring a stair up to the third floor.

CONSTANTINE ALEXANDER: Isn't it right, though, I was looking at the plans, the third floor under your plan will consist of entirely one large master bedroom.

EDRICK VAN BEUZEKOM: That's right.

CONSTANTINE ALEXANDER: With a very large walk-in closet and a very nice master

bath. Given all the, you only have one room up there, why do you have a space problem? I mean, why do you have to locate it here and therefore build a nonconforming in the dormer guidelines, that's nonconforming dormer?

EDRICK VAN BEUZEKOM: Okay. So the stair, in order to get the stair up there basically we -- there's no way to -- you would lose a substantial part of the second floor.

CONSTANTINE ALEXANDER: How much of the second floor would you lose?

EDRICK VAN BEUZEKOM: Basically lose use of the one of the rooms if you were to --

CONSTANTINE ALEXANDER: On the second floor not the third floor?

EDRICK VAN BEUZEKOM: On the second floor. If you have had to locate the stair somewhere else to get it in a compliant area.

BRENDAN SULLIVAN: Is there a staircase going up there now?

EDRICK VAN BEUZEKOM: No. There's a drop-down attic stair which comes down right in the center. So with that arrangement, you can't really make use of the space up there. And because it's such a small space to begin with, it's not really -- I mean there's no way to get a full bedroom or a full bathroom without bumping out somewhere in the space there.

So originally we were hoping that we could stack with the original stair and have enough headroom to support the dormer in from the corner of the house, but there's really isn't enough room to do that. And the issue there is currently where the existing stair comes up, we don't even have adequate headroom at the -- going up from the first

floor to the second floor. There's a closet that's pulled over that that's a step up from the second floor, but it's too low. So a new stair going up has to get high enough up to allow the headroom for the first floor stair coming up, you know, before we head up to the third floor. So that basically dictated the location of the stair and the location of the dormer on the back of the house. Now our is that because this is at the back of the house and because it's -- we have now a two-story section on the side here -- and let me show you some renderings here. So this shows the dormer at the front of the house. Which what we're doing here is the idea is to basically split it into the appearance of two smaller dormers rather than having just one big dormer.

CONSTANTINE ALEXANDER: And that

dormer is compliant with our dormer guidelines?

EDRICK VAN BEUZEKOM: Yes.

CONSTANTINE ALEXANDER: That's fine.

EDRICK VAN BEUZEKOM: So at the rear of the house what we're proposing is a shed dormer. And we would carry down the rake board so that you would still have the appearance of a roof there. And with the two-story section here -- here's more of a straight-on view. I think that helps balance it out so it doesn't feel too much like it's right at the corner of the house from the rear. Again, this is at the back of the house and, you know, it's -- again, we were really limited by the stair being the driving force in this. We, you know, we tried to keep it as tight as we could, and

really make the stair to use --

BRENDAN SULLIVAN: Can I see that?

JANET GREEN: How big is that one?

EDRICK VAN BEUZEKOM: The length of the dormer? It's 18 feet. So that includes the stair and plus the bathroom.

CONSTANTINE ALEXANDER: It's 18 feet and it's not set back from one of the sides?

EDRICK VAN BEUZEKOM: That's right. Yeah, the other side is set back.

CONSTANTINE ALEXANDER: That side is fine. But so it's noncompliant in a number of respects with our dormer guidelines.

EDRICK VAN BEUZEKOM: And this shows you more thoroughly how it's set back from the other side. So it does -- so, yeah. So the issue is it's a little bit longer than the

dormer guidelines permit.

CONSTANTINE ALEXANDER: It's lopsided to one side.

EDRICK VAN BEUZEKOM: It's lopsided, right. But, again, I think from the ground level and I think the view that I think Brendan has gives you a sense of how because of the plane of the two-story section on the site doesn't feel as lopsided as it might if there was nothing there.

BRENDAN SULLIVAN: Just that, you know, I mean, you just bought the house and yet it's too small for you. And so now you need to come down and add on 38 percent for the house and it's just -- it's, it's the massing of it. It's just going to look so overbearing. So overpowering.

CONSTANTINE ALEXANDER: The interesting thing is they don't have any FAR

issues.

