

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, NOVEMBER 19, 2015

6:35 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Timothy Hughes, Acting Chair

Brendan Sullivan, Member

Janet Green, Member

Douglas Myers, Associate Member

George S. Best, Associate Member

Jim Monteverde, Associate Member

Slater W. Anderson, Associate Member

Sean O'Grady Zoning Specialist and

Maria Pacheco, Zoning Secretary

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P R O C E E D I N G S*** * * * ***

(6:35 p.m.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And before we start with our business, I want to make two statements.

My first statement is as follows: I mistakenly stated at the Board of Zoning Appeals' hearing meeting on Thursday, November 5th, that the Board had been advised by the City's Legal Department that the Board could require a person to identify him or herself prior to recording a meeting. The City Solicitor did not actually provide such advice to the Board. I informed the public at an earlier meeting of the Board, on October 22nd, that a person wishing to record our

meeting was not required to identify himself -- him or herself. After that meeting I had a conversation with a colleague in which I mistakenly formed the impression that a person was required to identify him or herself prior to recording our meeting. My statement at the November 5th meeting was as a result of that conversation. I now know that I misunderstood that conversation and that my statement on November 5th was incorrect. I did not intend to mislead the public or cause any harm, and this mistake will not be repeated.

My second statement is under the Open Meeting Law. I will state that after notifying the Chair any person may make a video or audio recording of our open sessions or may transmit the meeting

through any medium subject to reasonable requirements that the Chair may impose as to the number, placement, and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the Chair will inform other attendees at that meeting that a recording is being made.

And I would report to those in the audience that a recording is being made. There's a tape recorder right here. And I've been informed -- I've been notified by the person putting that device there, and that this meeting is videotaped. And I've been notified by the person who is doing the videotaping. I would also point out that it has been our practice since God knows how long, to maintain a transcript of our meetings, a full

transcript, and the stenographer is right here. That transcript, by the way, is available at some point later on on the City's website. But in doing her stenography -- her transcribing, she records as well so to assist herself when she ultimately types up the transcript.

So we have one, two recordings, audio recordings, one videotaping.

End of my statement.

First order of business is I will inform the Board, although the Board is already aware, that there is an Open Meeting Law Complaint from Xavier Dietrich that has been filed with the Attorney General's office. The City Solicitor's office has prepared a response on behalf of the Board and that response has been distributed or made available to all board

members. I'm going to ask for a vote to approve that response. If people want to discuss the response and not want to vote right away, then we will go into Executive Session to discuss the response.

Does anyone want to discuss the response or are we ready for a vote on it?

(No Response.)

CONSTANTINE ALEXANDER: Looks like we're ready for a vote.

I move that this Board approve the response prepared by the City's Legal Department on behalf of this Board with regard to the Open Meeting Law complaint submitted by -- made by Xavier Dietrich in the form that was previously distributed to the Board.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion carries.

(Alexander, Sullivan, Green, Anderson, Best.)

CONSTANTINE ALEXANDER: Next I'm going to suggest that we go into Executive Session. I'm going to propose that we go into Executive Session to discuss the request for minutes of prior Executive Sessions of this Board under the Open Meeting Law.

JOHN HAWKINSON: I'm sorry, Mr. Chair, who is not voting in the five in favor?

TIMOTHY HUGHES: I did not vote.

CONSTANTINE ALEXANDER: So the vote still carries.

JOHN HAWKINSON: I thought I saw six hands.

CONSTANTINE ALEXANDER: I'm sorry.

TIMOTHY HUGHES: I didn't put my hand up. Somebody might have put two hands up, but one of them wasn't mine.

CONSTANTINE ALEXANDER: You got all the votes then. Right?

I propose to go into Executive Session to request for past minutes of Executive Sessions. I move that we go into Executive Session. Immediately following the Executive Session we'll resume our general, our regular meeting or general meeting. Under the Open Meeting Law we have to have a roll call vote on the motion to go into Executive Session.

I vote in favor of going into Executive Session.

BRENDAN SULLIVAN: I vote in favor.

TIMOTHY HUGHES: Favor.

SLATER ANDERSON: Favor.

JANET GREEN: Favor.

GEORGE BEST: Favor.

CONSTANTINE ALEXANDER: We have five in favor so we're ready to go into Executive Session.

JOHN HAWKINSON: Excuse me, Mr. Chair, did you state for which purpose Executive Session that was and that it would be detrimental to -- oh, what is the language? That disclosure would be to the detriment of the Board's position?

CONSTANTINE ALEXANDER: Yeah. We have, as we did in the last time with Executive Sessions, we have meetings, Executive Session meetings, and then we have the minutes which have to be reviewed by us and then submitted to the City's

Legal Department.

JOHN HAWKINSON: No, I understand in practice. I wanted to confirm that you satisfied the technical requirement. But it's just a technical requirement so that's why.

CONSTANTINE ALEXANDER: Okay. I would hope I satisfied the technical requirement.

JOHN HAWKINSON: In principle clearly.

CONSTANTINE ALEXANDER: We're ready to go into the Executive Session. I would ask all the attendees to leave the meeting as we meet with the Legal Department and members of the Board.

Thank you.

(Zoning Board of Appeals Executive Session.)

* * * * *

(7:15 p.m.)

(Sitting Members Case BZA-008443-2015:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Janet Green, Douglas
Myers.)

CONSTANTINE ALEXANDER: Okay,
we're going to resume the meeting our
Executive Session having been concluded.

And the Chair will call, as we all
know, we start with our continued cases
first before the regular agenda, because
continued cases -- not because, continued

cases are cases that we heard earlier and for one reason or another didn't reach a decision. So we have a list of continued cases this time. The first case I'm going to call is 52 Union Street, case No. 008443. I kept my promise you'd be the first one. Give your name and address.

JONATHAN MEDEIROS: Jonathan Medeiros.

CAMPBELL ELLSWORTH: Campbell Ellsworth.

CONSTANTINE ALEXANDER: Okay, with baited breath, where do we stand with the neighbor?

JONATHAN MEDEIROS: The day after we met on the 5th I went out on the 6th with a list of who the abutters and wrote a note to every one. This is that note if you'd like to see it. And so that's what

I delivered on Friday. I didn't feel that was enough based on their concern so I went to their home Sunday morning. My girlfriend Courtney and I went there and Stephen, not Rachelle, the wife, was there, greeted us in for coffee and a conversation. I feel it went very well. You know, we talked about the concerns that he had, you know, how we could address them. And said that he'd get back to me with an e-mail. He felt comfortable. He was thinking the summer might not be an issue at all, but maybe this time of year it could be. So he wanted to talk to his wife. He said he'd send an e-mail. I didn't receive one. So I decided to write another letter and dropped this off the following Friday, and then did receive an e-mail later that

night. I was away for the weekend for a wedding, but talked to her e-mail Monday morning first thing. We had a conversation over the phone that night. Basically, you know, she addressed her concerns as well. She felt more of an issue in the summertime rather than the wintertime. So I did my due diligence and practiced my photography and took a bunch of photos. And I think there are some really good ones that will show this being my house, and this being the sun setting. And it's their house and how the sun hits their house and the only shadow cast upon it is from the neighbor's top of their porch.

So I sent all these pictures. I have a whole bunch. This is the sun even further down, and they still have a lot of

sun. And this is the sun earlier in the day where they have no sun, but it's not because of me. And then some other ones. I felt it was important for them to understand exactly why we were doing the work, how there was more of a need than a want based on the damage and just, you know, how unfunctional it is. So I sent basically selfies so to speak of myself in the upstairs portion of the house. And this one I felt was important for them to see because there was no headroom. And, you know, I'm just under six feet. If I'm wearing boots, I'm six feet, and there's just no room. I want them to see that. I don't want to come in here and make this huge house into something. It was functional.

She assured me that night if I did

all this stuff, and I showed them, I took these pictures and got my architect to have a conversation with me, I asked them if they'd like him to reach out personally? They said no, no, no, I trust you. Okay.

So we had a conversation and it was just basically saying what we all know from, you know, science class that the sun is in fact higher in the sky during the summer and therefore would cast a lesser shadow. And I explained that in this e-mail from Tuesday which went along with all of the pictures. And I haven't -- they said they'd get back to me, not to worry. And I haven't heard.

CONSTANTINE ALEXANDER: Can I ask is that neighbor whom he's referring to in the audience tonight by any chance?

RACHELLE LaMASTER: Yes, I am.

CONSTANTINE ALEXANDER: You are?

Do you want to come forward, please.
If you don't mind. We want to hear what
you have to say. We heard his report.

RACHELLE LaMASTER: Do I need a
chair?

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

RACHELLE LaMASTER: We've only
spoken on the phone. Rachelle LaMaster,
395 Windsor Street. R-a-c-h-e-l-l-e
L-a-M-a-s-t-e-r.

CONSTANTINE ALEXANDER: I guess
the \$64 question is what are your views
and not -- I want to be very clear, you
don't have a veto power if you wanted to
say no. We'll make the decision.

RACHELLE LaMASTER: I understand

that.

CONSTANTINE ALEXANDER: We're very interested -- always interested what neighbors, particularly affect neighbors have say to say about a proposed relief. So you know what he's seeking to do. You want to express views on whether you support it, oppose it, or are indifferent or whatever? You're call.

RACHELLE LaMASTER: Sure. So, I couldn't hear a lot of what you were saying because I was in the back of the room. I think it sounds like you relatively represented our conversations thus far pretty well. I think there's a little bit of skewed information on time frame just because we didn't actually receive these pictures which, you know, Jonathan took upon himself to take care of

after our conversation on, I believe it was Monday evening. But due to some e-mail problems, we received them this afternoon. There were some communication problems as well. He left a message that we did not get until this morning. So we've had little time to see them and to respond to them. Indeed, when we spoke on the phone, I had my seasons a little bit mixed up, but regardless of whether, you know, I was correct or incorrect regarding the season, I think the issue is their home is to the west of our home, and how the height increase may potentially impact our backyard and sunlight and the view of the outside of our house from the inside to the outside of our house, that's our primary concern. We are interested in finding a solution that works to both of

our interests. We certainly would appreciate looking at something nicer out of that window, but we do know in looking out that window, we will not see the sky in the same way we currently see it and we don't really have good information on how it's going to impact us.

So that was basically my understanding of how we left it was, let's get an idea of how this is going to impact us. And indeed I said -- he asked if I needed a letter from his architect? And I said no, if you talk with your architect, I'm going to trust what you say. So that's pretty much where we left it and that was the information we got today.

So, I think as is evident in the pictures here, this is today's sunlight and certainly it shows a shadow that's

primarily cast from the south on to the north if I have that correct. And so we're a little -- we're just wondering what's that impact going to be on us.

JONATHAN MEDEIROS: I do have an image I got from Google Maps from September of 2014 that might, you know, allude to what I was saying.

RACHELLE LaMASTER: That was one of the ones you sent.

JONATHAN MEDEIROS: Yes. It casts a little bit less of a shadow. She's right, I did have a technical problem with the e-mail so I forwarded it to my mother to her work address, and she tried to forward it and she told me that it went through on Tuesday which is why I didn't drop off anything to my house like I said I would, the hard copies, so I was under

the impression that it went through Tuesday. This morning I did get a message so I did my best to get everything I could as fast as I could. I broke it up into different e-mails. Seven different e-mails.

RACHELLE LaMASTER: There is no question that you tried your best that you tried to get us the information.

CONSTANTINE ALEXANDER: That's our assumption as well.

RACHELLE LaMASTER: There's no question about that. We just don't have a clear understanding whether this is going to impact us and how it might, and that's really what we're looking at.

CONSTANTINE ALEXANDER: There is one way of solving this problem and one way I know and that's a shadow study.

Which, you know, where scientifically you'll see the shadow, the impact on your property at different times of day at different seasons. There's an expense involved with that. There's a time delay involved with that. And I guess that's the question. How long -- if we were -- say to you get a shadow study, how long would it take? I don't want to know how much it would cost, but how long would it take to get something to your -- the neighbor?

CAMPBELL ELLSWORTH: A couple days.

CONSTANTINE ALEXANDER: A couple days?

CAMPBELL ELLSWORTH: Yeah.

JONATHAN MEDEIROS: How much is it going to cost? It's going to cost me

money?

CAMPBELL ELLSWORTH: Yeah, it's going to cost you.

CONSTANTINE ALEXANDER: It's not going to cost her, it's not going to cost us, you're the only one left.

BRENDAN SULLIVAN: I'll say a couple of things. There's a shadow study obviously, but also a photo simulation so that you can see what it will look like from a vantage point from your house would probably, I think it's really a two part thing. Shadow studies, they're very nice and so on and so forth. But it's what you're going to see on a sunny day, on a cloudy day, on any day is really what tips the balance. Whether you feel it is going to impact or it will have a negligible effect. So I think both of those are

probably necessary.

CONSTANTINE ALEXANDER: Well, it seems to me that we should continue this case once again for two more weeks. I think you said, you can get the work done in two more weeks. I know, I see your consternation, but I have to point out to you as Mr. Sullivan pointed out earlier, is that it behooves you to try to get, if you can, neighborhood cooperation because if you don't, it could be litigation in the courts, in which case you're not talking a couple days, you're talking a couple years which however the case comes down. So....

JONATHAN MEDEIROS: I'm just concerned. I just want to ask one question of what exactly, what type of view you're looking for when you have this

parking lot in front of you, and the only thing behind this house is a big brown Livermore Place and you only see a brown house other than my house which is only the only thing you see anyway. What view exactly is that important to cause me this, this continued stress and grief over what, you know, is a very important project to me and my family?

RACHELLE LaMASTER: So one of the issues, I think as I've indicated, the primary issue is how the light will impact us. However when we were at -- when you're at this window and you currently look out it, I'm able to see sky. And when you're -- and with the three and a half feet, I believe it is, that will be raised. That will be obstructing.

JONATHAN MEDEIROS: The sky will

be obstructed?

RACHELLE LaMASTER: Yeah, because on the house.

CONSTANTINE ALEXANDER: Can I make a suggestion at this point?

RACHELLE LaMASTER: I'm happy to agree for you to come over and take a look you were in the kitchen. You can come over and look at it.

CONSTANTINE ALEXANDER: One thing we can do is we can recess this case. If you folks can go out in the room back there, you could have further discussions, answer your questions, maybe you'll come to some understanding. Come back to us next half hour, however long you need to talk about it, because we have a lot people in the audience and we have a lot of cases to hear tonight. I want to move

the agenda along. Come back and let -- report where you now are and then we'll decide what to do; whether to continue the case or go to a vote on the merits which would be up or down.

DOUGLAS MYERS: I would just like to say before they do that, I would like to state my opinion that I think that a request to have a shadow study and a photo simulation is reasonable, it provides reasonable information not only satisfies a point that I think is fair to raise, but it provides reasonable information for this Board in order to make a fair decision considering the applicant's interest and considering the points raised by the abutters.

CONSTANTINE ALEXANDER: Yes.

DOUGLAS MYERS: So for what it's

worth, I would also join in those opinions that if there's any question, if there's not resolved by your discussions, I myself are in favor of the shadow study and the photo simulation.

RACHELLE LaMASTER: I guess I do have one question.

CONSTANTINE ALEXANDER: Unless it's to us. If it's just to them, do it during the recess.

RACHELLE LaMASTER: Sure, you bet.

CONSTANTINE ALEXANDER: So we can move along with our agenda.

RACHELLE LaMASTER: I thought you were going to bring information that you were going to present this evening. You don't have anything additional.

CAMPBELL ELLSWORTH: There's nothing additional to what Jonathan's

presented, but I would, if I could, as I might interpret it, looks like two members of the Board would want the shadow study to happen.

CONSTANTINE ALEXANDER: At least.

CAMPBELL ELLSWORTH: At least.

CONSTANTINE ALEXANDER: You only need two, because if two vote against it and as you know you defeat it.

CAMPBELL ELLSWORTH: I would suggest, I know this is frustrating, I would suggest that we request the continuance. And I would request, also, that we go talk so that we come to an agreement on sort of how we will proceed --

RACHELLE LaMASTER: Sure, absolutely.

CAMPBELL ELLSWORTH: -- with that.

Because to do a reasonable photo realization we need to access your backyard or some window in your home. So that we can shoot, you know, take those shots and then we can superimpose the new building from that. And the shadow studies can be done completely in a piece of software and sketch up and those are quite accurate. So you'll see the before, the after, and what happens at different times of the year so we can present all sorts of information, and that's actually what takes, that's a rather quick thing these days. Again, I need to access your home to just take some measurements of it, height of your building in a sense. Actually not really, but I would like to -- I mean, I was impressed with Jonathan's photography and I was made

aware that your neighbor, your direct abutter, actually seems to cast a shadow early on in the sun process much earlier than this house would. So I'd like to actually present that be able to present that as well. So it really means modelling his house before and after, your house and the abutter's in basic massing.

BRENDAN SULLIVAN: So, anyhow, the next available date?

CONSTANTINE ALEXANDER: Yes, thank you.

MARIA PACHECO: December 10th.

CONSTANTINE ALEXANDER: Yes, why not? Remember we have Thanksgiving in between that's not going to interfere with your ability to get the work done and to share it with the neighbor. Right?

CAMPBELL ELLSWORTH: No.

CONSTANTINE ALEXANDER: No? It won't interfere?

CAMPBELL ELLSWORTH: It will not interfere. It will not interfere. We'll make it happen.

CONSTANTINE ALEXANDER: Okay. Then I'm going to make a motion to continue this case again as a case heard.

The Chair moves that this case be continued as a case heard until seven p.m. on December 10th subject to the following conditions:

That a waiver of time for decision be signed. And that's already been done. So that's been satisfied.

That the posting sign be modified once again to reflect the new date, December 10th, the same time now, seven p.m. You can do it by magic marker. And

that modified sign must be maintained for the 14 days required under our Ordinance.

And lastly, to the extent that as a result of these discussions or otherwise, you wish to modify the plans that are in our files right now, that these modified plans and any new dimensional form be in our files no later than five p.m. on the Monday before December 10th.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. See you in December.

(Alexander, Hughes, Sullivan, Green Myers.)

* * * * *

(7:30 p.m.)

(Sitting Members Case BZA-008064-2015:

Timothy Hughes, Douglas Myers, George S.

Best, Jim Monteverde, Laura Wernick.)

TIMOTHY HUGHES: The acting Chair
will call case No. 008064, 68 Middlesex
Street.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair. For the record, James Rafferty appearing on behalf of the applicant Joseph Ronchetti. This is a continued case as the Board will recall. This is a proposal that Mr. Ronchetti has filed to add a dormer in a home which his family has owned for nearly 100 years. It's the home he grew up in. He's looking to renovate the second floor apartment, and in particular to make more usable space out of the third floor of that second floor apartment. The plan when it was originally presented, contained two dormers. Those dormers, one was at 14-and-a-half feet and the second dormer was at seven feet. There was a total of 86 square feet of proposed GFA represented

in those dormers. There was concern expressed at the hearing by certain board members about the dormer guidelines, and while no dormer exceeded 15 feet collectively, they did exceed 15 feet and it was acknowledged that the separation between the two dormers had less to do with function and more to do with an attempt to meet those guidelines. So the proposal previously had two bedrooms in the attic area. This proposal with the single dormer has one bedroom but a larger bathroom. So based on the work of Mr. Ronchetti achieved with his architect Mr. Altobello, we have come in with a proposal that as I said is now slightly smaller at 60 square feet, a modest increase in GFA, a dormer that complies with the length, and it's a single dormer

of 15 feet.

DOUGLAS MYERS: One dormer?

ATTORNEY JAMES RAFFERTY: One new dormer. It's one single dormer at 15 feet. Whereas collectively the prior proposal was two dormers at 21-and-a-half feet.