EDRICK VAN BEUZEKOM: Yes.

CONSTANTINE ALEXANDER: With all this addition, you're still within our guidelines. It's just not --

BRENDAN SULLIVAN: 567 square feet.

CONSTANTINE ALEXANDER: I know. It's a lot. It's adding a lot. And unfortunately it's not that it's active. You see the rear, but the dormer guidelines don't distinguish from dormers that are on the street or on the street. Dormer guidelines are dormer guidelines. I'm not an architect obviously or a contractor, but I wonder if there's not another solution. Because you -- your problem I guess what I'm hearing is that it's not at the third floor attic level which you're going to convert into this very large master bedroom, it's on

the second floor.

EDRICK VAN BEUZEKOM: Right.

There's nowhere else that we can bring a stair up without losing space that then makes adding space superfluous.

CONSTANTINE ALEXANDER: Could you have the space, the room I guess it would be, that you would lose in the second floor be added to the third floor and reduce the size of the master bedroom?

EDRICK VAN BEUZEKOM: But then you lose a bedroom on the second floor.

CONSTANTINE ALEXANDER: Yes. You get it on the third floor. You just moved it up a floor.

THOMAS SCOTT: Could you do anything with the shed dormer in this location where -- because you don't need the height at the exterior wall. You need the height kind

of in the middle of the space.

EDRICK VAN BEUZEKOM: No. For the stair we need the height right at the corner.

THOMAS SCOTT: At this corner?

EDRICK VAN BEUZEKOM: Yes. If you look at the floor plan. Here's -- this is the -- let me first show you the second floor.

THOMAS SCOTT: That's the third floor right there, right?

EDRICK VAN BEUZEKOM: No, this is the second floor.

THOMAS SCOTT: Oh, okay.

EDRICK VAN BEUZEKOM: On the second floor you arrive from the first floor stair in the back here to a hallway. There's a small study here, and that's basically what we're sacrificing to create a stair that then stacks over that. And so in order to get adequate headroom over these stair coming up

from the first floor, we've got to get high enough from this corner above that and that's why --

THOMAS SCOTT: You don't need a full story at this corner is my point.

EDRICK VAN BEUZEKOM: We could drop it probably two feet.

THOMAS SCOTT: Is there any way to reduce the mass on this edge?

EDRICK VAN BEUZEKOM: We could. We could do a sort of second sort of shed that drops down that corner two feet, coming in probably about three feet from the edge of that dormer. So you'd pop up and then you'd pop up again with another dormer there. So that, that would be feasible. But, you know, then you have a stepped shed dormer. I'm not sure if that's any more attractive than what we're trying to do here.

CONSTANTINE ALEXANDER: I've seen them. Thank you.

TIMOTHY HUGHES: I'd like to see that one.

CONSTANTINE ALEXANDER: I'll give you both.

I'm troubled. I grant relief generally, but I, you know, I wonder if there's not a better solution. A solution that's more aesthetically pleasing and more consistent with our former guidelines than what's being proposed.

EDRICK VAN BEUZEKOM: Yeah. I mean --

JANET GREEN: You're gaining a bedroom, right, on the second floor?

EDRICK VAN BEUZEKOM: With the addition over here?

JANET GREEN: Yes.

EDRICK VAN BEUZEKOM: Yes.

JANET GREEN: So you're gaining a bedroom on the second floor and you're gaining a bedroom on the third floor and you're losing a study?

EDRICK VAN BEUZEKOM: Yes, that's right.

You know, we, we tried putting the stair in other locations. It's very disruptive to the entire second floor, and it's hard to bring it up in a location once, once you move it into a better location on the second floor or to avoid the dormer there. It's not great for the second floor, but it's also not great in terms of where you arrive on the third floor, partly because of the limited amount of headroom you have up on the third floor. So I mean, it's just a low space all around. So it's, you know, you -- really getting up

into the dormer helps a lot if we can arrive at the center, that would work. But that, again, it's just one of those things where you can't get around it very easily. So....

THOMAS SCOTT: Could this stair move over three feet or no? You're saying no.

EDRICK VAN BEUZEKOM: Over this way?

THOMAS SCOTT: Yes.