Like many constraints, it allows for an exploration of programmatic changes, and I think at the end of the day as I'm sure the Board so often hears, I think the applicant is not unhappy with where things have ended in terms of functionality and would hope the Board would recognize the modifications with consistent with the direction provided at the prior hearing and a reflection of Mr. Altobello's desire to comply with the guidelines and we know the dormers are one of the more popular

forms of addition given the form of housing stock that predominates the North Cambridge area, the two-family house. This will allow Mr. Ronchetti to proceed with his renovations and he looks forward to joining his future wife here and starting a family and remaining in the neighborhood. So for all those reasons we would urge the Board to act favorably upon the application.

TIMOTHY HUGHES: Any discussion, questions from Board members?

(No Response.)

TIMOTHY HUGHES: I'll open it up to public testimony.

Does anyone want to be heard on this case?

(No Response.)

TIMOTHY HUGHES: I don't see

anyone. There aren't any letters in the file so I'll close public testimony.

ATTORNEY JAMES RAFFERTY: I would just note, Mr. Chair, for the record, board members, I recall there were a series of letters from all abutters in favor of the prior proposal.

TIMOTHY HUGHES: Prior proposal, exactly.

ATTORNEY JAMES RAFFERTY: And I think it's reasonable to assume if an abutter was content with the prior proposal, they would be equally satisfied. I know Mr. Ronchetti I has spoken to them individually but he did not ask them to issue new correspondence.

TIMOTHY HUGHES: Any further discussion?

(No Response.)

TIMOTHY HUGHES: We ready for a vote?

The Chair would move that a Variance be granted for the property at 68 Middlesex Street for the construction of a dormer that is in keeping with the dormer guidelines.

A literal enforcement of the provisions of the Ordinance would involve a substantial hardship, financial or otherwise to the petitioner for the following reasons:

A literal enforcement of the Ordinance would preclude the petitioner from making the proposed modifications to the second floor unit which currently only has one full bedroom. Well, it's still only go to have one full bedroom.

The hardship is owing to the

following circumstances relating to the soil conditions or topography of such land or structures and especially affecting such land or structures but not affecting generally the Zoning District to which it is located for the following reason:

The hardship is related to the size and shape of the lot, age, and condition of the structure and the slope of the existing roof.

Desirable relief may be granted without either substantial detriment to the public good for the following reasons: Adding a dormer to the two-family dwelling will not create any detriment to the public good since the footprint of the structure will not change.

Setbacks and the amount of open space will not be diminished.

And the resulting increase in gross floor area is approximately 60 feet.

Relief may be granted without nullifying or substantially derogating from the intent or purpose of the Ordinance for the following reasons:

The nature and intensity of the use of this two-family dwelling will not change by installing the proposed dormer.

All those in favor of granting the Variance?

(Show of hands.)

TIMOTHY HUGHES: That's five in favor.

(Hughes, Myers, Best, Monteverde, Wernick.)

TIMOTHY HUGHES: Do we have a Special Permit?

DOUGLAS MYERS: You want to

mention the plans?

TIMOTHY HUGHES: Oh, yes. So the motion would carry that the work be done in accordance with the plans submitted, most recent plans submitted, I'm going to with Essex Engineer Survey, Newton Lower Falls, dated and initialled by the Chair.

ATTORNEY JAMES RAFFERTY: I believe they contained a date.

JOHN ALTOBELLO: 10/20/2015.
That's the architectural plans.

ATTORNEY JAMES RAFFERTY: 10/20, they're the revised plans.

TIMOTHY HUGHES: I don't have that.

DOUGLAS MYERS: They should be in the file.

ATTORNEY JAMES RAFFERTY: It's at the bottom.

TIMOTHY HUGHES: The smaller pages? This stuff here? I've got something that's dated October 29th here.

ATTORNEY JAMES RAFFERTY: October 29th?

TIMOTHY HUGHES: It's stamped October 29th. I don't know how that happened because this is, this is obviously the single dormer version of it. Oh, 10/20/2015?

ATTORNEY JAMES RAFFERTY:
10/20/2015.

TIMOTHY HUGHES: Got it.

ATTORNEY JAMES RAFFERTY: I think the plot plan may have a different date.

TIMOTHY HUGHES: That's what it is. That's the top sheet is the plot plan and it does have a -- top couple of sheets.

Special Permit.

ATTORNEY JAMES RAFFERTY: There are windows located in the dormer and that side of the house is not within the -- is within the setback, it doesn't meet the setback and as a result the Special Permit's required in order for the windows to be placed into the house -- into the dormer.

TIMOTHY HUGHES: Any discussion about that?

(No Response.)

TIMOTHY HUGHES: The Chair would move that a Special Permit be allowed for the placement of windows in a dormer in a setback.

Requirements of the Ordinance can and will be met for the following reasons:

Article 8.22.2c permits the creation of windows on non-conforming walls when as in this case there are no further violations of the dimensional requirements.

Traffic generated or patterns of access and egress would not cause congestion, hazard, or substantial change in established neighborhood character for the following reasons:

There will not be any changes in traffic patterns as a result of adding windows to a dormer.

The continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use for the following reasons:

Adjacent uses will not be affected

since the use of the property as a two-family dwelling will not be changed.

Nuisance or hazard would not be created to the detriment of the health, safety, and welfare of the occupant of the proposed use or the citizens of the city for the following reasons:

Adding windows would benefit the health, safety, and welfare of the occupants of this dwelling.

And further reasons, the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purposes of this Ordinance for the following reasons:

The proposed windows will not change the use of the property and are consistent with the residential uses in the district.

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

(Aye.)

TIMOTHY HUGHES: That's five in favor.

(Hughes, Myers, Best, Monteverde, Wernick.)

ATTORNEY JAMES RAFFERTY: Thank you very much.

(7:40 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair is going to call -- before I call the next case, I understand that folks in the back of the room are having trouble hearing what's being said. I sympathize. We've had this problem for years. Sometimes we

have mics -- microphones so we can hear us through the microphone. We haven't had them for a while because it disrupts other people in the building. I only suggest that feel free to move your chairs over to the side or closer to the front, even behind us if you would like, and we will all try to speak as loudly as we can and take it from there. But that's just the way life is with this Board.

Okay, also since there are a lot of new people in the audience now then there were before, I'm just going to report again that this meeting is being -- for those who just joined us, this meeting is being recorded by a citizen of the city, and in addition, it's being recorded by our stenographer to assist her in preparing the transcript of the meeting.

All of our meetings we have a complete transcript and in due course those transcripts are posted on the City's website so they are accessible to the citizens of the city.

With that, I'm going to now call the next case, case No. 007664, 14 Arrow Street.

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

ATTORNEY RICARDO SOUSA: Good evening, Mr. Chairman, Members of the Board. For the record, Ricardo Sousa from Prince, Lobell, Tye here on behalf of the applicant T-Mobile.

CONSTANTINE ALEXANDER: Okay, go head. An initial question.

ATTORNEY RICARDO SOUSA: Yes.

CONSTANTINE ALEXANDER: What

relief are you seeking? A Special Permit under our Zoning Ordinance, a finding under, what is it, 6409 of the Spectrum Act or both or neither or what, what's up?

ATTORNEY RICARDO SOUSA: We have filed for relief in both forms.

CONSTANTINE ALEXANDER: Both forms?

ATTORNEY RICARDO SOUSA: We feel at least initially that this application satisfies Section 6409 of the Spectrum Act in the sense that it is not, it is not a substantial change and it meets all six of those guidelines under the eligible facilities request that we presented, but in the alternative, if this Board finds that it is deemed a substantial change, then we also requested relief in the form of a Special Permit to modify the

application.

CONSTANTINE ALEXANDER: So in the alternative, if we were to grant you relief under 6409, we'll never get to the second Special Permit?

ATTORNEY RICARDO SOUSA: I believe so, Mr. Chairman. That's the way I look at it as well.

CONSTANTINE ALEXANDER: It's your call. I just want to make sure I understand it.

ATTORNEY RICARDO SOUSA: And that's exactly how I see it. It's in the alternative. And I feel the eligible facilities request is the first form of relief that the Board should look at.

CONSTANTINE ALEXANDER: Okay.

Since this is the first case we're hearing under -- probably not the last,

under 6409, why don't you just briefly for our benefit, for the benefit of the Board and maybe for folks in the audience what we're talking about when we talk about 6409.

ATTORNEY RICARDO SOUSA: I could do that.

So the Federal Government in 2012 passed Section 6409 of the Tax Relief Act of 2012. The FCC has since passed an order or issued an order to clarify 6409 because it was so, let's say it was vague when it was originally passed by Congress. The purpose of the Act is to allow wireless telecommunications carriers to upgrade their networks in a rapid fashion so that we can provide better service to the general public on wireless networks. And it provided a streamlined process

whereby a wireless carrier that was installing additional antennas or modifying or upgrading its existing installations could present an eligible facilities request to a municipality for review within a 60-day period to facilitate the issuance of permits and approvals to essentially effectuate that upgrade to existing wireless installations. And the FCC order that was passed most recently, beginning of this year, clarified the elements under which a municipality could review an eligible facilities request and essentially set forth six factors that would deem an eligible facilities request compliance. And the first of which is that modifications cannot extend the height of the base station of the structure or the

wireless installation by more than ten feet or ten percent of that structure.

In this case what we're proposing is the addition of three panel antennas, and we're not proposing on an existing smokestack. And we're not proposing to increase the height of that structure at all. In fact, we're facade mounting the antennas.

The second factor is that the equipment itself, the antennas, do not protrude more than six feet from that base station. And so in this case we're not protruding, you can see in our plans, in our photo simulations, our antennas are not going to protrude more than six feet from the base station itself.

The third factor is that it will not increase the number of cabinets by more

than four. Two in number, more than four. As you can see in our plans, we're not increasing the number of base cabinets at the installation by more than four.

The fourth factor is that it be, the modification does not require excavation at the site. If it required excavation, that would be deemed a substantial change.

The fifth factor is that it, the modification of the transmission of equipment does not defeat the existing concealed or stealth design of the existing, the existing installation.

And then last, No. 6, is that the modifications comply with the prior conditions of the original approval. And so if you meet all six of those factors, the intent of Congress and also the FCC is that the municipality would grant an

eligible facilities request and issue a Building Permit or an Electrical Permit, whatever is necessary, to allow the wireless carrier to make those modifications.

CONSTANTINE ALEXANDER: You know, the City's Legal Department has not supplied us with this information, these six conditions. Could you provide them to the Board after the meeting or next week? I don't -- this is all new to me.

ATTORNEY RICARDO SOUSA: I'm surprised by that because I have had --

BRENDAN SULLIVAN: It doesn't surprise me.

ATTORNEY RICARDO SOUSA: I've had numerous discussions --

BRENDAN SULLIVAN: It does not surprise me.

ATTORNEY RICARDO SOUSA: I've had numerous discussions with the City Solicitor in advance -- or the City Solicitor's office I should say, a couple of orders, in advance of this meeting. Our intent was always to work cooperatively with the --

CONSTANTINE ALEXANDER: Oh, I understand that.

ATTORNEY RICARDO SOUSA: Advise them of this statute. Advise them of the order. We met numerous times. We also submitted this eligible facilities request not only to the City Solicitor's office but we submitted it into, into ISD as well. And I actually brought multiple copies of the eligible facilities request and that sets forth not only the photo simulations in the plans but also the

guidelines, the six guidelines under the eligible facilities request.

CONSTANTINE ALEXANDER: What tab is that?

ATTORNEY RICARDO SOUSA: That is my letter on tab 1.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY RICARDO SOUSA: So this is the introductory letter that sets forth the six guidelines and also shows how we feel we comply.

And before I get into the eligible facilities request, I would like to say that the applicant's been working on this application with the City really since April 23, 2015. So we first knew that this was in a historic district and it was a historic structure so we filed a notice and application with the Historic

Commission.

That the Historic Commission actually deemed and granted a Certificate of Non-Applicability. Not only a Certificate of Appropriateness but a Certificate of Non-Applicability. Essentially saying that these modifications are not deemed something that would rise even to a level of a hearing. But we still filed an application.

But in addition to that, the building is also subject to the review by the Harvard Square Advisory Committee. And we met with them on August 17th. And we also supplied revised plans to them as a result of some requested changes.

This is -- we also met with the Planning Board on two occasions; on August

11th and also August 18th. And there were a number of design changes that were requested by that Board. And so before we even got here to the BZA, we really felt we did our homework by working with all the various agencies that we felt were very concerned with design, the design elements of this installation. This original application for three panel antennas on the smokestack was originally approved by this Board in the form of a Special Permit in 2005. And it was deemed appropriate to be facade mounted, painted to match. And so any modification would also have to come to this Board as well. And so we filed -- but also go through the various other agencies that we mentioned. And so we think we've worked fairly cooperatively with all these boards in the

city who are charged with the aesthetic aspects of these installations, and we felt that we had a design that was acceptable to them.

CONSTANTINE ALEXANDER: So the design that's before us tonight is in response or takes into account the comments from the Planning Board and the Harvard Square Advisory Committee which is in our files?

ATTORNEY RICARDO SOUSA: That's correct, Mr. Chairman.

CONSTANTINE ALEXANDER: Okay.

I don't see any photo simulations in here.

ATTORNEY RICARDO SOUSA: Perhaps you got a copy that didn't have -- you don't have it either?

CONSTANTINE ALEXANDER: It's not

even in your table of contents.

ATTORNEY RICARDO SOUSA: I have it here. We may have just copied them separately for easy use. There you go.

CONSTANTINE ALEXANDER: Are these, by the way, the same photo simulations that were --

ATTORNEY RICARDO SOUSA: Same ones.

CONSTANTINE ALEXANDER: -- that were in your prior submission?

ATTORNEY RICARDO SOUSA: Yes, that's correct. Those are dated August 24th and they are the same ones, have not changed, since we were scheduled to come here on -- end of August.

CONSTANTINE ALEXANDER: And I take it that since you went to the Planning Board and the Harvard Square Advisory

Committee, they gave you comments, you said you've made changes in response.

ATTORNEY RICARDO SOUSA: We did.

CONSTANTINE ALEXANDER: You haven't gone back to them and showed them what changes you've made or what?

ATTORNEY RICARDO SOUSA: We did closed that loop with the Planning Board.

CONSTANTINE ALEXANDER: You closed it?

ATTORNEY RICARDO SOUSA: Yes, we did.

CONSTANTINE ALEXANDER: We haven't gotten any further communication that would say it was done that's why I ask.

ATTORNEY RICARDO SOUSA: The loop was closed prior to even coming here to the ZBA the first time --

CONSTANTINE ALEXANDER: Okay.

ATTORNEY RICARDO SOUSA: -- when the matter was called but not heard.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY RICARDO SOUSA: And essentially the changes were these: The purpose of this modification is to add three, what we call or what T-Mobile calls L-700 antennas to allow for our installation to have more bandwidth and operate on an LTE format so that our customers can have the level of wireless service that's necessary and that's demanded by the public and in accordance with our licenses. And so those L-700 antennas are typically much longer than the other antennas that we operate on our sites. And so in our first application, the antennas were at different lengths, and so as a result of discussions with the

advisory committee and also the Planning Board, we went back to the drawing board and had, and our engineers were allowed to approve a smaller antenna so that all of the antennas are the exact same length. So that was one big change.

In addition to that, we currently have, as I said, three panel antennas. If you look at the plans, there are currently three panel antennas here, and there are also what we call TMAs; they're small boxes at the bottom of the antennas. And the advisory committee and the Planning Board wanted us to essentially box out the TMAs because they were going to be a different size than the remote radio heads. And we would box those out so that all the small boxes that you see in the photo simulations are the same size. So

that was another significant change. And so the two boxes will look identical. Here's the before and here is the after.

CONSTANTINE ALEXANDER: What about the wiring request?

ATTORNEY RICARDO SOUSA: In addition to that, they also rerouted the cable trays and we made the change in the setup plans.

CONSTANTINE ALEXANDER: Why is it still visible on the exterior?

ATTORNEY RICARDO SOUSA: It is still visible there because there has to be a jumper from there to the actual cable tray which is on the other side.

CONSTANTINE ALEXANDER: That's a polar bear in a snowstorm.

ATTORNEY RICARDO SOUSA: It really is.

And as you can see it on this cable tray here. So they, they took out many of the horizontal cable trays on the wiring and we just have it here on this back side going all the way down.

So those are -- that's a summary of the changes that they requested that I think really streamlines the nature of the installation. And it allows us to be consistent with the previous approval in 2005 which was the facade mount, and to streamline the design as best as is possible by painting it to match the chimney.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Well, the thing that I can't get my hands on or head around is the requirements of 6409. And I really hate to spend all this time. The

modifications do not increase the base, well of course you're not going to go above that chimney.

ATTORNEY RICARDO SOUSA: Right.

BRENDAN SULLIVAN: The modifications do not protrude from the edge. To me, the whole idea of 6409 and to allow you to modify would be that you take down an existing antenna device, it has to be a better word for it, and put up something that is more compatible with today's technology, more advanced, blah, blah, blah, so on and so forth. Where it falls down with me is when you start to increase the number of them. Now you might be able to -- well, within these guidelines, not going above the 86 feet, not protruding more than two feet from the base station, you know, all that other

stuff, and that the cabinet which we don't see and also the base station and all that other stuff which we don't see, and as far as the existing concealment or stealth design, I think we have become a little bit more sophisticated, I think more stealthy has become more sophisticated, and we have tried to push the design into a better direction, too. So I wouldn't necessarily use what we approved way back then as we would probably, a lot of it is naivety at that point, but I think we have advanced beyond that. But what I cannot agree with is that the FCC regulation was meant to allow you to just increase a number, because at what point do you, you know, what is that yardstick? Okay. To take a facility off an antenna off and put another one up there to the point -- and

as long as it doesn't -- but then once you start increasing that, I think it has a visual impact.

ATTORNEY RICARDO SOUSA: Yeah, so there's always going to be some visual impact because you have to increase the number from a technological engineering perspective. Not all modifications --

BRENDAN SULLIVAN: That's what I'm trying to figure out. Where does that allow you in this? Where is that specifically that allows you to increase the number? We have size, we have this, but it doesn't address, to me, I can't see where it addresses the number, because we approved three before, and that was acceptable. Now it's six. Now what happens if next year all of a sudden you want to come down and put in nine, twelve?

Where is that yardstick?

ATTORNEY RICARDO SOUSA: Yes, in each case you have an opportunity to say it's a substantial change. I can tell you practically all modifications, almost all modifications, are increases in the number of antennas because they allow for the new technology. So all of these licenses are being issued by the FCC to these wireless carriers, and the only way the wireless carriers can utilize the actual licenses in the spectrum is by additional antennas. There are very few instances where they are actually able to take out an antenna and operate all their frequencies on one antenna. It's very rare. And in fact, I'm not aware of it.

BRENDAN SULLIVAN: I would think that you would be able to combine -- you

would be able to take two of these and you would be able to combine it to make it look like one.

ATTORNEY RICARDO SOUSA: Would that it were. I wish we could do that. And if we could, we would. Think about it, can you imagine a situation where we would forego an easy solution if we didn't have to add three antennas?

BRENDAN SULLIVAN: Well, because there's some manufacturer someplace who has five million of these things sitting in a warehouse and pushing them out. It's an easy installation.

ATTORNEY RICARDO SOUSA: But if you just look at the applications that come before you, most applications by Verizon and AT&T are nine to twelve antennas. Most applications by Sprint are

six to nine antennas. T-Mobile very rarely gets by on three antennas, and here they're asking for six. They aren't asking for nine, they're not asking for twelve. They're living with -- in fact, the first application that came before me was more than this, and I advised that we're not going to be able to satisfy the eligible facilities request requirements or the Special Permit requirements if we go too high.

BRENDAN SULLIVAN: I'm just trying to find out where that --

ATTORNEY RICARDO SOUSA: So we minimized --

BRENDAN SULLIVAN: -- where we cross that line.

ATTORNEY RICARDO SOUSA: Yes, right, absolutely. And I know, regarding,

Mr. Sullivan, regarding your comments on stealth, there have been many occasions where I've been before this Board and you've asked us to stealth installations. And if I'm on a rooftop and I'm on a penthouse and -- or a big commercial rooftop, I can put it in a box and I can make it look like a penthouse or I can make it look like a chimney. I can't do that here. And in fact, in those discussions with the Planning Board and the advisory committee, they felt it would be inappropriate to do a box out of all these antennas. It would protrude at so much mass to the top of this smokestack that I think it would have a more significant impact than simply facade mounting the antennas as close as you can to the facade. So there are instances

where you're right, you could take a stealthing technique and try to hide the antennas from the general public altogether, you just can't do that with this structure.

BRENDAN SULLIVAN: It would be top heavy?

ATTORNEY RICARDO SOUSA: It would be top heavy, exactly. There were comments to that effect.

So you'd have structural, maintenance, appearance issues. There are significant reasons why both the Planning Board and the advisory committee felt that would not be appropriate. And we as applicants feel, we have an opinion as well, we feel that this is a much better design as well.

CONSTANTINE ALEXANDER: Any other

comments?

(No Response.)

CONSTANTINE ALEXANDER: I'll open the matter up to public testimony and I'm sure everybody is dieing to talk about this.

Does anyone have any comments on this matter?

(No Response.)

CONSTANTINE ALEXANDER: No comments.

We have no letters in the file other than communications from the Planning Board and the Harvard Square Advisory Committee which are really outdated because the -- what we have before us are in response to those proposals, those comments. Am I right? You told us earlier.

ATTORNEY RICARDO SOUSA: We closed the loop. We went back there, yes. Yes.

CONSTANTINE ALEXANDER: Okay. Closed the loop. So those letters are superseded basically?

ATTORNEY RICARDO SOUSA: They are, they are superseded by the plans that are in your file and they have not changed since the first opening of this public hearing, that's right.

CONSTANTINE ALEXANDER: I'll close public testimony.

Discussion?

BRENDAN SULLIVAN: Now this is 6409?

CONSTANTINE ALEXANDER: 6409, that's right. We'll never get to the other -- if, if we approve --

BRENDAN SULLIVAN: We don't have

to get to the --

CONSTANTINE ALEXANDER: -- then I'm going to ask the petitioner to withdraw his application for the Special Permit under our Zoning Ordinance.

BRENDAN SULLIVAN: We have to make a requirement.

ATTORNEY RICARDO SOUSA: Right, if we meet under 6409.

CONSTANTINE ALEXANDER: Yes, if we grant -- make a finding. As you pointed out earlier, you don't need it.

ATTORNEY RICARDO SOUSA: I would agree with you, Mr. Chairman, absolutely right.

CONSTANTINE ALEXANDER: Ready for a vote?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: The Chair

moves that the modification to what's existing telecommunication facility at 14 Arrow Street proposed by the petitioner does not substantially change the physical dimensions of such facility within the meaning of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, also known as the Spectrum Act, because it will not defeat the existing concealment elements of the existing facility provided that the petitioner complies with the following conditions:

That the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair. Right here.

ATTORNEY RICARDO SOUSA: Correct.

CONSTANTINE ALEXANDER: That upon completion of the work, the physical appearance and impact of the proposed work

will be consistent with the photo simulations submitted by the petitioner and initialled by the Chair.

ATTORNEY RICARDO SOUSA: Yes.

CONSTANTINE ALEXANDER: That the petitioner shall at all times maintain the proposed work so that its physical appearance and impact will remain consistent with the photo simulations previously referred to.

So you've got to keep these things in good appearance.

ATTORNEY RICARDO SOUSA: Of course.

CONSTANTINE ALEXANDER: And four, that should the petitioner cease to maintain -- cease to utilize the equipment approved tonight for a continuous period of six months or more, it shall remove the

property therefore -- it shall promptly thereafter remove such equipment and restore the building on which it is located to its prior condition and appearance to the extent reasonably practical.

All those in favor of adopting this proposal please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion carries.

So you have the necessary finding on the necessary 6409(a).

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

CONSTANTINE ALEXANDER: Do I hear a request from you to withdraw your petition for the Special Permit under the Zoning Ordinance?

ATTORNEY RICARDO SOUSA: Yes, I do, Mr. Chairman. I would respectfully request that the application for a Special Permit be withdrawn.

CONSTANTINE ALEXANDER: The Chair moves that we accept the request to withdraw the petitioner's Special Permit application under our Zoning Ordinance.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

ATTORNEY RICARDO SOUSA: Thank you, Mr. Chairman. Thank you Members of the Board.

* * * * *

(8:05 p.m.)

(Sitting Members BZA-007170-2015:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Janet Green, Slater W.
Anderson.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 007170, 307 Fresh Pond
Parkway.

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

ATTORNEY JOSEPH NOONE: Good

evening.

CONSTANTINE ALEXANDER: Good evening.

ATTORNEY JOSEPH NOONE: I'm attorney Joseph Noone. I represent the applicant Elie Lakkis who is the owner of the property located at 307 Fresh Pond Parkway.

CONSTANTINE ALEXANDER: Just before you start, are you aware of the correspondence in our file? You have letters of opposition including from the Planning Board.

ATTORNEY JOSEPH NOONE: I'm aware of the Planning Board opposition.

CONSTANTINE ALEXANDER: Okay. I see familiar faces in the audience, too, so you've got neighborhood vocal opposition as well as written opposition.

FROM THE AUDIENCE: Can you speak up? Many of us want to hear this. Petitioners please speak as loud as you can.

CONSTANTINE ALEXANDER: You heard that?

ATTORNEY JOSEPH NOONE: Yes.

CONSTANTINE ALEXANDER: Maybe if you slid over to this side and face the stenographer and it will be easier for them and us to hear.

ATTORNEY JOSEPH NOONE: I also have with me tonight landscape architect Mark Copshel (phonetic) and our architect from HBS Architecture Michael Dugan (sic).

MICHAEL DENNIS: Michael Dennis.

CONSTANTINE ALEXANDER: The floor is yours.

ATTORNEY JOSEPH NOONE: Members of

the Board, we are here seeking relief for three issues:

The first is a request for a change of use for the current property. The desire is to change the use to an automotive repair facility under the zoning bylaw.

CONSTANTINE ALEXANDER: And that relief requires a Special Permit, not a Variance?

ATTORNEY JOSEPH NOONE: Correct.

And with regard to the change of use, the intent of the bylaw will not be impaired. The proposed use will be a benefit to the neighborhood and will not derogate from the neighborhood and what is already in existence there. What Mr. Lakkis intends to do is he is the owner of the two adjacent parcels; 317

Fresh Pond Parkway and leases the Mobil Gas Station at 325. The intent is to connect -- not connect, but permit access between the building at 317 Fresh Pond Parkway where he currently operates Abe's Automotive Repair Facility. There will be a door connecting both buildings whereby at 307 Fresh Pond Parkway he will expand his automotive repair garage. There will be a door at 317 and 307 whereby cars will be able to access into 307.

The intent is to minimize the amount of traffic onto Vassal Lane by the proposed proposal that we have here by allowing the vehicles to be worked on. By accessing from 317 Fresh Pond Parkway, there will be very limited traffic into the neighborhood. The only traffic that will be going on to Vassal Lane will be by

employees for Mr. Lakkis's business. As you currently are aware, the existing area is -- currently has several automotive uses adjacent thereto and across the street and throughout the parkway. So the proposal to change the use from a restaurant to an automotive repair facility fits in with the existing use of the neighborhood. Throughout this process we have met with the neighborhood groups on several occasions, and the plans have been modified to address all of the concerns except for one that have been raised by Ms. Devereaux and her group. Mr. Lakkis has agreed to all of those changes to enhance the project and to address the neighborhood's concerns.

So because of the use that is already in existence in that area, it is

our position that the change of use complies with the requirements of the Zoning Bylaw, will not be a detriment. There will not be any increased traffic. There will not be any hazardous activity going on there that will be detrimental to the neighborhood. And that the existing condition of the building will greatly be improved and will be an improvement to the entire neighborhood.

The exterior facade of the building is going to be bricked. The overlay requirements are going to be applied to the building whereby there will be windows installed upon the facade facing the Fresh Pond Parkway and along Vassal Lane. In addition, the property will be landscaped to greatly improve its appearance in feel to the neighborhood. Many of the concerns

that were addressed by the neighbors dealt with the landscaping. All of the landscaping requests by the neighborhood have been incorporated into the plans. The only exception being the request that the hardtop be paved over at this point in time.

CONSTANTINE ALEXANDER: What's that?

ATTORNEY JOSEPH NOONE: The hardtop of the parking lot be paved over. So out of all the concerns and all of the meetings that we've had, all of them have been agreed to by Mr. Lakkis.

The other relief that is requested is a waiver of the requirement that parking not be immediately adjacent to the building. That is needed because we've installed -- the planning calls for the

installation of windows, and so there is a request that the setback of parking adjacent to the building be waived.

And finally, the last request is for a Variance in the slight increase in the height of the building. Because of the age of the building and the condition of it, the applicant desires to increase the roof, the height of the -- raise the height of the roof by approximately four feet.

CONSTANTINE ALEXANDER: Roughly six feet to ten feet?

ATTORNEY JOSEPH NOONE: No, it's going from 12.9 feet to roughly 16 feet.

CONSTANTINE ALEXANDER: Okay.

Let me just point out to the audience, and maybe the benefit of the board members, it's a little bit not

correct to say you want a Variance for the height. Basically the building right now is non-compliant as to setbacks. The wall. You're going to increase that area that's non-compliant to setbacks by going up four feet as you point out, that we call is increasing the massing on the, of the intrusion to the setback, and that's what requires a Zoning relief. So it's really increased massing on the setback because you're going to go a little higher. It's not technically the height because you're well within the height limitations of our Zoning Ordinance. So that's what it's about. It's basically they're too close to the lot line now where the building is now, they want to make that part of the building go up four more feet so it will be more massing along

your lot line.

ATTORNEY JOSEPH NOONE: Right.

And I would like to point out to the board members that it appears that when this building was originally constructed, that it was constructed with the mindset that it was a corner lot and that's the reason why there is no rear setback on the property. And since the DCR took over the property, that exists in front of the building, the front -- the property line for the front of the building along Fresh Pond Parkway goes right to the lot line. The landscaped area from the front of the building to the roadway is owned by DCR. So, the way the building was originally constructed, there was no setback and so, therefore, that's why we have the need to obtain the Variance for the change in the

volume of the building. The change in the volume of the building, I would submit, is rather de minimus. The area, the district permits that 35-foot high building in that area. We would also submit that the change in the -- the increase in the height of the roof or the volume of the building will bring the building itself into conformity with the other surrounding buildings, it will be more uniform in height and will be -- from a visual standpoint will be a more attractive to the neighborhood.

In addition, the benefit of having to repair the roof and raise it, the Tokyo sign that is -- was on top of the building has been taken down or will be taken down, and the increase in the height of the roof will be lower than what the signage was on

that building. So from that standpoint, because of the shape of the lot, there is a hardship and we would request the Variance in that regard.

The other thing I would like to point out, there has been some discussion from the neighborhood about the area and whether or not automotive use is appropriate for this particular area. I would submit that the area does have automotive use. It appears for the foreseeable future that automotive use is going to remain there and that Mr. Lakkis's proposal is, is most conducive for the neighborhood because of his ownership of the adjacent building. That will impact the amount of traffic that will be flowing onto Vassal Lane and into the neighborhood. As a result, if

some other use were to go in there that would not be able to utilize Mr. Lakkis's existing property, there would be significantly increased vehicular traffic and increased safety concerns for the neighborhood.

CONSTANTINE ALEXANDER: How long has it been since the Tokyo -- roughly since the Tokyo Restaurant has been closed? It's an abandoned property for now. How long has it been that way, do you know? I'm sure the neighbors can tell you.

ATTORNEY JOSEPH NOONE: I don't know. He purchased the property a little less than a year ago.

CONSTANTINE ALEXANDER: So it's been --

FROM THE AUDIENCE: 15, 18.

CONSTANTINE ALEXANDER: I was going to say five, ten years.

FROM THE AUDIENCE: 15, a long time.

ATTORNEY JOSEPH NOONE: So with that, we would request the relief that we've petitioned for.

CONSTANTINE ALEXANDER: The Variance and the two Special Permits?

ATTORNEY JOSEPH NOONE: Yes.

CONSTANTINE ALEXANDER: Okay.

Questions at this point from the members of the board?

BRENDAN SULLIVAN: What is the need to raise that wall up four feet?

ATTORNEY JOSEPH NOONE: Because currently the existing roof is dilapidated and any repairs to the interior of the building will further cause additional

damage. The need to increase the roof, the height of the roof would be beneficial to what he intends to --

CONSTANTINE ALEXANDER: The jacks. Your lifts you're going to have in the garage --

ATTORNEY JOSEPH NOONE: To operate the --

CONSTANTINE ALEXANDER: He's going to have lifts?

ATTORNEY JOSEPH NOONE: The lifts.

BRENDAN SULLIVAN: Well, you only need 12 feet for a lift.

ATTORNEY JOSEPH NOONE: Well, the height of the building is 12-foot, 9 from, on the exterior.

BRENDAN SULLIVAN: Right.

ATTORNEY JOSEPH NOONE: So the increased height --

BRENDAN SULLIVAN: So you're coming in from that and then to put a car on the lift and lift it up to work underneath it, all you need is 12 feet.

ATTORNEY JOSEPH NOONE: Yeah, Ideally it would be preferable to have the extra space for the lift to --

CONSTANTINE ALEXANDER: And under the relief you're seeking, you want to go how high, 16 feet I think you said?

ATTORNEY JOSEPH NOONE: 16 feet.

CONSTANTINE ALEXANDER:
Mr. Sullivan is pointing out you only need 12.

ATTORNEY JOSEPH NOONE: The building is already 12, 9 from the exterior.

BRENDAN SULLIVAN: At that point. And it's a pitched. Then, again, I don't

see any need to go up to 16 because all you really need to get underneath the car is yourself and the car which is -- tops off at 12 feet, or the alternative is put a pit in.

ATTORNEY JOSEPH NOONE: The other alternative that he has is that the portion of the building that is within the setback, that portion of the roof, that is not within the setback requirement could be raised, so there would be a visual deterrent to having one part of the roof, only the existing height and then raising the height of the other portion. So....

BRENDAN SULLIVAN: But that's a choice. I mean, I guess what I'm trying to -- I don't see the hardship in having to raise that wall four feet because a car, you know, goes up to 12 feet. You're

working underneath the car. And if that doesn't work, then you do a pit. You go to Valvoline, they go underneath the car.

ATTORNEY JOSEPH NOONE: Well, then you're talking significant increase in construction costs to --

BRENDAN SULLIVAN: You paid \$3 million for a building you have to have a use for it as of right and not assume that you're going to get some relief from the Zoning Board to make it more worthwhile, more valuable. So that to buy a building you have to say, yeah, we can use it as of today, tomorrow. You know, we would like to expand, we'd like to do some other things to it, but if you're going to lay out that kind of money, it should be able to be used in its present condition other than some modifications or some repairs.

That would be my point.

CONSTANTINE ALEXANDER: This is an issue that we have, not just for your case, but for other cases including one we're going to hear later on tonight about people buying a property and then asking our board to grant them relief, not satisfying the requirements for a Variance in order to increase the value, or in this case the utility of the structure. You know, I don't want to get into -- we'll have a discussion later about the hardship, but I think the bigger issue, frankly, before us is the Special Permit to convert the use from a restaurant to an auto repair. But those are all separate issues. We may grant relief on one and not the other. We may grant no relief, we may grant relief on everything. We'll

find out before the evening is over.

Anything further?

BRENDAN SULLIVAN: No, just editorializing, that's all.

CONSTANTINE ALEXANDER: Okay. With great trepidation I'm going to open the matter up to public comments.

Is there anyone here wishing to be heard on this matter? One at a time. Sir.

JOHN MCKERNAN: All right my name is John McKernan, M-c-K-e-r-n-a-n, 275 Lakeview Avenue. I'm nearest the abutter directly across from the former Tokyo building and unfortunately I work in Europe in the summer so I wasn't here to be able to have the discussions with the new owners at that time, and since I've been back, I have been keeping in touch

with Jan Devereaux who did some work back then in talking with the owners.

I have written two letters to the Board: One protesting the change of use because I have lived for the past 20 years across from the Cambridge Honda Company, and I base my anxiety about having another car repair facility there on the role of policeman that I was put into by being a neighbor across the street from a business that really cannot help making noise as much as they try to, and as many promises as they make to mitigate or choices not to mitigate, it's been a long haul. Then I saw the plans and I was pleased. I'm delighted to see that the property has finally been purchased because it's been derelict. I've said this before, and I say again that I bought my house there in

the first place across from Cambridge Honda, then it was Cambridge Chevrolet. It hadn't been bought knowing that was there. But I didn't buy it thinking that there might be another one on the other side of me. So I'm basically sandwiched. And I have sent, I think you have the pictures of where my property is and the dilemma that it presents. And since then, I have written and been in touch with all of my neighbors, the ones that are next-door to me and all the way up as far as Jan. So we have five to seven of us that are in that area directly affected, and we have had to deal with just as a quick sketch of some of the things that we've had as a constant problem, and I had one just three days ago when I was working in my garden and a huge car carrier came

and parked at the Tokyo Restaurant parking lot. It wasn't for him, it was for Cambridge Honda where they're not supposed to park, leaving the engine idling for 45 minutes which is also a violation of the city. So I have to pick up the phone and call, and by then the business is done and they go away, but the violation has happened and it happens again and again. Delivery trucks coming and going for parts for cars because they do repairs over there, too.

One of the letters, and I'm sorry I wasn't able, I've got seven letters here from abutters and I wasn't able to get to them in time for the Monday deadline. So I don't know if it's allowed that I can read them.

CONSTANTINE ALEXANDER: We can

take them at any time. It's just plans that we have for the Monday deadline. So you didn't have to -- you could have given them to us on Tuesday or Wednesday.

JOHN MCKERNAN: I had some of them were away and I got the final ones tonight. I've got four copies. I'd like to read one thing first.

CONSTANTINE ALEXANDER: I just want to make sure you understand the rules. You're okay to give us a letter Monday after the five p.m. deadline, that's all.

JOHN MCKERNAN: Thank you.

This is from Roger Boothe. I think you may remember him because he's in Community Development -- he was in Community Development for Cambridge and he's retired now. He lives up the street.

And he wrote this letter and asked if I would read it tonight and then you could have it for the public record.

CONSTANTINE ALEXANDER: Go right ahead.

JOHN MCKERNAN: He says: I am writing in opposition to the request for change of use for the former Tokyo Restaurant. The City's longstanding planning and design objectives for the parkway overlay district are to create a more hospitable environment that would better link the residential neighborhood with the Fresh Pond Reservation. To that end, the zoning for the area allows residential and retail uses with the expectations that redevelopment, over time, will make the parkway less dominated by the automobile and auto-related uses.

Every project is required to have landscaped setbacks on the private edge of the public parkway. Auto uses are explicitly not allowed. Several years ago the City and the Commonwealth renovated a major renovation -- he goes on to talk about the improvements that were made to the parkway. I don't think I need to make those here. I think it goes to the terms expecting it to continue to be an extended use of automobiles in that area.

The other letters, which I'm -- I can read to you because it gives you some of the history of that previous property.

CONSTANTINE ALEXANDER: I would ask only if it's really pertinent to our decision.

JOHN MCKERNAN: Some of this is, yes.

CONSTANTINE ALEXANDER: Maybe you can summarize what's in the letters for us.

JOHN McKERNAN: All right, let me see. One of the things that is a concern is the traffic and the safety. And this is a neighbor that lives right across from the Tobin School where there's constant traffic coming and going in there during the school year.

Let's see here. We see now the proposed development in the garage and repair space of the empty restaurant building and corner lot which we guarantee an increase in auto and truck traffic onto a street heavily used by pedestrians, back of Fresh Pond Parkway, and so I support Mr. McKernan, and like the others who are certain to be affected by more noise,

traffic, and general aesthetic decline and oppose the new property owner's plans.

And the rest of it is like this.