EDRICK VAN BEUZEKOM: No. Because you run into a headroom issue coming over this stair up from the first floor. Right? Because if you were the -- if you think about it this way, stairs are stacked like that. If you move it that way, you lose headroom over that. I mean that's what we -- that was when we were first conceptualizing, that's what we were really hoping we can do. Then when we actually looked at the headroom we had there, it was just so tight. We couldn't,

couldn't, you know, we just couldn't squeeze it over anymore.

You know, the only other option that we came up with that might help some would be a situation where we could move the bathroom out of the dormer and thereby make the dormer overall a smaller dormer. We could get it to comply in length to the dormer guidelines. It would still be at the corner here but we could get it down to a 14-foot dormer.

CONSTANTINE ALEXANDER: And what would you have to do to get that?

EDRICK VAN BEUZEKOM: I'll show you. We actually brought a floor plan. So it sort of -- (inaudible) up the space. What I've done here is to move the bathroom out more into the center of the space and out from under the dormer. And it's -- I mean, you have a shower that has a sloped ceiling in it,

but you know again, you could live with this if that was preferable to --

CONSTANTINE ALEXANDER: It seems to me it's still a substantial and nice master bedroom suite.

EDRICK VAN BEUZEKOM: This is the --

CONSTANTINE ALEXANDER: I mean, it would be a smaller dormer. You said 14 feet.

EDRICK VAN BEUZEKOM: That's correct.

CONSTANTINE ALEXANDER: It would be lopsided.

EDRICK VAN BEUZEKOM: It would still be lopsided. I did create a view of that.

CONSTANTINE ALEXANDER: Oh, you have a view of that?

EDRICK VAN BEUZEKOM: Yeah.

BRENDAN SULLIVAN: Edrick, had you done a solar study and how the additions are

going to affect the next-door property?

EDRICK VAN BEUZEKOM: We are pretty far away from any of the other houses in terms of the or en -- where the shadows would fall. So we haven't actually done a study. I mean, I haven't run a --

BRENDAN SULLIVAN: Well, it's pretty close to the house on the left.

EDRICK VAN BEUZEKOM: Yeah.

BECKY HARMON: We do have a letter of support from the neighbor on the side and the neighbor in the back. If that means anything. Or a letter of support from the side.

ROBERT HARMON: Louis and his wife are like when are you going to move in? Everything is fine.

BECKY HARMON: They're supportive.

CONSTANTINE ALEXANDER: We'll get

to that in a moment.

BECKY HARMON: Sorry.

CONSTANTINE ALEXANDER: No, no.

That's fine. There are a lot of letters of support. They don't concern themselves with former guidelines like we have to or should.

EDRICK VAN BEUZEKOM: No, I understand.

THOMAS SCOTT: I'm less troubled by the length than I am by the fact that it extends out to the break line of the roof, you know.

EDRICK VAN BEUZEKOM: No, I understand. And I think that's the hardship that we're saying is that just that existing stair drives the, you know, location on where we can fit a stair in here. It's, it's very odd condition. I haven't seen a house like this that had the stair in that location

before, you know. And typically it's a center stair. So, it's an awkward location. And unfortunately it's a difficult thing to change, too.

CONSTANTINE ALEXANDER: Other questions from members of the Board?

Tim, do you have any questions at this point?

TIMOTHY HUGHES: No, not really.

CONSTANTINE ALEXANDER: Let me just finish up with the rest of the things we have to go through. I'm going to open it up to public testimony.

Is there anyone here wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Obviously no one here wishing to be heard.

We do have substantial amount of

letters in the file that should be made part of the record.

There is a petition, a signed petition saying -- stating (Reading) We the undersigned have reviewed the drawings of proposed dormers and renovations to the Harmon residence of 7 South Normandy Avenue, Cambridge, Mass., prepared by EVB Design. We support the plans for the proposed additions and their application for a Special Permit and Zoning Variance. And they're signed by 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 -- about 15 persons.

And there is a letter from Cheryl and Lewis DiPisquale (phonetic). (Reading) This letter is to verify that we support the remodeling of 7 South Normandy Avenue. Our property is next-door to the Harmons and we have seen the plans. We gladly support the

renovation of their home.