And I don't know, I'm sure you haven't had a chance to see this, but I am not going to be completely opposed to this change of use. I hope for it, but I can understand that there is a, you know -- I'm -- this is a person who is trying to run a business. However, if the Board is thinking that they want to grant this change of use, I have suggested that there is a way of doing this that would in my mind anyway, immediately mitigate much of the problem that would happen here, because if you put that door in that facade on Vassal Lane in a parking lot that's supposed to be used only by the employees, it won't be long before it's

going to be used to take cars in and out for repair. You already have a door in the back of that building that you could use. And I've drawn a plan to show how it could be. You can drive -- take all of those cars and that driveway you have back there behind the chain link fence, move them. You've got plenty of room for people to drive and get their cars repaired in that door and into the Tokyo Restaurant and you would gain extra space if you look at my plan. I don't know if you've seen it. But I'm not an architect.

CONSTANTINE ALEXANDER: Let me ask you a question, if the petitioner were to make the change you just made with the door, would you still be opposed with the change of use Special Permit that's being requested to allow an auto body? First

initial issue is --

JOHN McKERNAN: I understand. You're putting me between a rock and hard place as they say.

CONSTANTINE ALEXANDER: That's where we usually sit.

JOHN McKERNAN: I would like it to be used for retail and residential use. If the city is going to really want to have the taxes, that's what I'm thinking is it might be driving this for making it into an auto repair facility, but I don't think we need to do that. He has that large garage there. And you could use that building, you could develop it into some kind of a retail property and probably come out very well as a result of that. So that's where I'm standing.

CONSTANTINE ALEXANDER: And the

other thing I would point out, and the obvious, it's been 15 years that property has been vacant. Should we turn these folks down, it may be another 15 years that you're going to live next to an abandoned property.

JOHN MCKERNAN: He's going to own it for 15 years and pay taxes on it. He might want to sell it.

CONSTANTINE ALEXANDER: If he can find a buyer.

JOHN MCKERNAN: It's been this way for sometime.

CONSTANTINE ALEXANDER: I'm trying to point out it may continue that way for a long time.

JOHN MCKERNAN: I understand what he's trying to do, but here I am, I'd like to hear from somebody else if there's

somebody else here. You've got all of my stuff. And I'd like to give you copies of this if I like.

CONSTANTINE ALEXANDER: By all means. If you don't mind coming up, and we have a letter from the Planning Board which I'm going to read into the record, and other letters.

JOHN McKERNAN: All right. And do you need more copies? I have several.

CONSTANTINE ALEXANDER: Do other members of the board need them? We're all set.

JOHN McKERNAN: And the other thing I haven't spoke about which I want to is the aesthetic effect of having that facade that way. And you can put this in there, too, if you -- I sent you these, but I didn't send you this. Because

that's the effect I have -- this is my, I want to disagree with what you think you're doing, what you might do for landscaping, because the city has just done some very good landscaping on Lakeview of arborvitae trees, they're not deciduous and once the leaves go on your plan there, this is what I'm going to see. So I want you to take a look at that.

Thank you.

ATTORNEY JOSEPH NOONE:

Mr. Chairman could I just address --

CONSTANTINE ALEXANDER: You're going to have an opportunity. Do it now. You're going to have later an opportunity as well. You want to do it now? Go ahead.

ATTORNEY JOSEPH NOONE: Sure. The Planning Board letter references

Mr. Lakkis's alleged failure to maintain the landscaping of the property at 317. I'd like the Board to be aware, and make sure that everyone in the audience understands, that Mr. Lakkis only owns a small portion of the land that's in front of 317 Fresh Pond Parkway.

CONSTANTINE ALEXANDER: Okay. But I'm sorry to interrupt you, but the thrust of the Planning Board's comment is the change of use, not the landscaping. They do comment on that. That's the real issue for the Planning Board. They don't want to see more automotive repair, and I'll get to that, I'll read the letter. That's -- and that's the crux of the matter, not the landscaping.

ATTORNEY JOSEPH NOONE: And just so the Board knows, we did meet with Liza

Paden and the various people in her group and they --

CONSTANTINE ALEXANDER: I'm sure you have been very diligent in those plans and cooperative with the city. And no one is suggesting any bad faith on your part or your client's part or lack of a willingness to cooperate. We just have an issue here from the City's point of view, or at least in the Planning Board's mind, is this a good way to develop this property? Is that in the City's best interest? We'll get to that a little further in a second.

BRENDAN SULLIVAN: Can I see the folder in a second?

CONSTANTINE ALEXANDER: Sure.
Anyone else wish to speak?

JAN DEVEREAUX: I guess I will

since my name has been mentioned and I'm involved in this. I'm Jan Devereaux, Devereaux, 255 Lakeview Ave. So I'm an abutter. I also have been leading the Fresh Pond Residence Alliance. I'm not speaking on behalf of the group because in essence we haven't been able to have a consensus, as you can see from Mr. McKernan here. I mean, it's, you know, people speak with their own minds so I'm speaking as an individual tonight, but I have met several times with the owners, the attorney, the architect, just to kind of go over a little bit of the history. When this plan was first announced in mid-June, we invited the architect at that point to come and give a presentation to our neighborhood meeting at Tobin. We had about maybe 30 people there at that point.

The plan was not as developed as this. There were lots of concerns. All the same things we've heard tonight. They went back to the drawing board, made some changes. We met again at the attorney's office. Dennis Carlone was actually present at that meeting. We made some more changes. In this time I think it's now that this is the fourth time this meeting has been scheduled. I think there was -- it was originally going to be the end of July and then it was October. So meetings keep, you know, so it's just -- it's been hard to get any momentum. They have definitely made a good faith effort to respond to concerns about the design, the landscaping, the -- how the lot would be used, all that kind of stuff, but the fundamental

question remains of this change of use, and none of us have ever supported that. I'm surprised to hear that the Planning Board has written a letter and I would love it if you would read that aloud because I spent the better part of the summer pestering the people at CDD saying I don't understand why this property, which is in the overlay district, is not under the Planning Board's purview. And I kept being told well, the BZA has this category of Special Permit and so it's their call and we're not gonna give you any guidance. And so now I'm kind of surprised that they've weighed in because that would have been helpful to know months ago. So I feel like, you know, we've been sort of talking about, you know, plantings and fencing and, you know,

we've all made a good faith effort to kind of figure out how to work together if this change of use were granted, but no one has ever expressed any great enthusiasm for having more auto repair there. And, you know, inasmuch as things, you know, we can get a fence, we can get plantings, but there's really no guarantee as Jack and I have --you know, I live across the street from Cambridge Honda as well. You can ask for all these things, and we came and asked you for things to do with Cambridge Honda's sign last year and certain things haven't been followed through. So there's really no --

CONSTANTINE ALEXANDER: Some have is my understanding.

JAN DEVEREAUX: Some have.

CONSTANTINE ALEXANDER: The rest

is to come. Be patient.

JAN DEVEREAUX: Puts us in a position that we thought we had an understanding and we don't want to be the ones always saying the car's parked inappropriately. The door's open, blah, blah, blah. We feel like we're caught in the middle. And yes, obviously looking at a derelict restaurant for the past 10, 12, 15, I don't know how many -- it feels like forever, is not ideal. However, this is a very prominent site. This, you know, I've described it as the gateway to the neighborhood. You know, the city and -- has invested a tremendous amount in Fresh Pond Reservation, in creating, you know, the crossing, the bike path, all of that kind of stuff, and to sort of, you know, dump you unceremoniously on this

straggly triangle which is DCR's responsibility and they neglect and they confront you with yet more auto in the neighborhood and the school, and, you know, from a planning perspective big picture feels like a real missed opportunity and we're sort of left with, well, what's the lesser of two evils at that point? So that's, you know, what I have to say.

CONSTANTINE ALEXANDER: Thank you.

Ma'am.

LOIS LAMPSON: I'll stand here.

I'm Lois Lampson, L-o-i-s L-a-m-p-s-o-n. I live at 180 Lakeview. I've lived there for 30 years. I remember the restaurant. We used to walk there with our kids and it was a neighborhood place to go. And it was a boundary. On one side was this

beautiful street and on the other side was all the stuff along Fresh Pond Parkway. So it really was a boundary and it defined what was the residential neighborhood. So I, I'm here because I'm very much disappointed if it's going to -- instead of a restaurant, we're going to have an auto repair shop. And my answer to your question is, it is derelict, no question about it, but I'd rather wait until we get something that enhances the neighborhood. I think this would be going in the wrong direction.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down and speak. Same with the other folks who have spoken.

Sir.

ADAM GLASSMAN: Adam Glassman, Two

Worthington Street. I've been on the fence a little bit about this. Yeah, it is a derelict building that we all look at and it's nice to see that somebody wants to improve it as they see fit, however, thinking about the -- what you said about the Planning Board's letter, the question is this in the best interest of the city? And what we've got is probably a half a mile of contiguous, contiguous, contiguous use that's all automotive, and this is the last island that we have where we can create some kind of link between the amenity of Fresh Pond and the neighborhood and the city beyond where it just can be a more human environment. This wall of automotive is, it's brutal and it's relentless and, you know, this is a case where the city can hold on to one little

piece of good zoning, and it would benefit the neighborhood and the city to bring something in there, anything other than automotive.

So, thank you.

CONSTANTINE ALEXANDER: Thank you for coming down as always, Mr. Glassman. You've been here before.

ADAM GLASSMAN: Once or twice.

CONSTANTINE ALEXANDER: Anyone else who wants to speak? You go first, Ma'am. You.

MARGARET BARNES LEONARD: Hi, my name is Margaret or Peggy Barnes Leonard, two names, 115 Fayerweather. And I'm part of the neighborhood organization and did want to echo that I do feel that Mr. Elie Lakkis had reached out to us and I appreciated that process very much. I'm

appreciative that perhaps property owners are reaching out more to neighborhoods in response to the May 15, 2015, memorandum from CDD with recommendations to the Planning Board and I hope they do get to opt it formally. My comments are not personal at all to the owner and it's really about some of the issues we've already discussed, whether or not the parkway overlay district is to be, you know, what are we to do with it? And what is to be precedent to be set down the road so to speak. Are we going to have more auto repair? And I do want to also acknowledge that Mr. Elie Lakkis had responded to our questions about if this does get passed, what might be some things to mitigate that it is auto repair happening there with better landscaping?

And that he has given us his assurances that he would improve on the landscaping in front of 317 which was also another condition for that, that auto bay, first one being in place.

And the other thing I did want to raise is that we are on -- I understand we're on the eve of master planning to begin for the city, and it is to begin in this area. It's kind of to be fast tracked. And I feel like although this isn't a large piece of property, it is symbolic or it is important as to how do we proceed with the overall questions for this area around climate resiliency and whatever gets built there, is it, is it dealing with flooding elevations and projections for that area? How is storm water runoff going to be handled? I

believe it needs to be handled on-site, particularly with this use as well as the previous use of this site. The adjoining Mobil gas station and the Tobin School I do understand have contaminants known in the ground and they do have mitigation monitoring, remediation wells that some of which I think have been discontinued because they have been brought up to speed. I don't know what the status is now right at the site. They have been digging in various points around it. So I do feel that whatever the use is, that the storm water runoff --

CONSTANTINE ALEXANDER: That's not a zoning issue for us. Other parts of the city will take care of that.

MARGARET BARNES LEONARD: And possibly this doesn't either. It brings

me to the resurfacing or remediating of this parking lot, that there's questions, it's degraded over time and in essence is actually being exposed. The underneath, whatever there is there, I'm not sure the reason for why they're not wishing to deal with it in some way, but I'm wondering if not for aesthetic reasons possibly whatever exposed so I understand it's near a school, it's near a frequently traveled pathway, so that, those are my concerns that I'm bringing forward right now.

CONSTANTINE ALEXANDER: Okay.

MARGARET BARNES LEONARD: Thank you for your time.

CONSTANTINE ALEXANDER: Thank you for coming down. Sir, I'll let you go last if you don't mind. Can you wait?

JAY YESSELMAN: My name is Jay

Yesselman, Y-e-s-s-e-l-m-a-n. I'd like to claim the mantle of being the longest -- someone said they lived on Lakeview for 20. I've got 34.

The prior petitioner, you know, had two parts to his, if we didn't get this, then he wants to apply for the Special Permit and so I just want to make sure that if you do decide to grant this, that we can comment on the proposed landscaping or would you rather hear about it now?

CONSTANTINE ALEXANDER: Well, let me make this suggestion. It's a fair question. What I'm going to do when we come to the time for a vote, I'm going -- the first motion I'm going to make is whether to grant the Special Permit for the use of an automotive repair. It strikes me that if we turn, if

we vote against it, everything else becomes academic.

JAY YESSELMAN: Yeah.

CONSTANTINE ALEXANDER: We'll still proceed to vote on the other two relief being sought. Just because if we don't, it will be automatically granted. I don't think we want to do that. I think, what I'm trying to say is, that if we vote yes to say yes, they can convert, then I'll entertain comments on the landscape.

JAY YESSELMAN: Okay.

CONSTANTINE ALEXANDER: If we don't vote yes, then it doesn't count.

JAY YESSELMAN: I want to make sure we have an opportunity for that.

CONSTANTINE ALEXANDER: You will.

JAY YESSELMAN: And I would like

to add my voice of in the best of all worlds, I would oppose this use of the property for that, but to some degree, because of what we've gone through in the Alewife area and seeing what the city has permitted to be built and called and residential and so forth, I'm skeptical. It's -- in this case it's the devil I know is better than the devil I don't know.

Prior to Elie buying the property, there was a proposal that got us all our Fresh Pond Residence Alliance engaged in the first place which was to build an oversized residential complex there. I don't remember it was condos or apartments, whatever, but it was totally inappropriate. And I -- so I'm more fearful that something worse would happen than this usage. So while I oppose it,

I'm not confident of what might come on the other side.

CONSTANTINE ALEXANDER: You'll find out I guess.

Anyone else here wishes to speak besides Mr. Williamson?

James, the floor is yours.

JAMES WILLIAMSON: Why am I being discriminated against?

CONSTANTINE ALEXANDER: I wanted to give you the last word.

JAMES WILLIAMSON: I don't need the last word. James Williamson, 1000 Jackson Place. I live in North Cambridge and I got interested in this as a result of my experience with the newly forming Fresh Pond Residence Alliance which seemed a very impressive neighborhood initiative. And I only recently have had the

experience of being in a car with a friend travelling in this area on numerous occasions, and one of the things that I've noticed, that I noticed is you go out, we would go out heading toward the Fresh Pond shopping area, heading out on Huron Avenue which is, of course, is one giant pothole. And the place to take a left is on Lakeview -- if you want to not go to Alewife Brook Parkway, take a left on Lakeview and it's a nice shortcut to reconnect to Alewife Brook Parkway. So I think there's dimension to this which is important, which is -- there's already a traffic issue on Lakeview heading into Alewife Brook Parkway at this very location as I understand.

Now, getting to Alewife Brook Parkway, that in and of itself is, was at

gridlock a lot in my experience depending on the time of day, later in the evening it's not so bad. So I think there's already a negative situation in terms of the traffic, and I'd just like to add about Roger Boothe who I wish Roger had taken a similar kind of issue on some issues that I cared about in Central Square, but Roger was I think the urban design specialist at the Community Development Department for many years and what he said about the overlay district seems kind of -- totally persuasive to me that the ideas going forward to improve the linkages between the residential area and Fresh Pond and not to expand uses that we would like to see transforming towards something, towards something better. Now it's always unfortunate when you've got a

perfectly, you know, well meaning person who's got a relationship with people in the community who, you know, really just wants to expand a business. It's unfortunate that this particular business is, I think, widely seen and the precedence of the city planning understood to be an unwanted use that shouldn't be expanded in this location. So I just wanted to express sympathy for what my neighbors seem to be saying, but also sharing the fear that we can't always count on what the end result is going to be but it might be -- I mean, I think it's probably worth holding off on expanding an auto use here and maybe working with the owner to see, with the neighbors, to see with what we can come up with as a better alternative use for this and not just

leave it to the forces of the marketplace but to have community-based planning take place here in a more specific way with the owner of the property so that a very, you know, a very positive use that would be, you know, financially beneficial to the owner and more amenable to the neighborhood. I like the comments of the lady in the third row, this was a boundary when it was a restaurant and whatever goes there would hopefully play that role again at the very least.

So, thank you.

CONSTANTINE ALEXANDER: Thank you, James.

Anyone else wish to speak? Wants to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently

no one does. As I indicated, we are in receipt of a communication from the Planning Board which I will read into the record. It's dated August 26th.

(Reading) The Planning Board reviewed the Special Permit application for the expansion of the existing auto repair use into the abutting restaurant. The Planning Board recommends against this use expansion and does not support additional car-oriented uses along Fresh Pond Parkway. Board members noted that the existing auto repair business, which was granted a Special Permit -- which was granted a Planning Board Special Permit is usually out of compliance with the permit requirements that prohibit parking cars on the open space and on sidewalks, and also fails to maintain the required

landscaping. It is for these reasons that the Planning Board does not support expansion of the existing auto repair's use.

We also have letters -- we have a letter from Mr. Boothe, J. Roger Boothe which you read into the file already.

We have a letter from Lois Lampson. And you've expressed your views, no need for me to read it.

We have two letters from Mr. McKernan he's summarized for us.

And I believe we have a letter from someone else who spoke. Give me a second. Maybe not. Apparently not.

So those are the comments, sum total of the comments that we have received.

Sir, you have any -- I'll close public testimony.

JOHN McKERNAN: There are several other ones attached.

CONSTANTINE ALEXANDER: I thought you summarized.

JOHN McKERNAN: Well, I couldn't speak for all of those people. Each one of them has a way of expressing their dismay when having it become a car --

CONSTANTINE ALEXANDER: But all of them are in opposition?

JOHN McKERNAN: Yes.

CONSTANTINE ALEXANDER: Unless Board members want me to read the letters, knowing that there's opposition.

JANET GREEN: Maybe just read the names of the people who wrote.

CONSTANTINE ALEXANDER: Sure, that's a good suggestion.

We have a letter from Mr. Boothe

that I already referenced and is in our files.

A Lucille Wilhelm, W-i-l-h-e-l-m,
188 Vassal Lane.

From Shippen Page, Shippen L. Page,
Esquire, 174 Lakeview Avenue.

From Margaret P. Richardson, 196
Vassal Lane.

From Alyssa, A-l-y-s-s-a, Morein,
M-o-r-e-i-n.

JOHN McKERNAN: She's 277.

CONSTANTINE ALEXANDER: Okay.

There's no address on the e-mail. Okay.

These are all Melissa Morein.

JOHN McKERNAN: And there should
be one there from, it's Edgerly
(phonetic), Lois and William.

CONSTANTINE ALEXANDER: It may be
in our file there. I would assume --

JOHN MCKERNAN: And then one from a woman named Fran Beltington (phonetic), Beltline (phonetic) and she is a my next-door neighbor. That's another e-mail supporting what my letter said.

CONSTANTINE ALEXANDER: Okay, thank you.

Okay, I've said now I'm going to close public testimony.

Sir, do you have any final comments?

ATTORNEY JOSEPH NOONE: Yes, Board Members, this is a request for a Special Permit. And as you said at the outset, this use is permitted with a Special Permit. So the zoning bylaw does contemplate this type of use in this area subject to this Board's review of an application, and I would submit to you that the requirements for obtaining a

Special Permit have been satisfied. You know, the traffic is going to be lessened by this proposal.

The impact on the existing uses adjacent to the property are not going to be adversely impacted.

There will be no nuisance or hazard created by this use.

And that the proposed use does not impair the integrity of the existing neighborhood. This automotive use is in existence here. So I would respectfully submit to the Board that the -- because a Special Permit is -- can be allowed, that the overreaching concern of expansion of this use should not be a factor necessarily considered once the elements of the, of applying for a Special Permit have been satisfied, and I would

respectfully submit that they have. I would also like to point out that as-of-right uses that could be put in at this location also involve other automotive uses. For example, a used car facility could go in there as long as the vehicles are parked within the interior of the building. No Special Permit is needed. So the existing use that -- the existing uses that exist there, the ability to obtain a Special Permit, and the as-of-right uses I would respectfully submit suggest that there have been no valid and legal reasons why this use should not be granted in this location.

We can go through the plans and whatnot. I didn't do that.

CONSTANTINE ALEXANDER: No, and I didn't want you to do that. As I said,

let's take the vote on the use. The automotive use. Because if we don't grant relief, going through the plans is academic obviously.

I'm going to check something first. Anything further? I'm sorry.

ATTORNEY JOSEPH NOONE: No.

CONSTANTINE ALEXANDER: Discussion from Members of the Board. Do people want to talk about this or do you want to take a vote?

BRENDAN SULLIVAN: The thing that resonates with me, and it's sort of sticking in my craw, a lot of stuff up in that area is the shop owners come down before us and they give us very pretty pictures and they agree to almost everything that either the neighbors want, whatever we feel is appropriate and we

feel like we have struck a deal, probably the best that we can come out with and then everybody leaves. And then what happens is the behavior turns and changes. And I go back to the Shell Station where we impose some very strict guidelines, some very strict landscaping and some behavior because they had to get in their inspection bay and would have promised anything. They would have given us the moon with the white fence around it and everybody was -- and I chaired it and I was very clear, and I said to Mr. Rafferty make sure that your client understands exactly what he's agreeing to. And if you want, go in the other room and go word by word, because I don't want to say I misunderstood. No, no, he fully understands. We all signed off on it and

that was it. It went downhill after that. And to this day we cannot get him to agree to what he agreed to do what he agreed to do.

All right, that's one.

Honda, again, is another one with the sign and that's now getting slugged through the mud.

What resonates here with me is the Planning Board letter, if you could repeat the language in that, which says that you are constantly out of compliance. I don't know why or where it is, that gives me pause that we should allow an expansion of a business that apparently was subject to some regulations and some constraints and has not agreed to that and there's been bad behavior since then. And so that's where I am. I don't know where that is

other than that language.

CONSTANTINE ALEXANDER: Let me make one observation if I may. I'm aware of the situations that you're referring to where we granted relief -- zoning relief subject to conditions like landscaping and they have not been complied with. I have to say in all frankness, shame on the Inspectional Services Department. If they're not in compliance with the conditions, write a letter to them and saying that your Variance has been revoked because the Variance is granted subject to conditions, you haven't complied with the conditions, and, therefore, no Variance and put them back to square one. For whatever reason that hasn't been done at least with regard to the Shell Station, and it should be done in my view.

BRENDAN SULLIVAN: I think a Certificate Occupancy should never have been granted until they complied. That's an administrative thing.

CONSTANTINE ALEXANDER: And I don't think -- I guess, my only observation, I don't think we should deny relief -- people going forward because people in the past haven't complied with the conditions we've imposed.

BRENDAN SULLIVAN: No, it just leaves a bad taste in my --

CONSTANTINE ALEXANDER: No, I know it does.

BRENDAN SULLIVAN: -- in my mouth and it gives me pause. It gives me pause to allow for an expansion, to allow for relief to somebody, to a business, that is out of compliance as per that. Because if

it's bad behavior, whatever it is, I don't want to mischaracterize it, but whatever it is, it's not going to get any better and sometimes those things don't self-correct. So that gives me pause to saying yes.

CONSTANTINE ALEXANDER: I have a problem with saying yes because just basically the Planning Board's more general comment about the land use, the development of this area. The City has a policy, has adopted a policy about what they want this area to eventually become, and it will eventually sometime not in my lifetime, but it will happen. And one of the things we're supposed to do in enforcing the Ordinance is we're supposed to -- one of the objective purposes is to encourage the most rational use of land

throughout the city, including the encouragement of appropriate economic development, the protection of residential neighborhoods from incompatible activities and, etcetera. So those are the policies that we have to make a vote, when we vote on the Special Permit, that what you want to do will not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance. And given the Planning Board's comments, I'm afraid I don't think you satisfy that requirement, so I'm not going to vote in favor of the Special Permit. That's my, that's my personal view.

Anyone else wish to comment?

JANET GREEN: I do. I also have a problem with the project. I think this is

a significant piece of property that will affect the integrity of the neighborhood, and that the City made a decision when they talked about the overlay district and they put a lot of effort into the lighting and things like that along that street. They made the places where people could crossover because they wanted Fresh Pond and that beautiful area to be connected to the residential part of the city, and this piece of property I think sits in an important location regarding that. It is, I think it is harmful to the integrity of the neighborhood to do this project on that piece of land.

CONSTANTINE ALEXANDER: Anyone else? We could go to a vote.

TIMOTHY HUGHES: I would concur that, you know, I don't think you meet all

of the requirements of the Special Permit. Even if you did, you know, just squeak in on some of them, I don't -- there's one that keeps coming back to me and it says the new use or building construction is inconsistent with the urban design objectives set forth in Section 19.30. And I think that even if you did meet the letter of A through E on this category, I don't think it meets the urban design objectives so I couldn't vote for it.

SLATER ANDERSON: And I'll just weigh in since everyone else has. I concur. I think this is an intensification of a use that is and has the potential to be a nuisance to the neighborhood. It's a gateway location. It's a crossing from the neighborhood over into the park. Granted it's derelict

right now, but there's got to be a better solution. And there are better places for this use. I know it's a convenient use for you because you're next-door. But this is not where an auto repair place should be in the city. That's my opinion.

CONSTANTINE ALEXANDER: Okay, I think we're ready for a vote because everybody's talked and expressed their view.

As I said, the first motion is going to relate to the Special Permit to change the use of the property from restaurant to auto repair.

The Chair moves that we with regard to this Special Permit request, we make the following findings:

That it appears that the requirements of the Ordinance can not be

met without the grant of a Special Permit.

That traffic generated or patterns of access or egress are resulting from the project 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, the conversion to automotive repair.

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 what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of

the Ordinance.

On the basis of these findings, the Chair moves that we grant the Special Permit on the condition that the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair. First page of which has been initialed by the Chair.

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

(No Response.)

CONSTANTINE ALEXANDER: All opposed?

(Show of hands.)

CONSTANTINE ALEXANDER: None in favor. Five opposed.

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

CONSTANTINE ALEXANDER: The Chair

moves that we make the following findings in view of our vote against granting the Special Permit.

That we have denied the Special Permit because what is proposed will be -- will in fact impair -- will derogate the intent and purpose of the Ordinance.

It's inconsistent with the long range planning objectives of the City as expressed by the Planning Board.

That what is proposed will be inconsistent with the urban design objectives set forth in Section 19.13 of our Ordinance. And that in fact allowing this auto body repair and this building will impact the adjacent neighborhood. The neighborhood being the residential area immediately abutting the project.

All those in favor of making these

findings in support of our vote, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Anybody want to add anything?

TIMOTHY HUGHES: No.

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

CONSTANTINE ALEXANDER: We should go to the other two votes as a matter of course, and in as much as you can't do anything here. That with regard to the Special Permit to increase -- waive parking setback requirements, the Chair moves that we make the following findings --

ATTORNEY JOSEPH NOONE:

Mr. Chairman, could I withdraw those?

CONSTANTINE ALEXANDER: Well, that

would make my life a lot easier and the Variance, too.

ATTORNEY JOSEPH NOONE: Yes.

CONSTANTINE ALEXANDER: Do I have a request to withdraw both the Special Permit and the Variance?

ATTORNEY JOSEPH NOONE: Yes.

CONSTANTINE ALEXANDER: All those in favor of withdrawing this case say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Thank you.

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

CONSTANTINE ALEXANDER: And I want to say by the way of observation, this is one of the more cooperative presentations we've seen, and it's not usual we -- usually the neighbors come in

opposed to a development and they come in here with fire in their eyes. And I heard very nice comments and you should take -- I know it's not what you want, but you should take some solace from that. It was a good effort, it really was.

ELIE LAKKIS: Thank you.

CONSTANTINE ALEXANDER: Thank you.

* * * * *

(9:10 p.m.)

(Sitting Members Case BZA-007909-2015:

Constantine Alexander, Timothy Hughes,

Brendan Sullivan, Janet Green, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 007909, 119 Pleasant Street.

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

JACK JOSEPH: My name is Jack Joseph. I am the architect for Matthew Pickett and Anne Bandes.

ANNE BANDES: Hi. I'm Anne Bandes. Unfortunately my husband had to go to a wake tonight for his best friend's father. He's, been the brain behind this so you'll have to make do with me.

So we've been living at 118 Pleasant Street for five years now, and when we bought the house -- we lived in Cambridge since 1999 and when we bought the house

there was a Variance that had already been granted for creating a vestibule in front of the house to enter the house, but we didn't act on it because we wanted to have an opportunity to get used to living in the house and see whether we really felt like we needed to do something like that. And to be honest, the front of the house with our gardens is one of my favorite parts of the house so we don't want to mess with the integrity of that part of the house. But after living there for a few years, we've decided that we would like to create that vestibule, but have it at the back of our house and have it connect to an artist studio where my husband has his studio so that the two buildings connect. So it would be an entryway into our house.

CONSTANTINE ALEXANDER: What will become of the artist studio if we grant the relief?

JACK JOSEPH: It will continue as an artist studio.

CONSTANTINE ALEXANDER: Occasional use or full time use?

ANNE BANDES: He's a full-time artist. So he works there everyday.

CONSTANTINE ALEXANDER: So, everyday. Okay.

There's no windows as you face Pleasant Street or maybe I missed it.

JACK JOSEPH: There's no windows facing Pleasant Street to the artist studio. Windows to the artist studio face the yard.

CONSTANTINE ALEXANDER: The yard and neighboring properties?

JACK JOSEPH: No. Well, there is a six-foot fence surrounding the property. And the, I think we've included pictures that should show that -- excuse me, I apologize here.

CONSTANTINE ALEXANDER: Would it or would it not be fair to say that if we grant the relief there would be more intense use of the art studio?

ANNE BANDES: No, it will be the same.

CONSTANTINE ALEXANDER: It would be the same as it is now.

JACK JOSEPH: These are the windows of the artist studio as they face the backyard. That's the same.

CONSTANTINE ALEXANDER: The reason I'm asking the question, my concerns, which could be easy maybe allayed, is that

you're going to -- the trouble with the artist studio is it's too close to the lot line and, therefore, it impacts on the privacy and the like of the neighbors.

JACK JOSEPH: But the artist studio --

CONSTANTINE ALEXANDER: Let me finish, sir.

JACK JOSEPH: I'm sorry, I apologize.

CONSTANTINE ALEXANDER: To the extent that we do this, I have to believe that the artist studio would be used -- of course there's no assurance that it would always be an artist studio. It could become another room of the house and then there's impact on the abutters who are very close -- you're too close to the lot line, and that would be my initial concern

that we are allowing basically an addition too close to the lot line in a very densely inhabited neighborhood. If you can address that, please do.

ANNE BANDES: Yes, so if you look at the first page of what I handed out, you'll see that all of the houses in green are houses that are, that have signed approval letters, approving our proposal.

CONSTANTINE ALEXANDER: We don't have in any other file.

JACK JOSEPH: They brought them.

ANNE BANDES: I'm sorry, I didn't realize that they were supposed to be submitted.

CONSTANTINE ALEXANDER: I didn't know there were any letters, that's all.

JACK JOSEPH: And we have letters from the abutters.

CONSTANTINE ALEXANDER: What about the ones most directly affected by the --

JACK JOSEPH: Yes.

ANNE BANDES: The only one we don't have is the one directly behind us, but most of the ones next to us which are closest to the artist studio as you can see from the pictures.

CONSTANTINE ALEXANDER: Show me on the plan.

SLATER ANDERSON: See the ledger at the bottom there?

CONSTANTINE ALEXANDER: Thank you. But you don't have 32 Andrew Street, is that one you don't have?

ANNE BANDES: That's correct. But we did speak with the owner.

JACK JOSEPH: We did speak with the owner, and the owner's concern was

that this might become a second apartment.

ANNE BANDES: Which it won't be.

JACK JOSEPH: Which it will not be. And we've gone through the -- we've gone through the land as far as meeting the requirements to the open space, and we still meet the open space requirement. We do not, this becoming part of the house by its attachment as I interpret the Zoning, still meets -- falls within the allowable FAR. This is and will remain a single-family house.

The land is such that it rises up to the back which allows us to have far fewer steps. And because we have the room for the steps, they can become more humanely gradual.

ANNE BANDES: I'll just chime in there to say that I have bad knees and a

back injury so....

CONSTANTINE ALEXANDER: I'm sorry to hear that.

ANNE BANDES: And it's only going to get worse. So for me, you know, to be able to have an entryway that has, you know, two steps as opposed to, I don't know what we have now, six or seven steps, it would be huge, a huge difference.

CONSTANTINE ALEXANDER: Are there any bathroom or kitchen facilities in the artist studio?

ANNE BANDES: No.

JACK JOSEPH: Not at the present time.

CONSTANTINE ALEXANDER: And what is the plans?

JACK JOSEPH: The plan is to put a bathroom in there.

CONSTANTINE ALEXANDER: And no kitchen?

ANNE BANDES: Definitely no kitchen. The idea behind the bathroom being that we only have one bathroom and it's on the second floor of the house --

CONSTANTINE ALEXANDER: Oh, okay.

ANNE BANDES: -- and the stairs upstairs are very steep and again with my knee issues.

CONSTANTINE ALEXANDER: Okay.

JACK JOSEPH: So there is, you know, and the impact to the yard -- the yard is in shade presently and this will not affect in any way the neighbors. Nothing is being -- will rise higher than than 12 feet at the highest possible location.

CONSTANTINE ALEXANDER: Okay.

JACK JOSEPH: You can see right here the connection. This is the existing artist studio.

CONSTANTINE ALEXANDER: Yes.

JACK JOSEPH: This is the house itself.

CONSTANTINE ALEXANDER: And this is Pleasant Street where your hand is?

JACK JOSEPH: Pleasant Street is here. This is the property. This is all yard and open space. There is walls along the side. And adjacent to it, this is a two-and-a-half story multi-family house here, and it's a two-story multi-family house here. Same on all the sides. This is a single-family house. And we'd like to keep it -- they'd like to keep it that way.

ANNE BANDES: Well, we'll

definitely keep it that way.

CONSTANTINE ALEXANDER: If we grant relief, we're going to condition it that way.

JACK JOSEPH: And we would hope that you would.

ANNE BANDES: Absolutely fine.

I have another set of abutters letters.

CONSTANTINE ALEXANDER: Same thing?

ANNE BANDES: Yeah, it's the same.

CONSTANTINE ALEXANDER: We just need one for our files.

Anything further you want to say at this point?

JACK JOSEPH: Any questions?

CONSTANTINE ALEXANDER: I'll ask for questions in a second. Our usual

procedure is you first you make whatever presentation you want to make.

JACK JOSEPH: This is my presentation. I'm glad to answer any questions.

CONSTANTINE ALEXANDER: Questions from members of the board?

BRENDAN SULLIVAN: How many people work in the artist studio?

JACK JOSEPH: Just one.

ANNE BANDES: Just my husband.

JACK JOSEPH: He's a sole practitioner. And he's typically in Cambridge as I'm an architect doing the same thing and it's an allowed function.

CONSTANTINE ALEXANDER: Okay. Further questions?

TIMOTHY HUGHES: No.

CONSTANTINE ALEXANDER: I'll open

the matter up to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently no one wishes to be heard.

And we are in receipt of letters, support letters as given to us by the petitioner. They're identical. They appear to be identical. Yes, letters. I'll read the letter and I'll identify who has signed it as best I can.

(Reading) I, blank, authorized by the owners of, blank, fully support the plan proposed by the Bandes/Pickett family of 119 Pleasant Street, Cambridge, Mass., regarding the addition of a vestibule to connect their main house to an existing artist studio building at the back of

their property, and a dining room extension. The plan has been explained to me in detail and the project is reasonable and not detrimental to the neighborhood. And the person who signed this letter is Daniel Leslie, L-e-s-l-i-e, the property manager of the property at 115-117 Pleasant Street; Joyce Booth, 121 Pleasant Street; Stephen, looks like Horitios, H-o-r-i-t-i-o-s, 114 Pleasant Street; Julia to Taddonio, T-a-d-d-o-n-i-o 118 Pleasant Street; Dan Gretchi (phonetic)? I don't know, as best I can read, 118 Pleasant Street; and Alexandra Rada, R-a-d-a, 118 Pleasant Street. These all reside in apartments. The one before was apartment 2, this is apartment 3. Mary Ann Young 120 Pleasant Street, apartment No. 1 or No. 1; John Gill, 120 Pleasant

Street, No. 2; some -- I can't -- looks like Rodriguez, Joseph, 120 Pleasant Street, apartment No. 3; the occupant of 120 Pleasant Street, No. 4; the occupant of 120 Pleasant Street, No. 6; the owner of Aleks, A-l-e-k-s Zosuls, Z-o-s-u-l-s 126 Pleasant Street; the person who resides at 323 Allston Street. And the person who resides at 30 Andrews Street. And the person who resides at 20 Andrews Street. And the person who resides at 113 1/2 Pleasant Street. And we have no letters of opposition. That's it for public testimony.

Any final words you want to say before we deliberate?

ANNE BANDES: No.

JACK JOSEPH: We can do this very quickly as far as the construction. The

construction should have no serious impact on anyone and hopefully this will allow, you know, be a very simple little process for them.

ANNE BANDES: Hopefully we can, hopefully we can get it done before the next winter so it will be less shovelling.

CONSTANTINE ALEXANDER: Better for your back or your knees.

ANNE BANDES: Fortunately my husband does it.

CONSTANTINE ALEXANDER:
Discussion? Members of the Board, ready for a vote.

JANET GREEN: No, I'm good.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that with regard to the Variance being sought this Board make the following findings:

That a literal enforcement of the provision of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being that this is an older non-conforming structure with a second structure that's usable for human purposes, and is but separate from the, principle structure.

That the hardship is owing to the, basically, non-conforming structures, and any relief requires -- any change requires Zoning relief including connecting to what the so-called artist studio to the main structure.

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

On the basis of these findings, the Chair moves that we grant the Variance subject to the following conditions:

One, that the work proceed in accordance with the plans prepared by Jack Joseph architect, initialled by the Chair.

And two, that the artist studio may not contain any kitchen facilities and may only be used by, on a regular basis, by one person and not more than one person.

And that the -- lastly, that the use of the structure be confined to a so-called artist studio and no other uses like an additional bedroom or additional rental unit or dwelling unit.

All those in favor of granting the relief with these conditions, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

* * * * *

(9:30 p.m.)

(Sitting Members Case BZA-008474-2015: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Janet Green, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 008475, 136-138 Cushing Street.

Ist here anyone here wishing to be heard on this matter? Give your name -- both your name and address to the stenographer.

ROBERT LINN: Robert Linn,
L-i-n-n. Moskow Linn Architect.

DUNCAN McARTHUR: And Duncan
McArthur, D-u-n-c-a-n M-c-A-r-t-h-u-r.
I'm the owner of the property and I live
at 255 Broad Street in Cambridge.

CONSTANTINE ALEXANDER: The floor
is yours.

ROBERT LINN: So this property is
really, as you all know I'm sure, an
anomaly in this neighborhood. You know,
it's an interesting lot. It has a funny
doing leg shape. It's a double lot that
had what was the Sante Lucia Club
positioned very oddly toward the back of

the site, three and a half, less than four feet from the adjacent property at the back side. That particular house had some historic significance which we went in front of Historic and they found it to be significant and we investigated what it would take to maybe work with that house or bring this lot to its best use. And one of the things that we were really concerned about was making sure that what we proposed was going to be very consistent with the fabric of the neighborhood, and it's very evident currently that what's there does not really feel like a residential structure and in fact it isn't. It's partially residential but it's -- also has a chapel and it was a club and they hosted festivals. And so there was a lot of

things going on and it kind of reads currently as something that is somewhat of an anomaly in the neighborhood. The club is now defunct. They weren't able to hold the festivals any longer, and they at some point made the determination that they were ready to sell. And the lot is zoned to be a two-family. Could be a two-family.