There's also a letter from Abigail M. McNally, M-c-N-a-l-l-y and Brian McNally.

(Reading) We live directly across the street from the Harmon family's home located at 7 South Normandy Avenue. We have reviewed EVB Design plans and support the Harmon family's project being presented to you on November 14th. We believe that the design will be pleasing -- will be a pleasing enhancement to the neighborhood landscape and we encourage you to support the request for a Special Permit and Variance to complete the project as submitted.

There's also a letter in here, here it is. I'm not sure if you've seen this or not. It's from the Delaine, D-e-l-a-i-n-e Strandberg, S-t-r-a-n-d-b-e-r-g who resides at 65 Blanchard Road. (Reading) I am

concerned with the flat decks on the third floor which penetrate or are attached to the roof and on the ground floor. If they are not sufficiently reinforced to bear the weight of snow, ice, multiple people, or act of God that New England winters bring.

Anyway, that's the letter. But it looks like there's someone -- where is of 65 Blanchard Road? Is that behind you?

ROBERT HARMON: Yeah, they're the abutters. They signed the petition.

CONSTANTINE ALEXANDER: Oh, they did?

ROBERT HARMON: I talked to Malcolm and his wife, that's one of the things he asked. Well, what happens if there's snow? I'm like, I was like --

CONSTANTINE ALEXANDER: That's not our issue anyway.

ROBERT HARMON: I was like, I'm pretty sure the roof will fall off. And he goes what about the deck, the back deck collapsing? I'm like, I'm pretty sure the contractor -- I'll have other problems with the contractor than anything else. But Malcolm and his wife both signed the petition. He did bring it up to me about the snow removal. I didn't really know what to tell him.

CONSTANTINE ALEXANDER: Okay. I'm going to close public testimony. So we're all -- those are all the letters in the file. And unless you have something more to add I mean which you're free to do. We'll discuss this among ourselves.

EDRICK VAN BEUZEKOM: Okay.

CONSTANTINE ALEXANDER: Anything else you want to add?

EDRICK VAN BEUZEKOM: Oh, here it is. Here's the smaller dormer version.

CONSTANTINE ALEXANDER: This is the smaller dormer version.

EDRICK VAN BEUZEKOM: Yeah.

CONSTANTINE ALEXANDER: This is the only view you have. You don't have the one that looks down?

EDRICK VAN BEUZEKOM: No.

CONSTANTINE ALEXANDER: Could I have the one that's current? I want to put them side by side.

This is what you're seeking now and this is what it would look like as an alternative.

You see it?

TIMOTHY HUGHES: I had the smaller version.

CONSTANTINE ALEXANDER: What's the Board's pleasure? Anybody have views they

want to express?

I'm wondering whether -- I'm still on the fence to be honest with you. I'm not sure how to come out on this, but I wouldn't mind having you take another hard look at the dormer issue. I am troubled by it. But I do also want to find some way of granting you relief, frankly, that otherwise makes sense. That's where I am.

JANET GREEN: It's really difficult. It's almost -- I mean, of all the houses we've looked at, and you've looked at many more than I have, this is a house that really doesn't want to have a third floor. I guess I mean, it's really tough to get it up there.

EDRICK VAN BEUZEKOM: You know, it is. It's hard. It's hard to fit.

JANET GREEN: You know, it just is.

I mean I really see your problem of getting the stairs and having them go up.

EDRICK VAN BEUZEKOM: And we're trying to avoid having to redesign the entire house and trying to work with what's there and do something that's, you know, and so....

JANET GREEN: There are other houses of this design in the neighborhood.

ROBERT HARMON: Yes. Pretty much every house is dormered. I mean even Louis's house basically -- his entire house is dormered. That's what most people in the neighborhood have done.

CONSTANTINE ALEXANDER: The city doesn't like --

EDRICK VAN BEUZEKOM: Right. There are numerous dormers that go right to the edge in the neighborhood.

CONSTANTINE ALEXANDER: Yes.

JANET GREEN: Yes.

EDRICK VAN BEUZEKOM: Not that that makes it any better, but at least there is some precedent in this area.

THOMAS SCOTT: And your dormers don't exceed the ridge line of the existing house?