CONSTANTINE ALEXANDER: Could be. Not zoned to be a two-family.

ROBERT LINN: Could be a two-family, correct. So we began the process by thinking what can we do by right, and by taking advantage of the provisions for a townhouse in this particular zoning district, we realized that we could build three contiguous townhouses more or less in the center of

the property conforming to all the setbacks and accessed off of Vineyard Street with parking underneath all of them and the parking not necessarily included as part of the gross floor area because it would be excluded in that way. And the resultant mass that we came up with would also be somewhat anomalous to the neighborhood.

CONSTANTINE ALEXANDER: It would be conforming though, right?

ROBERT LINN: It would be conforming but it would be much larger in scale and mass than most of the other smaller residential structures --

CONSTANTINE ALEXANDER: More so than the two single-family residences that you want to build?

ROBERT LINN: Much more. It would

much more of a wall, kind of building a wall up in that area and it would be something that would be blocking a lot of the views and lights that are currently in place to the residence who are behind us, adjacent and behind. It has a funny kind of sense of openness now because of the strange position of the -- what was the club.

BRENDAN SULLIVAN: But where did you come up with the allowing that you can build three townhouses?

ROBERT LINN: The Zoning Ordinance allows in that area just a townhouse development --

BRENDAN SULLIVAN: Right.

ROBERT LINN: -- in that area.

BRENDAN SULLIVAN: It's a B, B Zone.

ROBERT LINN: Correct.

BRENDAN SULLIVAN: Which are?

ROBERT LINN: The requirements for B would be FAR, all of the setbacks, all of the various provisions. In addition we would be allowed to do the townhouses because they are allowed by right in this particular zoning.

BRENDAN SULLIVAN: But I'm not sure you have enough lot are.

DUNCAN MacARTHUR: It's an 8500 square foot lot. So you could do -- you need 2500 square foot per unit, so we could do three units by right.

BRENDAN SULLIVAN: You know, that sort of -- okay, so Res. B, minimum lot area 2500. Then you go, you know, (j) and that's applicable for the first 5,000 square feet of lot area for those portions

of any lot exceeding 5,000 square feet, the applicable maximum ratio of floor area shall be 0.35 for all permitted residential units. For each dwelling unit, the minimum lot area for each dwelling unit shall be 4,000 square feet. So you're allowed 2500, 2500, up to 5,000. And then after that, that third unit has to be 4,000 which means that you need 9,000 square feet so that you cannot build three units. Three townhouses.

ROBERT LINN: Okay.

CONSTANTINE ALEXANDER: But you can build two.

ROBERT LINN: We can build two. Okay. Well, that's not what we're proposing to do, either three or two.

BRENDAN SULLIVAN: Well, it's just a three obviously you're saying is a

bigger building.

ROBERT LINN: Correct.

BRENDAN SULLIVAN: So you can't really build that bigger building.

ROBERT LINN: Understood.

DUNCAN MacARTHUR: But contiguous being the factor. We're potentially trying to separate the buildings.

CONSTANTINE ALEXANDER: We see that in your plans.

ROBERT LINN: Our intent is to actually come up with two structures that would have somewhat of the same relationship to the street as the existing structures, they'd be more or less in the same scale as the other structures, they're just a little over 2,000 square feet. They would have parking to the side which would be similar to the rest of the

structures. And then in most ways conforming with what would be the, you know, urban design city guidelines by the Planning Board. So in order to do that, in order to sort of make that work both economically and so that we have enough open space and we preserve some of the views and light for the abutters behind, we're asking for a relatively small increase in the gross floor area which is a little over 400 square feet, which is what we're asking for, of which about 100 square feet of that is actually just overhangs and, you know, covered canopies on the exterior allowing for access to the different spaces that are not over permeable, you know, that would not be allowed under permeable -- when they're over permeable space below, they're

allowed without being counted as gross floor area. So the intent is to build two structures in keeping with the rest of the neighborhood and preserve as much of the sense of what was currently there as open and light filled and sort of maintaining for the abutters as much of the character of the space that's there, while it be more in keeping with the rest of the neighborhood.

CONSTANTINE ALEXANDER: For us to grant zoning relief one of the requirements that you probably know, is the one is substantial hardship. You need relief because there would be substantial hardship to comply with the Zoning Variance. You can comply with what looks like two, a penthouse -- a townhouse with two units to it as of right, no relief.

Why should -- let's be frank, what's involved here is you want to increase the value of your investment. You want to build two single-family structures because you want to make more money than if you build what you can do as a matter of right. That doesn't justify granting zoning relief in my mind anyway. I'm only one of five.

DUNCAN MacARTHUR: I think it goes deeper than that. We've actually worked with the neighbors and with the abutters that were affected by this, and they much prefer to see things kind of separated (inaudible), and it's much more of an expense. I agree that we're trying to create value by creating two separate structures. But I think the value is there because it's more desirable. And I

think the lot, the way the lot is set up, the hardship is that the lot by doing a block in the middle of it just obstructs light to the to the abutters.

CONSTANTINE ALEXANDER: We have a letter of opposition from your neighbor right across the street, and I see some with heads nodding, we're going to hear more opposition orally tonight. So that's not quite an accurate statement. You may not be aware of that, but there is neighborhood opposition to what you want to do.

DUNCAN MacARTHUR: Okay.

CONSTANTINE ALEXANDER: Just so you know. I'm sorry, keep going. You have to address the question what's your substantial hardship? I understand what you want to do, and maybe perhaps

aesthetically better to do what you want to do rather than this two-unit townhouse. But I'm having trouble getting to the legal requirement of a substantial hardship. It's not like you can't develop this lot. You can develop it. You can't develop it in the way that you want to develop it.

DUNCAN MacARTHUR: We can develop it better. You just heard an argument here about what you do with a lot and what you can do that's better for a lot and better for the neighborhood? We can develop the lot, we think in a way that's better than what we're allowed to do. And what we're proposing we think is a better development for the lot.

CONSTANTINE ALEXANDER: That's not a hardship. That's not a hardship.

That's the problem.

DUNCAN MacARTHUR: No, you're right. The hardship is the fact that, and to conform to what the city would allow us to do creates an inferior development.

CONSTANTINE ALEXANDER: Okay.

DUNCAN MacARTHUR: We believe.

CONSTANTINE ALEXANDER: I understand that.

BRENDAN SULLIVAN: Or I mean personally I like the design of the two structures, and I think your argument for that is valid; light, air, all that other stuff. I just don't, I can't get over why it can't be conforming FAR. You know, so it, you know, a tad smaller on each one to get you under that magic number.

ROBERT LINN: I mean part of what we were doing is really trying to match

both the scale and the sort of the height and the shapes, and there's a lot of things that are more contemporary way, but with the rest of the neighborhood and to make them three-bedroom units, not units, but three-bedroom structures so that they would be able to accommodate a family of four.

BRENDAN SULLIVAN: The rest of the neighborhood is out of conformance. You could not build the rest of the neighborhood as per this book.

ROBERT LINN: Correct, correct. And we would really --

BRENDAN SULLIVAN: A lot of that predates all of this stuff. You know.

ROBERT LINN: That's right. But we wanted what we were going to be building to fit with the fabric of the

neighborhood to feel it was part of a --

BRENDAN SULLIVAN: And there's no way of getting it under that number?

ROBERT LINN: It would be very difficult to have units that felt like they were a proper, a properly scaled with that, just that little bit of square footage. Part of that is having two entries. They would have canopies over the entries included in the gross floor area and breaking it apart actually increases the need for --

BRENDAN SULLIVAN: That's form and function basically those.

ROBERT LINN: Form and function, correct. And so we felt like what we're asking for is just a very small increase to allow us to actually produce what feels like it's the best use for the

neighborhood. And if we were going to make our argument for a hardship, it's that, you know, and I was wrong to say that we could do three, but the idea was that if we were building something that was a mass, then we could actually combine them together which is what the ordinance would require us to do, we'd be blocking the rest of the neighborhood and creating something that felt really out of scale. And the shape of the lot really helps to sort of dictate that we'd stick it more in the center of the property, either has this funny dogleg to it and because we were thinking that you would need to have access from the back side, we would be able to get parking on the back side, so it really pushes it to the forefront of Cushing Street and we create something

that would create an anomaly in the area which is sort of what's currently there and so, you know.

CONSTANTINE ALEXANDER: This is not a particular zoning requirement, what's going to happen to the wonderful tree that's on the lot?

ROBERT LINN: I think that anything that gets built on the lot, the tree --

CONSTANTINE ALEXANDER: It gets taken down.

ROBERT LINN: It would be damaged.

CONSTANTINE ALEXANDER: So that tree's gone.

ROBERT LINN: Unfortunately.

CONSTANTINE ALEXANDER:
Effectively.

ROBERT LINN: Unfortunately.

CONSTANTINE ALEXANDER: Looking at the plans, you're familiar with our dormer guidelines?

ROBERT LINN: Yes.

CONSTANTINE ALEXANDER: One of the buildings has got dormers on it. It looks like one of the dormers is too big. It's more than 15 feet in length. I couldn't -- could the scale of your drawing is not sufficient to answer that question, but can you answer it?

ROBERT LINN: I can't say for sure if it's more than 15 feet, but if it is, it's not significantly more than 15 feet.

CONSTANTINE ALEXANDER: If we, if we were to grant relief subject to reducing the dormer to no more than 15 feet in length, do you have any comment on that?

ROBERT LINN: I think if it was reduced to 15 feet, it would be substantially the same.

CONSTANTINE ALEXANDER: So therefore you wouldn't have a problem with it?

ROBERT LINN: No.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: None. I'm going to open the matter up to public testimony. We have a letter of opposition which I've indicated already. I'm going to read that letter first which is not our usual practice, because the person who wrote the letter could not be here tonight and he thought other neighbors would be

here so let me get that into the file first and if anyone wishes to speak, obviously you'll have an opportunity to speak.

It's a letter from Lisa, L-i-s-a Dobberteen, D-o-b-b-e-r-t-e-e-n.

(Reading) I write as an abutter to the above-named property and as a long-time resident of Cushing Street for over 20 years. I live directly across the street. It is poignant that one of the oldest buildings remaining in the area is slated for demolition, but I understand it has been modified many times and no longer warrants protection as a historical building. As an abutter, I strongly object to the plans for new development as follows:

One, the proposed density two single

family dwellings on this small lot is far greater than what is appropriate for the neighborhood. One single-family dwelling would be fine or even a duplex property, but two single-family homes on that lot will be unacceptably crowded. This is a detriment to the neighborhood and sets a bad precedent for further overcrowding and unacceptable density in the future. It does not warrant a Variance.

And then the second comment talks about the tree's going to go down that I referred to. I should read the letter.

Two, the plans make no accommodation for the very substantial tree on the property. Although not a native species, the Norway Maple is well over 100-years-old and may be close to 150-years-old and dates from the early

years of the Wyatt tenant property. It is a healthy strikingly beautiful tree that is a valuable and an irreplaceable part of the local ecosystem and urban landscape. The removal of this tree is in direct contraindication of the city policy that have resulted in the tree city U.S.A. award for 18 years and its growth award from the National Arbor Day Foundation. I'm out of town this week so I'm unable to attend the Zoning Board of Appeal hearing. I'm hoping some of my other Cushing Street neighbors will attend in person and present our concern. I respectfully request that this letter be entered into the public record. Which I've just done.

So with that invitation, anyone else wish to speak?

SLATER ANDERSON: There's another

one. Is this the same or different?

CONSTANTINE ALEXANDER: I'll tell you in a second. I'm sorry. Thank you, Slater. There is a second letter addressed to us. The only -- one person has signed.

FROM THE AUDIENCE: Let me say something about that. I didn't understand how the process -- we didn't understand how it worked.

CONSTANTINE ALEXANDER: Okay.

FROM THE AUDIENCE: So the plan for --

SLATER ANDERSON: Her name?

CONSTANTINE ALEXANDER: Oh, yes. Thank you. Your name and --

FRANCINE SPARKS: My name is Francine Sparks, and I live at 139 Cushing directly opposite --

CONSTANTINE ALEXANDER: Clearly.

FRANCINE SPARKS: -- the property. So I thought that -- I didn't realize it had to be in before this meeting, and the idea that this place for signatures that it would be -- instead of multiple letters, get all my neighbors to sign which I know they -- and many of them are here now. So....

CONSTANTINE ALEXANDER: They can all speak. Let me read the letter --

FRANCINE SPARKS: You can read it. The person who sent it over Walter. He couldn't be here tonight either.

CONSTANTINE ALEXANDER: Okay. Well, you'll have an opportunity to speak and then other neighbors as well. The letter we do have is signed by Walter Lewin, L-e-w-i-n, 139 Cushing Street, No.

4. (Reading) We the undersigned -- and of course as you explained, there is no undersigned beside Mr. Lewin.

FRANCINE SPARKS: Not yet.

CONSTANTINE ALEXANDER: I'm sorry?

FRANCINE SPARKS: Not yet.

CONSTANTINE ALEXANDER: Not yet.

That's correct.

(Reading) We the undersigned as Cambridge residents who are abutters to and/or living in close proximity to the above named property strongly object to the plans as submitted for new development. Primarily we feel that there is considerable history to this building dating back to the first decades of the 1800s. In addition, to the into 20th century the former Saint Lucia Club and Chapel holds deep cultural significance

relative to the social history of Italian-Americans in the City of Cambridge and nearby communities. We feel that the historic significance and cultural value of the building warrants that the appearance and structure of the building be preserved. Specifically -- I should make a comment at this point, but I'll read the rest of the letter.

One, the former Saint Lucia Church is one of the oldest buildings remaining in the area. It was built by the Wyatt family in either 1837 or 1843. The five bay center entrance on Vineyard Street is the original entrance building. The building is also significant to the neighborhood for its 20th century social history of the Italian-American population of Cambridge. The look of the building

should be preserved for both the historic value as the Wyatt tenant house and the memory of its years as Saint Lucia Chapel.

And the next I am going to summarize, the next one refers to the tree that we've talked about.

Secondarily, while we object to one of the oldest buildings remaining in the area being slated for demolition, we understand that the building may no longer warrant protection as an historical building. The building is demolished against the wishes of the neighborhood. We the undersigned feel that the proposed density of the two, single-family dwellings on this small lot is far greater than what is appropriate for the neighborhood. Two single-family homes on that lot will be unacceptably crowded.

This is a detriment to the neighborhood and sets a bad precedent for further overcrowding and unacceptable density in the future. It does not warrant a Variance.

And so let me just say -- make an observation since you're going to commenting on this. There's nothing -- this petitioner has every right to demolish that building. Has every right to build another building in its place without the zoning relief. He wants, he wants to do something that does require zoning relief, and that's why we're having the hearing tonight. So if the belief is that this building should be preserved for its historical significance, that can't happen. It's up to this gentleman to do what -- he can make it

happen or not.

FRANCINE SPARKS: I understand that.

CONSTANTINE ALEXANDER: We can't stop him from doing that.

FRANCINE SPARKS: I understand that.

CONSTANTINE ALEXANDER: Now, any further comments now?

PAT ZOFFREO: My name is Pat Zoffreo, Z-o-f-f-r-e-o. I live at 143 Cushing Street. I mean just looking at this, I mean could you pick this thing up and just show it to people? I mean it just looks enormous and just completely --

FRANCINE SPARKS: Yeah.

PAT ZOFFREO: Out of place for the neighborhood.

CONSTANTINE ALEXANDER: One at a

time, please.

PAT ZOFFREO: It's just huge. And what could not be accomplished in a single structure? If they need these two behemoth things next to each other? I mean, why couldn't you achieve -- I mean, I'm amazed that you would choose this design and not come up with a single structure. I mean, that you gravitated toward something like this. I'm just -- I don't know where that comes from. And maybe you could explain it.

ROBERT LINN: I would love to explain. If you notice here in this site key context these are the two footprints of the houses that what we're proposing. And if you look at the relationship to all of the existing footprints, it's actually smaller than almost every other thing

there and there's more open space around it. And if you notice also in the, these two elevations, it's very much in keeping with all of these buildings that are the abutters.

PAT ZOFFREO: But it's two structures. Why can't you achieve in a single structure -- I mean, there's two families going to be living there, right? It's -- and this is not a huge lot.

DUNCAN MacARTHUR: You would have these two joined together. Basically the massing would be the same. You would have parking --

PAT ZOFFREO: Visually it would look more appealing to people in the neighborhood.

DUNCAN MacARTHUR: And appreciating the identified -- back there.

And I think it the people that most affected by this development which is three and four, it gives them some light relief.

FROM THE AUDIENCE: And I'm for. I'm Vineyard Street, 16.

CONSTANTINE ALEXANDER: Your name, please.

AMY SALAMON: I'm sorry. Amy Salamon, S-a-l-a-m-o-n. And I have to say I came to the Historic Commission meeting really wanting to fight to preserve the Saint Lucia, both its history and the structure, and we had a very odd meeting or else I didn't understand the nature of the meeting, and thought we were going to have time to once it, it was declared historically significant, that we'd have time to sort of talk this through more.

So I come here really to understand what it is about the Zoning Commission issues that might affect me. So one question I would have is aside from the density are you actually positioning these closer to property lines than are allowable under zoning ordinance s.

CONSTANTINE ALEXANDER: And the answer is no. The answer is just the density. It's a matter of, under our Zoning Ordinance, it's two -- more than 400 feet more building or structure than is permitted as a matter of right.

AMY SALAMON: I simply cannot figure out why the two together would be, would provide less -- what's the word? The light issue is gonna be achieved because I'm not sure how much that alleyway between the two houses, how large

that is and where it rests in relationship to the other properties. So I feel like I, I'm very ambivalent about commenting. I think their design is very interesting. I know the work they've done is really an interesting take on more traditional architecture, to modernize it. I'm concerned because we've had another house come up on Vineyard Street that passed muster and is huge. It is big and is high. As many stories I think these -- I don't know if these are going to be as high. So, I really, I'm here more to listen about what the limitations are of these two and hopefully we'll make some decision by the end of the meeting. But at the moment I'm on the fence because I think one of the reasons I moved to this neighborhood was we've had this open feel

and I do believe that the Saint Lucia house and that property were part of a more almost rural flavor, you could imagine what the history was for this neighborhood and that will definitely be gone, but that would probably be gone with a large two, you know, a large two unit structure as well. So....

CONSTANTINE ALEXANDER: Okay.

PAT ZOFFREO: Not necessarily.

CONSTANTINE ALEXANDER: Well, I want to try to -- please don't speak out of turn. Just let me recognize you just so we keep the meeting in an orderly fashion.

Anybody else wish to speak? Sir.

CLIFF ANDERSON: Sure. I'm Cliff Anderson of 139 Cushing Street, also an abutter across the street. I'd start by

saying that it's a tragedy to lose the tree however else we might look at the questions here, and I think it may show some lack of imagination not to be able to accommodate if the real intent of the petitioners is to keep the spirit of the neighborhood. I think it's a bit disingenuous to make that claim. I haven't been reached out to or spoken to and none of these plans have been shown to me. And the presence of the tree is a key focal point in entering that part of the neighborhood.

I understand that we're talking about the zoning specific concerns and specifically the ratio of the allowable floor area to the overall property square footage. I don't understand why that couldn't be done in compliance. When I

hear going over that ratio, that sounds to me like an increase in the density and an increase in the population. I'm concerned about specifically from that, the impact on foot traffic and vehicle traffic on the rest of the street which is already quite congested particularly during the school drop off and pick up times, parking and just regular walking is already an issue there. So we're talking about a request to allow more people to be using that space and occupying it.

So there's the congestion issue and we're also subject to traffic problems in the form of speeding despite some traffic calming measures that have been put in place on parts of the street. I'm not sure by adding more people by virtue of higher density of square footage is going

to be good for the neighborhood in that respect as well.

I guess I can't really complain about impacts of construction, although to build two structures is certainly a bigger undertaking than one, while it's all going on. I would just say that I don't think the proposed plan should be allowed to exceed the square footage that would normally be allowed. I'm not hearing that there is any real hardship in that, and I understand that there's also a question before the Planning Board with the existing plans. It reminds me of the case that was heard earlier tonight regarding the Tokyo Restaurant where the property was purchased and perhaps some assumptions were made that Special Permits or exemptions would be granted. And I wonder

if the petitioners feel that, you know, or had an expectation of entitlement of those coming into it. That's all I have to say.

CONSTANTINE ALEXANDER: Thank you for taking the time and sticking around.

Is there anyone else wishing to speak? Ma'am.

MICHELLE SELIGSON: Michelle Seligson, Seligson, 139 Cushing Street, apartment 1.

I really only want to say one thing and it is about the tree. I absolutely cannot imagine cutting down a tree that is in good health that is 100 and possibly 150-years-old, and I definitely have had fantasies of chaining myself to it, but -- and I say that simply because I want to convey how important that tree is. I, and I think Mr. Anderson's point about

the lack of imagination in terms of how to incorporate the tree into whatever design could have been made boggles my mind.

CONSTANTINE ALEXANDER: Let me just point out, if we were to grant or deny relief, they can do a lot on that -- they can take that tree down anyway and site the house, whatever structure they're going to build. So it's not whether the tree survives or not, it's not going to be decided by this Board. They have a lot of options, all of which could involve, if they wish, to taking down that tree without having to come back to us or any other city official.

Ma'am, you wanted to speak?

RONNIE SAROFF: Yes, I'm Ronnie Saroff, S-a-r-o-f-f 139 Cushing Street, No. 5. I also want to speak to the tree

even though -- or speak for the tree, even though I understand that it's not under your jurisdiction, but since we have the architect and designer here, I just wanted to share that I'm an administrator at the Harvard School of Design. I've consulted with our landscape architecture faculty on this issue because my neighbors are so deeply upset and concerned about the future of the property, and I've been assured by several of them if there's no reason why a single-family structure put on the same footprint as the current structure would in any way require removal of that tree or negatively impact it. The tree, I've also brought my son here and kept him up at this ridiculously late hour because I want to illustrate that it's not just adults with cars that enjoy this

neighborhood but children, and that tree is integral to the health of our children and of our neighborhood, that the fragile ecosystem. We had a property down the street last year that was also a single-family on a double lot, and it also had an over 100-year-old growth tree on that property and the developers that purchased it demolished the tree and put in three units. So this is the last old growth tree that exists on this street. That's it. If it comes out, it's gone, and we have nothing left but chain link fences and tiny little saplings that will take, you know, that won't even grow to that height in my child's lifetime. So I would ask the architects and designers please to reconsider their design. I would be happy to take your designs to the

Harvard School of Graduate Design and pose that to our students and faculty as a challenge to how we could come up with something more creative that would address your needs as well as the neighborhood's.

CONSTANTINE ALEXANDER: Thank you. And thank you to your son for sticking around to this late hour.

Is there anyone else wishing to speak? Maggie.

MAGGIE BOOZ: My name is Maggie Booz, B-o-o-z. I live at 27 Lawn Street in the neighborhood right around the corner from the port.

CONSTANTINE ALEXANDER: Could you come closer? I'm having trouble hearing you.

MAGGIE BOOZ: I live at 27 Lawn Street which is right around the corner

from the property. I have a couple of things to say. I guess one thing is that I live on a lot that's approximately the same size as the lot of the Saint Lucia building and I have a single-family house, and it conforms to Zoning, it conforms to the floor area ratio, and it's plenty large. And I bet if you built one just like it, you'd make a lot of money without having to divide the lot and put two structures on it and/or even maximize the floor area frankly. So that whole floor area ratio, you know, the idea that there's a hardship on this lot, I don't see the hardship. And as, you know, I'm pretty familiar with hardship in terms of the Zoning Ordinance.

My second point is that I'm the Co-Chair on Public Planting for the City

of Cambridge and our neighborhood has a
shortage of street trees and it's really
lacking compared to a lot of the
neighborhoods in Cambridge. The sidewalks
are not wide enough to put more street
trees on them. So we don't actually have
the option of planting street trees on
most of the sidewalks, on most of the
streets on Strawberry Hill. I know that
trees on private property and it's
completely not within your jurisdiction to
protect it. But it's within your
jurisdiction to say what could be built on
the lot.

CONSTANTINE ALEXANDER: That's
right.

MAGGIE BOOZ: And certainly that
tree could be preserved with a
single-family house on that lot, and this

is really all about development and making money and I don't see zoning hardship in that case.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Is there anyone else who wishes to be heard? Yes, Ma'am.

FRANCINE SPARKS: My name is Francine Sparks I also live at 139 Cushing Street. I agree with what everybody said, but some of your comments about matching the scale with the rest of the neighborhood or fitting in with the fabric of the neighborhood and the idea that the current building there, the Saint Lucia, which I've lived there since 1995, there's been a festival every single year. That there's, that building has been a church for people. You could almost think of it

like a little community park. People gather there, there are weddings there. It is a total joy to have had that building across the street. And so I just want to point out that your comments on the best use for the neighborhood, I don't think you could find anybody in the neighborhood who would agree with that.

CONSTANTINE ALEXANDER: Okay, thank you.

Mr. Hawkinson.

JOHN HAWKINSON: John Hawkinson, 84 Massachusetts Avenue. I'm sort of curiously wonder if there's room for a compromise of a condition preserving the tree in exchange for more FAR which would give a totally different design but, you know, a way that preserves the tree, though, it would still have to be a

Variance to -- it would still have to -- the neighbors would have to give up something substantial, and I don't know whether that's possible.

CONSTANTINE ALEXANDER: I personally believe -- it's an interesting and innovative suggestion. It's not possible. They got to start by hitting, in my, in my judgment, it's a fact, they have to satisfy the requirements for a Variance. The tree is not tied to the Variance -- I mean, it's not related to the relief being sought for the Variance. More FAR. So we could try it if you want to, if the Board wishes to do, but I think it's somewhat dubious as a legal matter in my personal judgment.

JOHN HAWKINSON: Well, it would be about the abutters' support. They would

only support it with the tree than without.

CONSTANTINE ALEXANDER: Okay.

Well, we'll see when we take a vote.

That's an interesting suggestion and thank you for it.

Any final -- I think we're going to close public testimony. Any final comments you want to make at this point? It's for these two gentlemen.

DUNCAN MacARTHUR: I've heard what everyone has to say, and I understand that the tree's an important factor but going back to just the development of the property, whether it's one or two, whether there's 30 square feet to it or not, I'm happen to have a discussion, and I still believe having two structures as opposed to one in massing --

CONSTANTINE ALEXANDER: Sorry, sir, I didn't mean to interrupt you, my apologies. Would it make sense to continue the case and you want to talk to the neighbors and see if you come up with an alternative design that gets more neighborhood support.

DUNCAN MacARTHUR: Well, there's two steps to this. On December 1st we have to go in front of Planning Board anyway. So if we do need relief from 75 feet to create two separate structures and, honestly, a lot of the comments, not that I want to shoot myself more appropriate at that meeting because that's the jurisdiction that they're going to have about whether or not these get pulled apart honestly. So I guess we can continue it.

CONSTANTINE ALEXANDER: I'm just throwing it out. I'm not trying to force you into it.

TIMOTHY HUGHES: I need a clarification. On how many square feet are we over in terms of FAR?

CONSTANTINE ALEXANDER: About 400 feet.

TIMOTHY HUGHES: And how do you compute that with that, you know. The 5,000.

CONSTANTINE ALEXANDER: It's a calculation because of the Res. B, but basically under the formula, they can't have any more than 3700 square feet, and the two structures would never have a combined total of 4100 square feet. Ten percent more.

SLATER ANDERSON: It's 0.5 and up

to 5,000 and --

TIMOTHY HUGHES: And then 0.35.

SLATER ANDERSON: -- additional
3500 or --

CONSTANTINE ALEXANDER: It makes
for a difficult computation.

SLATER ANDERSON: What's the
Planning Board -- what are you asking for
from the Planning Board specifically?

ROBERT LINN: There's a provision,
I think it's 5.53 that says that if you're
allowed to have two separate residential
structures on the lot, but both structures
have to be, 75 feet from the lot line.
But that provision I think was not
intended for a corner, a corner lot
situation. So in our case we're within 15
feet or more from Cushing Street which is
really the 136-138 Cushing but from

Vineyard Street building B is more than 75 feet.

SLATER ANDERSON: Oh, got it. It has to be within the 75 feet?

JANET GREEN: He's got two front yards.

SLATER ANDERSON: I live on a corner, I get that. I've got one structure.

DUNCAN MacARTHUR: You can penetrate that 75 feet if it's attached, but once it's detached you can't.

ROBERT LINN: And truthfully I'm sure that we can find a way to carve out 400 square feet between two buildings. What we would be removing are overhangs which create texture, which actually adds some life and shadow to the exterior of the buildings. We'd be taking away some

of the bays and some of the things that make a building a much more rich architecturally. Of course, yeah, if we wanted to, we could strip it out and we could make it work. And it isn't just about -- I mean, certainly there's economic viability of having about 500 square feet doesn't make or break a project, but it's about adding this architectural detail that we think, I feel really helps it to feel like it's -- it would feel good as part of the fabric of the neighborhood as I said.

BRENDAN SULLIVAN: Is there any of that 400 -- well, is there any of the floor area in the basement?

ROBERT LINN: No, none is in the basement.

BRENDAN SULLIVAN: Okay, so it's

all above ground.

ROBERT LINN: Uh-huh.

TIMOTHY HUGHES: You could save some money when he cuts his dormers down to 15 feet.

ROBERT LINN: Yeah.

JANET GREEN: But I think it was important because somebody mentioned that they thought that this was going to create more traffic and more people, but by right it's not -- that's not going to change. I mean, what they can do by right, they can still have a two-family joined.

CONSTANTINE ALEXANDER: It would be a -- as I understand from their proposal, two-bedroom units. So not likely, I think my guess is the number of people would be higher with two single.

JANET GREEN: So they made a

proposal that also includes --

DUNCAN MacARTHUR: We were always going to go for three bedrooms even if we shrink them down. But I don't think the person count is going to make a difference. They're going to be in smaller rooms. I don't think the person count is the same with vehicles. And --

JANET GREEN: Just so that people realize you'll be talking about fitting the same number of people in the same number of bedrooms in one building. In a mass of one building. Because it would be a two-family instead of --

CLIFF ANDERSON: May I respond to that? I was the one that raised that question. I would question if there is more square footage of living space available, it is possible with the same

number of bedrooms there might be more occupants given a larger amount of square footage, that's how families grow. I mean, that could make it an appealing choice or not for a larger family.

FRANCINE SPARKS: Could I just comment?

CONSTANTINE ALEXANDER: No, you've had your opportunity. Please.

ROBERT LINN: May I speak?

CONSTANTINE ALEXANDER: You still have the floor. Go ahead.

ROBERT LINN: One other thing that's a consideration is that if we were doing an attached two-family, we would also be able to have parking as part of that which could be covered and add to the mass of the structure, which in some ways if you're not pulling them apart and

having the amenity for families of being able to have the open space around which is what we're saying now if you're pushing it all together, you would just, by necessity, have the amenity of covered indoor parking which you could do by the mass without adding to the gross floor area. In our calculation it's a big mass versus two smaller pieces that feel like they're more appropriately scaled and maintaining as much of the open space as we could maintain that's the calculus.

CONSTANTINE ALEXANDER: Thank you.

DUNCAN MacARTHUR: And lastly, we are intending it is families. It's next to the Haggerty School, and we figure it's going to be appealing someone who wants to send their children to school, we're trying to accommodate to that.

CONSTANTINE ALEXANDER: I'm going to close public testimony. I think we're ready for a discussion and eventually a vote.

BRENDAN SULLIVAN: I think it might behoove all parties maybe to just step back to just what you've heard and, again, there is my getting over the hurdle of that you can't do it as of right that, I mean, I don't necessarily object to the two structures. I think that you're close. You can almost get there. And because you can almost get there, you're starting off with a blank piece of paper. It has to be really a compelling reason to grant a Variance because it's the hardship thing. And even though I think the design is pleasant, I mean, I think some of the features with Grove Street that are in

there with the roof lines and some of the other features and what have you, and I think those are pleasant looking buildings. I think that a two-unit townhouse would not be pleasant. I think the design is basically good. It's just me getting over granting the relief when I think you can do it as of right. But I think it may be an exercise that you have to go back through. And you may come back to us and say it really just doesn't work for these reasons and for me to be convinced of it I guess.

JANET GREEN: I guess, you know, I feel that same way. And I also feel in listening to some of the comments, I want, sure, there was a clear understanding of what the choices are that the neighbors have. That's not this or a single-family.

And so it seems to me that in order to have a real input into what is going to happen, you need to understand what the options really are from a legal point of view or from a zoning point of view. And that's where the part of having a conversation or going back and looking at it seems to me to make sense.

CONSTANTINE ALEXANDER: So anyway, you've heard from three members, and I talked about this earlier suggesting that you really should have a -- continue this case, rethink it, meet with the neighbors. Have a neighborhood meeting and go over, as we've suggested, the options you have without dealing with the five us and why you want to deal with the five of us, i.e. to get the Variance and see where you go. And then we'll reconvene at appropriate

time and we'll take a vote.

SLATER ANDERSON: And I would say that, you know, I know the tree is not really under our jurisdiction, but there is an element of a hardship in that if you guys try to accommodate the tree, that, you know, there may be some relief there because that is, you know, related to the topography and the shape of the site. And the neighbors clearly have very strong feelings about this tree. I mean, all of us who live in the city, trees, you know, have a tough go of it here in the city, particularly a 100-year-old tree. If there's a way to accommodate that, accommodate your plans, might require some marginal relief, I could get there myself on it I think.

CONSTANTINE ALEXANDER: So --

TIMOTHY HUGHES: I have a little different opinion. I'm not opposed to continuing this case, but I do feel like that if we were to force them -- if we were to deny this and force them into an as-of-right solution, it's still going to be two buildings on this lot and it's not going to satisfy any of the neighborhood, you know, complaints about what's going on here partly because what they're concerned with aren't zoning issues that we have no control over. We can't save the building. We may not be able to save the tree except, you know, with trying to pin the hardship on that which is a possibility. I'm not, you know -- so I mean I'm not sure that continuing the case is going to accomplish anything but I won't vote against a continuance.

CONSTANTINE ALEXANDER: The other thing I'm going to point out is we're coming into a bad time of year in terms of meeting with the neighbors because people, you know, it's holiday season coming up when -- how long would you like to -- if we were to continue the case, when would you like to continue it to? I have in mind sometime in January. That's my suggestion only because that gets you by the holidays and allows you to have a meeting with the neighborhood. If that's not a good idea, we'll do it earlier if we have room on our agenda.

DUNCAN MacARTHUR: I would just as soon do it as soon as possible. There are neighbors we talked to that are in favor of it. And I think depending on what side of the street you're on, is potentially

difference of opinions there how they want to see this laid out. But it's, my concern about the tree is that we could do all of this around the tree if it's a 150-year-old tree, I don't know how long Norways last, you could do all this. We're going to be disruptive to it. The tree could expire and then you have this thing that's sort of developed around a tree that's no longer there. I'm a little concerned about that. But I wouldn't need until January because I think we can meet fairly quickly and we have a meeting on December 1st. So potentially we can meet before then anyways. And a lot of this is going to be rehashed at that point. I do want to point out that, you know, one thing we were trying to do is not attach these. The reason before the Planning

Board it's very easy to put the garage attaching these two units. We don't need to seek Planning Board relief and we create more massing. There was a lot of thought into how we eliminate here to create that space.

CONSTANTINE ALEXANDER: My assumption is, by the way, if we do continue the case you're going to have to continue your Planning Board hearing. You won't have the plans to show the Planning Board, because if you show these plans and we ultimately turn it down or want modified plans, you're going to have to go back to the Planning Board.

DUNCAN MacARTHUR: I am. Whether or not we go back to this and carve out the 300 feet and try to make it work and whatever it is, the overhang, it's not a

lot of work to do. You know, my decision is do I do that? Do I attach them with the garage to get by the Planning Board. Do I take the 300 feet out, attach them, and we're kind of done. And, you know, that's -- so I'm happy to have a discussion, but it's pretty easy for me to pull this together to make it comply.

CONSTANTINE ALEXANDER: The next meeting is December 10th, right? That's our agenda?

MARIA PACHECO: That's the next available. But we have four continued and five regular.

CONSTANTINE ALEXANDER: Too many. So the next one after that is December?

MARIA PACHECO: We only have one in December.

CONSTANTINE ALEXANDER: Then

January 7th, right? And this is a case heard. And I know after January 7th you're not around. So we'd have to do it.

MARIA PACHECO: You're here the 7th.

BRENDAN SULLIVAN: I'm around not after January 7th. Not for the 21st.

MARIA PACHECO: 28th.

CONSTANTINE ALEXANDER: Every other members of the board can you make a meeting on January 7th?

I'll be here.

TIMOTHY HUGHES: I can do the 7th.

JANET GREEN: I can do the 7th.

CONSTANTINE ALEXANDER: Okay, I'm going to make a motion that we continue this case until January 7th on the subject to the following conditions -- this is a case heard.

That the petitioner sign a waiver of time for decision, which is standard requirement.

The second is that you modify the posting sign that's there now to reflect -- do it with a magic marker, reflect the new date and time January 7th and seven p.m.

And lastly to the extent that you modify the plans, you're seeking relief from us, and modified plans and related dimensional form, must be in our files no later than five p.m. on the Monday before January 7th. If you don't get them in the file by then, you can't just bring them to the hearing in short or even short of that.

So, and the final condition is that we've urge that you meet with the

neighborhood, the neighbors, to the extent that you can, in a group meeting and discuss what you want to do, including any revised plans. Or if no revised plans, why you're not revising the plans as been suggested by many members. I think it's important for you to educate the neighborhood as to what your options are. There are things you can do without getting relief from us and that may be worse to the neighbors than what you're proposing. That's got to be flushed out with the neighborhood.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. See you on January 7th.

(Alexander, Hughes Sullivan,

Green, Anderson.)

SLATER ANDERSON: Maybe just a suggestion that you and/or the neighbors maybe have an arborist look at the tree and get a sense of -- when you say about the tree is fair about what is the long term health of the tree. I don't know. I have no idea. But maybe get an impartial person to let you know.

CONSTANTINE ALEXANDER: Thank you very much.

* * * * *

(10:20 p.m.)

(Sitting Members BZA-008606-2015:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Janet Green, Slater W.
Anderson.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 008606, 2485 Mass.
Avenue.

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

So this is the Cambridge Zoning case
equivalent of Jarndyce versus Jarndyce,
the longest pending litigation.

ATTORNEY JAMES RAFFERTY: The case that --

CONSTANTINE ALEXANDER: Fifteen years.

ATTORNEY JAMES RAFFERTY: Right, right. It seems like yesterday.

So many of us here tonight have been here for all of those meetings. But for the record, I'm James Rafferty. I'm an attorney in Cambridge representing Henley Enterprises. And they operate the Valvoline Instant Oil Change. And seated to my right is Randolph Kazazian. It's K-a-z-a-z-i-a-n. Mr. Kazazian is the director of real estate for Henley Enterprises. And Jorge DeLeon. And Jorge spells his first name J-o-r-g-e, and his last name is D-e-L-e-o-n and he's the area manager.

Mr. Kazazian was impressed when he saw your agenda tonight because he noticed -- he said, look, they're just like us, they do every case in 15 minutes.

CONSTANTINE ALEXANDER: And you disabused him of that.

ATTORNEY JAMES RAFFERTY: He said to me a little while ago if we measured 15 minutes the way they do, we'd two cars a day. So I explained that BZA 15 minutes is not the same as instant Valvoline 15 minutes.