EDRICK VAN BEUZEKOM: No, they hit the ridge line. Because the headroom is eight feet right in the center we can't drop any lower --

CONSTANTINE ALEXANDER: This is a dormer that doesn't comply. I'm just stating the facts. And --

EDRICK VAN BEUZEKOM: I understand.

CONSTANTINE ALEXANDER: -- in respect to the dormer guidelines.

EDRICK VAN BEUZEKOM: Yeah.

CONSTANTINE ALEXANDER: And the

only question is can you come up with a design that still meets the dormer guidelines but at least in this view of this Board is less offensive. I don't mean it sarcastically.

EDRICK VAN BEUZEKOM: I understand.

JANET GREEN: He can -- excuse me. The piece of it you're determined to put the master bedroom on the third floor and that makes it so big. I mean, if it was a smaller room, then it would -- it wouldn't need all of this to be able to fit it in the middle.

EDRICK VAN BEUZEKOM: You'd still to get a stair up there.

JANET GREEN: You still need to get the stair up there.

CONSTANTINE ALEXANDER: And that's the problem.

EDRICK VAN BEUZEKOM: It's, you know -- believe me.

CONSTANTINE ALEXANDER: You can't trade off the stair. I mean, the room you'll lose on the second floor if you made a stair that works with dormer guidelines and you're going to pick up maybe two rooms on the third floor, the attic floor? But a smaller master bedroom obviously.

EDRICK VAN BEUZEKOM: Yeah, I mean you couldn't really be two real rooms. It would be maybe a big closet and a bedroom. Or it's not -- once you get -- if you had the stairs somewhere in the middle or where one of the -- one of the bedrooms pull out, it really chops up the space to where you'd end up really only being able to get one room up there. And, you know, I think the floor plan is a little deceptive in making it look like it's a big room because it's low. And so, there's not as much floor space that, you

know -- I mean the dormers come down on the sides of this bedroom area, for instance, so the, you know, the outside walls here are, you know, out here, only five feet tall. So, you know, so that's a relatively small space. This space back in here you've got the roof coming in front so there's not much space here. What looks like a full closet here is a closet that's low and under the eaves. So, you know, even in the proposed scheme here, you know, it's hard to find the place to put closets. We we've put them back under the eaves here and we still, you know, we've got to put a little space where there's going to be mechanical equipment. And we have to have the circulation coming up from the stair. So, you know, again it's, it's deceptive in a little way just in terms of floor area versus what the actual amount of space is and

the volume of space.

You know, again, I really tried to find other ways to do this and in the end it seemed like this was the only reasonable and economical way to make it work with the existing stair from the first and second floor. And, you know, so it just seemed like that corner there was no way to avoid that piece of it. And, again, we are willing to cut the overall length down to make it comply with the --

CONSTANTINE ALEXANDER: I forget, on the second floor now, how many bedrooms are there?

EDRICK VAN BEUZEKOM: There's three bedrooms on the second floor.

CONSTANTINE ALEXANDER: Three bedrooms on the second floor?

EDRICK VAN BEUZEKOM: Yes. So the

two existing bedrooms, one of which is pretty small. And, you know, I mean they're all relatively small. This one is nine and a half feet wide. And then, yeah, we're adding a second floor to this space over here.

CONSTANTINE ALEXANDER: So you're going to go from three bedrooms today to four bedrooms?

EDRICK VAN BEUZEKOM: To four bedrooms, right.

CONSTANTINE ALEXANDER: If we grant you relief you're seeking.

EDRICK VAN BEUZEKOM: Right.

CONSTANTINE ALEXANDER: And the need, have you started a family yet?

BECKY HARMON: We have two kids.

ROBERT HARMON: Six and an eight-year-old. And we live in a one floor condo now.

BECKY HARMON: Yeah, and the kids have shared -- they're two different genders. And they share a bedroom. We've lived really modestly with like, you know, no driveway and all that. We have saved up a lot for our dream house. And, you know, we really wanted to stay in Cambridge. And so our only alternative to stay in Cambridge was to find a little bit of a fixer-upper. And we felt like that maybe the roof was high enough that maybe we could get something. We both, we have parents who, you know, don't live nearby actually part of the year.

ROBERT HARMON: Now they can't stay with us.

BECKY HARMON: Yeah, so for 12 years we haven't had a place for grandparents to stay. We for us this is kind of our dream to build like a -- to actually have a place for

the relatives to stay, you know. I don't know. We're willing to work to --

THOMAS SCOTT: Did you consider a gable on the back, off the back? Is that a possibility?

EDRICK VAN BEUZEKOM: We did consider it. It ends up being a very flat gable, again, because the height, right? Because we need to get up at least this high. You know, so it would be a really flat sort of gable, and that's sort of a kind of elegant shape as well. So, you know, I think here I was thinking well, at least this is something you see in the neighborhood and then in a sense it would fit in with what's there, it's not going to stand out like a sore thumb as much as it might in some other parts of Cambridge. But, yeah, I mean, again, that was one of the early things we looked at. And

it's just, you know, I would love to have brought it down low there, but it's just, you need to be up -- the most we did bring this down is about two feet from where it is at this corner currently. So in order to have the adequate room there for the stair.

CONSTANTINE ALEXANDER: Okay. To sum up is -- if I get it right. I mean, it is what it is. There are alternatives you've suggested that will not satisfy the dormer guidelines, it might minimize in one respect other another the noncompliance. The price to be paid for those. But those are on the table I suppose or a possibility.

If we go to a vote now, and this is to my fellow Board members, and we vote it down because of these problems, of course, they're out for two years. I guess I'm saying is that if people are inclined to vote against this,

we might want to signal that now so that the Petitioner can come back with another set of plans that are closer to our former guidelines than we have now. I don't want them to be blind sided in short by a vote and then all of a sudden they're out of luck if that's where the vote is going to go. So, did I make my point? Are people ready for a vote or do you want to express some views to the Petitioners to allow them to consider continuing the case?

TIMOTHY HUGHES: Well, I think it's awkward looking in the back. But, you know, it's -- I don't have the same massing issue that other people have expressed. In fact, I almost like to see the roof line extended, you know, sacrifice the outside deck and the roof line.

THOMAS SCOTT: I was thinking the

same thing. Is there a way to extend?

TIMOTHY HUGHES: So that the dormer doesn't look like -- it sticks out like a sore thumb, you know?

CONSTANTINE ALEXANDER: That's a good point.

THOMAS SCOTT: If you gave some of this deck area and add a roof element here.

TIMOTHY HUGHES: But you get some balance to it and then that sort of increases the massing. And you don't get really usable space inside either.

EDRICK VAN BEUZEKOM: Then we're over the FAR.

CONSTANTINE ALEXANDER: That occurred to me already.

TIMOTHY HUGHES: Right.

CONSTANTINE ALEXANDER: You're looking for a Variance anyway. And the FAR

issue would probably be minimal.

TIMOTHY HUGHES: Yes, I think if you went over, it would be only by a point.

EDRICK VAN BEUZEKOM: So if we took three feet out and we could, I mean --

TIMOTHY HUGHES: Just something so that the dormer doesn't look so awkwardly placed at the end of the wall. At least I think you should draw it and see what it looks like.

EDRICK VAN BEUZEKOM: And then to the front of the house.

THOMAS SCOTT: It's going to change the front.

BRENDAN SULLIVAN: I think it probably needs another redo, another relook. I'm having trouble supporting what's before us anyhow.

CONSTANTINE ALEXANDER: I think

what you're hearing -- I think there are some ideas thrown out. There are some reluctance to approve the project as proposed now. We don't want to turn you down and keep you out for two years. Continue the case as a case heard, and we have to get the five of us together, and go back to the drawing board with some of the ideas you heard, and come back with maybe more than one some other alternatives. And you can come back and say this is it. We'll rise and fall on what we propose now because the alternatives are too expensive. They don't really work.

TIMOTHY HUGHES: Show us some attempts and show us why they don't work or explain why they don't work if you want to defend this particular plan.

CONSTANTINE ALEXANDER: We're not saying you have to redesign, but we want you

to think about it and make a better -- another case for why if you want to keep this one, why it has to be kept.

EDRICK VAN BEUZEKOM: So let me address the suggestion of maybe extending the roof a little bit. I guess I just want to get a feel for it. If that were the approach that we took in order to get a little more balance there, is that something then we're asking for a little bit of FAR relief, I think it be pretty disappointing to lose the ability to have a little roof deck up there. Just the, you know, I think that's important for Robert to just have a space to go out at night and look at the stars.

THOMAS SCOTT: How big is the deck as proposed?

EDRICK VAN BEUZEKOM: As proposed it's pretty modest. My point is, you know,

we could move it over, just puts it closer to the edge of the house. So that's why I just want to get a feel for, you know, if we're looking for FAR relief in addition, is that something that --

CONSTANTINE ALEXANDER: It's going to depend --

EDRICK VAN BEUZEKOM: -- you feel like you can support?

CONSTANTINE ALEXANDER: -- how much relief you want. I don't think the fact that you will need FAR relief is fatal, because it will help solve another problem we have right now. That's my view. So I wouldn't say forget about it because of FAR. But, you know, if you're going to come in and you're going to double -- you're going to be way over FAR, which you shouldn't be, then I might have a problem. I've got to see the design and

numbers before giving you a definitive answer.

And, again, you can come back with the same plans, same as tonight, if when you get there and you show big FAR changes and you come back to us and say we can go either one, the FAR violations, etcetera, but it solves some of your former guidelines or stick with the ones we showed you. You could say no to both by the way.

EDRICK VAN BEUZEKOM: I understand.

THOMAS SCOTT: But if that rendering that's under your right hand, if you were to just, you know, how you didn't want to interrupt that ridge line there.

EDRICK VAN BEUZEKOM: Right.

THOMAS SCOTT: If that line came --

EDRICK VAN BEUZEKOM: Pull that out a little farther.

THOMAS SCOTT: You're not going to pick up that much FAR because a lot of it is going to be unusable. It's going to be underneath the --

EDRICK VAN BEUZEKOM: Sure. True. We're just, you know, right now right at the line. So....

CONSTANTINE ALEXANDER: Yes, but what you're hearing from us is we're not going to lose sleep over the fact that you're over the line by a small amount. It's going to improve the overall design of the project.

THOMAS SCOTT: I think if you want that size dormer, than you've got to do something.

CONSTANTINE ALEXANDER: That's exactly right.

EDRICK VAN BEUZEKOM: All right.

CONSTANTINE ALEXANDER: So....

EDRICK VAN BEUZEKOM: When would be -- we'll ask for a continuance then.

CONSTANTINE ALEXANDER: Maria?

MARIA PACHECO: January 9th is the next. We have 12/5 is closed and we have four continuations for the 19th already.

CONSTANTINE ALEXANDER: January 9th?

EDRICK VAN BEUZEKOM: If that's as soon as we can get.

CONSTANTINE ALEXANDER: That will give you more time to think about it.

EDRICK VAN BEUZEKOM: Yeah, I mean, the issue for them is starting construction as of right stuff would be nice to segue in.

CONSTANTINE ALEXANDER:
Understood.

EDRICK VAN BEUZEKOM: But it is what it is.

CONSTANTINE ALEXANDER: Okay. The Chair moves that this case be continued as a case heard on the conditions that the Petitioner sign a waiver of time for a decision. You know what that is.

EDRICK VAN BEUZEKOM: Yeah.

CONSTANTINE ALEXANDER: That the posting sign be maintained at least for the 14 days before the January 9th hearing. But what you need to do is just change the date, which is if you want to use the current sign, with a magic marker to January 9th and the time to seven p.m. so you don't have to wait until this late hour at night.

And on the last condition that to the extent that you submit new plans or alternative plans, they have to be, together with the dimensional form, revised dimensional form, all of that has to be in our

files no later than five p.m. on the Monday before January 9th. So, if you don't do that, miss that deadline, then we're not going to be able to hear the case on January 9th. You know that.

EDRICK VAN BEUZEKOM: Yes.

CONSTANTINE ALEXANDER: All those in favor of continuing the case -- by the way, assuming everybody can make January 9th, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Motion carried. Case is continued.

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

(Whereupon, at 11:00 p.m., the
Zoning Board of Appeals
Adjourned.)

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