SLATER ANDERSON: We'd be out of business.

JANET GREEN: We wouldn't make any money.

SLATER ANDERSON: We charge for lawyers.

TIMOTHY HUGHES: That's what we

shoot for is 15 minutes.

CONSTANTINE ALEXANDER: That's right. We never achieve it, but we shoot for it.

TIMOTHY HUGHES: No, that's right.

ATTORNEY JAMES RAFFERTY: This is a case that has --

TIMOTHY HUGHES: Twelve minutes left, Jim.

ATTORNEY JAMES RAFFERTY: Okay.

So this case started 15 years ago. People might recall this was Uncle Russ's gas station, a Shell gas station on Mass. Ave. So U-Haul and as Mr. Brandon reminded me, he also sold live bait, and it was a little bit of an urban fish market in addition to everything else. So Henley bought it a little more than 15 years ago, cleaned it up environmentally, and then

created the instant oil facility. At the time the original Special Permit was granted to allow for a change of use from one automotive repair facility to a different kind of automotive repair facility. It was a five-year limitation placed on the Special Permit, and there were some conditions put in place. We returned five -- ten years ago to -- as required by that Special Permit. There were some issues addressed at that time, particularly around landscaping. And the decision by the Board was made to issue the Special Permit or to extend the condition review period for ten years. So we're here after 15 years of use. We did take the opportunity to reach out and -- with the neighborhood association just to see if they had the same view that

we did about how we were doing. And as is often the case, we learned a few things that were of concern to the neighbors. I summarized those items and responded to the association, and I put a copy of it in the file just to alert the Board to that area of discussion.

CONSTANTINE ALEXANDER: Is that here?

ATTORNEY JAMES RAFFERTY: Yes, it's a communication dated November 16th which identifies four issues that I summarized from the notes at our meeting.

The first involves, there's a wall sign on the building. The wall sign is -- has the capability of being internally illuminated which doesn't comply with the Ordinance. It's not supposed to be on, and apparently it has

been on from time to time. So when we learned of that, since the meeting with the neighbors last week, the mechanism that allows that to be turned on has been disabled so that can not happen.

We also heard concerns from some neighbors about the adequacy of the snow removal. There's a variety of factors that contribute to that. Certainly the harshness of last winter. The fact that employees do the shoveling. They have a snowplow, a couple of days in which the facility didn't open, so there were delays but it's been identified as a priority.

An area that we had frankly not focussed on all that much was the signs on the building. Not -- excuse me, the lights on the building. These are lights intended placed on the building, and I

learned through Mr. Teague that they're called wall packs, and last night at about 8:30 Mr. Kazazian walked the site with Mr. Teague and got the benefit of his attention to these issues with suggestions for smaller units and different type of colored lighting and the like. So we have a proposal to address that.

And then there had been a temporary sign on the building advertising Sunday opening and it exceeded by some length the permitted period of time for temporary signs. So that came down right away.

And the last thing was, again, the landscaping, the hedge that had been in the front of the property. It's difficult to maintain, and after the last winter it was destroyed through snow activity and the like. So a replacement hedge was put

in, but it's been acknowledged that it wasn't, it isn't adequate. So the, so we have three additional areas which we said we would address as a supplement to that. So picking up on the last issue on the landscaping, we have said the following and we discussed this:

We took advantage of the time you were hearing other cases with the leadership of the neighborhood association to identify these issues. So we, the applicant has said that we're going to enhance the existing hedge in the spring. We're also -- which is in our submittal that you have.

We also agreed to explore alternatives to the hedge with the goal of insuring long term success. Meaning that we would look at perhaps another plant

species or another type of screening that would work better.

And then the most important thing, and this was Mr. Kazazian's suggestion, is they have the ability to put, they have something called spring compliance. They will put the landscape issues on the spring compliance. So that every spring -- they have multiple locations, that the landscaping will be surveyed, and where improvements are made. One thing that was put in the landscaping the last go-round was irrigation, because often times all these plantings don't survive. So it is irrigated. We know that for a fact because someone commented to us that they get wet walking on Mass. Ave. when the sprinkler is on. So the sprinkler does work and so that's, that's the

proposal to -- on the landscape.

On the signage we said that all the signage on the building needs to be compliant, and we have not sought any relief from signage. But we did say that we, Mr. Kazazian said that Henley would explore new signage. The building is about 15 years old, the sign packages change over the life of the company. He says that there are other options these days that are available and they are committed to -- they will explore that. They will share the options with the neighborhood, solicit their feedback, and they'll make a determination about those signs.

CONSTANTINE ALEXANDER: But the signage would be compliant?

ATTORNEY JAMES RAFFERTY:

Compliant signs.

CONSTANTINE ALEXANDER: The design of the compliant signage would be worked out between the neighbors and --

ATTORNEY JAMES RAFFERTY: Exactly. The sign, the size the materials. Mr. Kazazian made mention of a channel lettering is now in some locations and there's a variety of options. But the expectation is obviously would have to comply and we would look at that. The current signage does comply with the exception of that internal illumination, so....

And then finally on the lighting, the result of last night's exercise in the -- frankly the good exchange of information provided by Mr. Teague is that Henley is committed to replace the three

existing wall pack lights on the building with new fixtures that will generate less glare and minimize light trespass which is a term that is new to me, but I think suggests that there are ways to shield the lighting and to lower it.

And so, that's all part of being a good neighbor, and Henley says that they're perfectly prepared to do that. They have been there for 15 years. They believe they provide a good service. They -- a use that gets a lot of business from the neighborhood and from beyond, and they would like the -- they would like to be able, frankly, to have this Special Permit and continue to operate.

CONSTANTINE ALEXANDER: Without another period limitation?

ATTORNEY JAMES RAFFERTY: That

would be our request. That the -- now, I acknowledge that the limitations have allowed for opportunities to visit issues. I think we're committed to say we will continue to visit those issues and, but we think that the five, the ten years, this time frankly I credit Henley that they tracked the time and all that and then they do it. But we all know that, I mean, Special Permits do have the ability to be time sensitive, but I think it's more taken at a macro level and how is this use doing? We feel that the use is demonstrated, that they closed at seven p.m., they're not open in the evening, the traditional places where complaints would be heard either in ISD or frankly at licensing, that there's -- we're not aware of any issues, any complaints.

CONSTANTINE ALEXANDER: I would observe that the time period that's been put on the two Special Permits granted before, have really served a good purpose because it requires you to come back and talk to the neighborhood and to deal with current situations and the like. And it gives the neighborhood a chance to basically monitor or at least weigh in on how the property is being operated. In my view keeping some time frame on the Special Permit one more time at least to see if this last go-round satisfies everybody and maybe the next time around you can come by and say no neighborhood opposition whatsoever and then I would personally be amenable to take a time frame off. I'm still very partial to some time frame which we can talk about, but

I'm only one of five.

TIMOTHY HUGHES: I'm determined not to be here if there's another time frame.

CONSTANTINE ALEXANDER: This is Mr. Rafferty's annuities. He can guarantee every several years he can come back and charge more legal fees.

ATTORNEY JAMES RAFFERTY: Is it necessary to type everything that is said at the hearing. At least it won't be YouTube.

CONSTANTINE ALEXANDER: I'm already a star on YouTube.

ATTORNEY JAMES RAFFERTY: At least they get your front view. You should see how I look on YouTube. The cameras are behind me, trust me, it's not a pretty picture.

BRENDAN SULLIVAN: Something that I somewhat object to and I -- granting, when I sat on them, one thing I did not really want to see, we gave that little sign down at the corner, but not to see all of these banners, you know, that say Valvoline. I mean, they look like sales. And I know they're all temporary and what have you. I think it really junks up the place. And I noticed that they have been removed, cleaned up, I think, but that is one thing I really -- the signage that's there today is the way I would like to see the place and not have all of these other marching banners that say Valvoline that makes it look like a used car lot type of thing.

CONSTANTINE ALEXANDER: Let me try to frame something when we get to the

motion maybe. Try to anyway.

BRENDAN SULLIVAN: I go back up and we shouldn't separate, we should separate different locuses (sic) but that what used to be the Hess Station which is now Speedway or something. We granted them signage and they have taken the opportunity to plaster every available sign on every available post and everything and it just junks up the neighborhood. So that's, you know, one of the -- my little pet peeve. Anyhow.

CONSTANTINE ALEXANDER: Any other -- I'm going to open it up to public testimony any other questions?

JANET GREEN: No.

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

Mr. Brandon, you have anything you

want to say.

MICHAEL BRANDON: Do you want to go first?

CONSTANTINE ALEXANDER: Sorry, go ahead, Mr. Teague.

MICHAEL BRANDON: You'll identify yourself, I guess. Thank you. I don't want --

CHARLES TEAGUE: Charles Teague, T-e-a-g-u-e, 23 Edmunds Street which is just -- opens out just across the Valvoline. And so, I'm also on the City Manager's Lighting Ordinance Task Force and which has yet to complete anything in particular. The -- what my assertion was that the lighting here was -- is not compliant with existing Zoning Section 646, and we could be redundant and make a condition that rather than that new

lighting be compliant, but that sort of redundant because it should be compliant anyway. We might add a condition that any new signs not be illuminated, but that was the whole issue was that -- I'm, apparently when I call into ISD and say that their sign is on, that doesn't get -- because I've called like five or six times over the ten years. And disabling the mechanism to turn on the sign was what I requested here ten years ago. So let me see. I just want to -- so I love the Special Permit renewal timer. I think that's great. It's a very amiable process to my mind, and Michael Brandon and I, we don't -- as I told them, we don't pick on them, we pick on everybody. All the signs and all the lights. And we treat everybody equally. And the

play -- you know, there's a lot. You know, signs just pop up everywhere and we get them taken down. And so it's, you know -- and one thing that I really would like to -- there's some promises here, it's good to have them written down as conditions and that are on a piece of paper because that -- I said to them for the NTB we paved their parking lot, they paved over the landscaping. I said that was a condition. You go down to the records room in ISD and there it is, and then suddenly the landscaping reappears. But it's so much more work without the time limit on the Special Permit. The time limit is great. Please keep that.

CONSTANTINE ALEXANDER: Thank you.

CHARLES TEAGUE: Thank you.

MICHAEL BRANDON: Thank you,

members of the Board. I'm Michael Brandon. I live at 27 Seven Pines Avenue, and I'm the clerk for the North Cambridge Stabilization Committee. And Mr. Rafferty did approach us and let us know that this deadline was coming. They had reapplied or had applied to remove the -- to extend and remove the expiration date. He came to our meeting, and as he described, there were four main areas that people raised concerns about: They were the signs, the landscaping, the light pollution, and the problems with snow removal on the adjacent sidewalks mainly.

I did send a letter in very late today that probably didn't make it into your -- it was very late in which I had suggested a continuance to allow us more time to work with the proponents on things

that they had agreed to after the meeting.
Mr. Rafferty's note there.

We've now had a chance in
the -- while waiting for the hearing to
start, to discuss further what I call
broader issues in my letter about the
signs, not just, you know, the temporary
sign that was taken down, the sign that
was turned off, but broader things. And I
think we're on a track now where we have
assurances from Mr. Kazazian that they in
the spring they will address some of the
specific landscaping issues and look at
revised signs.

The Board, I would like to know
that -- or maybe some of the newer
members, this is in the Mass. Ave. Overlay
District which was created in 1986 largely
to remove the many automotive-related

uses, used car lots, filling stations, abandoned filling stations. And so we've had some success over the past 25, 30 years in improving things. So this particular site, they couldn't go in and build that new. And the reason they got the original permit was it was improving this gas station that was there and, you know, so there were lots of process, conditions imposed.

And then the same thing happened. It was supposed to be five years, but they neglected to come back in five years and came back in seven, but it was extended for an additional ten years. But over that time there had been numerous failures to comply with conditions and other ordinances or regulations, some zoning from the snow and so forth.

So without going into all of those, and there were quite a few of them, you know, I think we're in the process of addressing them all. And I guess I would suggest at this point that the conditions as embellished by -- there were four, he said, and he's now expanded on those, those be added together with any others that the Board thinks are appropriate. But all the previous conditions be retained from the original. You know, there's no identifying, and there are a lot of very detailed conditions. Those be there. But then that rather than continuing the case, because we're talking about looking at the landscape in the spring, you know, and so there's time to work this out and different signs. That I would suggest that you grant it, but for

one year which then will give us time to see when we work out -- are the details worked out satisfactorily and are they now complying with a lot of conditions that haven't been complied with? And at that point, you know, maybe we do get rid of everything, you know, or go back to a five year or a ten year, but I would agree the process is great.

I would also agree with the pet peeve here of Brendan about that's what I'm talking about the temporary signs, the banners. I know you had this issue with the Honda, I think it was over there.

CONSTANTINE ALEXANDER: Yes.

MICHAEL BRANDON: So you're familiar with it. And also the issue of lighting after hours. But at this point we'll see what the new signs are. But I'm

presuming that they will not be internally illuminated. But I would like to see some sort of wording that these, you know, some of the signs are clearly illegal, like the temporary sign that was taken down. Well, it exceeded the requirements. But anyway, those are the issues. And I think we're over our 15 minutes.

CONSTANTINE ALEXANDER: Thank you.

Just my own personal observation, I think a one year extension is far too short. I think you want to have at least -- well, I wanted to say several years, and I'll get more specific in a second, to see a pattern of compliance with the conditions. I think from the neighborhood's point of view, you can comply for one year and then let the landscaping go to hell and don't do any

snow removal. You won't do that. And we have a Special Permit there forever. I think there's a benefit to the neighborhood for having a longer period of time. That's exactly what I'm thinking about.

Anyone else wish to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Any final comments?

ATTORNEY JAMES RAFFERTY: Not really.

CONSTANTINE ALEXANDER: We're going to try to construct on the fly these conditions.

ATTORNEY JAMES RAFFERTY: Well, they're set forth in my correspondence on November 16th and then this is --

CONSTANTINE ALEXANDER: I don't have that.

ATTORNEY JAMES RAFFERTY: And then there's this.

CONSTANTINE ALEXANDER: Well, I'll try.

ATTORNEY JAMES RAFFERTY: I'm sure you can improve upon.

CONSTANTINE ALEXANDER: I'm closing public testimony. You're all through.

ATTORNEY JAMES RAFFERTY: In more ways than one it sounds.

CONSTANTINE ALEXANDER: In a matter of speaking.

Discussion? I'm up for renewing, and as Brendan has signaled to me which I agree with renewing the Special Permit for five years subject to the conditions which

we'll get to. We'll try to get to in a second. I think we do need a little bit of time to see how well you're complying with the conditions for over a period of time. And one year is a relatively short period of time. There is a potential for mischievous potential or otherwise if it's for only one year.

Okay, with that the Chair moves that we grant the Special Permit being requested -- no, the Chair moves that we make the following findings with regard to the Special Permit being requested:

That the requirements of the Ordinance cannot be met without the Special Permit.

That traffic generated or patterns of access or egress resulting from this the Special Permit will not cause

congestion, hazard, or substantial change in established neighborhood character based upon the conditions that we would impose to the Special Permit.

That a continued operation or development of adjacent uses will not be adversely affected by the nature of the proposed, what is proposed, again, subject to compliance to the conditions that we're going to impose.

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 will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

On the basis of these findings, the Chair moves that we grant the Special Permit requested subject to the following conditions:

That there will be no -- one, no internally illuminated wall sign. The one being there now, having been disabled and will remain disabled. By the way, stop me, anybody, along the way if I'm not getting it right. Including yourself if you have suggestions, sir.

That the petition letter will use all reasonable efforts to remove sidewalk snow as promptly as practicable but not -- this is a soft judgment. It doesn't have to be instantaneously as the flakes hit the ground, but you've got other things to do, but don't let it -- do it.

SLATER ANDERSON: The city has snow removal guidelines.

ATTORNEY JAMES RAFFERTY: I was going to say, Mr. Chair, in that case this is not a condition that has existed in previous permits --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- in the two previous iterations and what I said is that the municipal ordinance that requires this and we need to comply with that as any business or property owner does. So....

CONSTANTINE ALEXANDER: I thought you were referring to the sidewalks along there which you have responsibility, the city doesn't.

ATTORNEY JAMES RAFFERTY: That's what I said, well, the city has a

municipal ordinance that requires property owners to do that.

CONSTANTINE ALEXANDER: You're right. I'm sorry, I forgot about that.

ATTORNEY JAMES RAFFERTY: And there's a mechanism to -- property owners get cited for failure to comply.

CONSTANTINE ALEXANDER: I know what you're talking about.

ATTORNEY JAMES RAFFERTY: It has not been a historic condition for the 15 years --

CONSTANTINE ALEXANDER: Eliminate that condition. Forget about it. You're right. I forgot about the municipal ordinance.

That the wall pack, so-called, that's currently there will replace with a smaller unit.

ATTORNEY JAMES RAFFERTY: Actually excuse me, I think if you use the substitute language, it essentially says we're going to replace all three.

CONSTANTINE ALEXANDER: Okay. The next condition is all -- that the petitioner will replace three existing wall pack lights on the building with fixtures that will not -- will generate less glare and minimize light trespass. Whatever that's supposed to mean.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: That the signage on the property will comply with our zoning ordinance, and that in any event, there will be no banner signs on the property. Signage should be other types of signage.

ATTORNEY JAMES RAFFERTY: Right.

But the ordinance does provide for temporary signs on occasion.

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY JAMES RAFFERTY: But what I'm saying a blanket banner sign would, a restriction again we haven't had that in 15 years, but what we're saying is there are -- if you are, if you're having a special, you could have a banner up to 14 days and the ordinance and all of that. I think the signage needs to comply.

CONSTANTINE ALEXANDER: Yes, and that's my motion. It has to comply.

ATTORNEY JAMES RAFFERTY: But there's nothing.

CONSTANTINE ALEXANDER: All right. Thank you. To the extent that the banners are -- the signage consists of banners, that those banners also comply with our

Ordinance.

ATTORNEY JAMES RAFFERTY: Right. We could say comply with sign requirements including temporary sign requirements. I think the history has been that the temporary signs to the extent the ones that are there are allowed have lasted longer than the window allowed for those things. So compliance with the sign ordinance is an obvious condition. And calling out particular compliance with the temporary sign provision seems to be the appropriate focus for the condition.

CONSTANTINE ALEXANDER: I think you don't need to -- I'm happen to add that as a condition. I don't think it's necessary.

ATTORNEY JAMES RAFFERTY: Right. I was trying to divert you from calling

out a banner and saying that a banner would be a violation of a condition. It might be some scenarios where a banner for a short period of time is a permitted sign.

CONSTANTINE ALEXANDER: Okay. I got your comment. And revise what I said about banners. That banners, that banner signs may be used so long as the use of them is consistent with our zoning ordinance.

BRENDAN SULLIVAN: And what's the zone here? Sorry.

ATTORNEY JAMES RAFFERTY: Business A-2.

BRENDAN SULLIVAN: A business office in industrial district, temporary signs pertaining to special sales or events, lasting no more than 15 days are

fixed to the inside of windows, provided that the total area does not exceed 30 percent of the area of the window glass to which they are affixed.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: The ones I'm talking about are the one that's get stuck between the sidewalk and the parking lot.

MICHAEL BRANDON: It's --

CONSTANTINE ALEXANDER: We're okay if he has to comply with the ordinance, those kinds of -- if the signs meet that requirement, he's fine. If he don't, then he's in violation of the condition.

And the next condition would be that with regard to the landscaping on the property that the -- this is harder. That the petitioner will seek to enhance the existing landscaping this coming spring

and to maintain through spring compliance annual maintenance of the landscaping.

The goal here being to improve the landscaping and therefore the visual impact of the property.

And then last that the Special Permit will continue -- and next to last. That the conditions imposed on the Special Permit previously granted continue except to the extent that they are inconsistent with and have been superseded by the conditions we've imposed here tonight.

And then lastly that the Special Permit will continue for a period of five years, following which the petitioner if it wishes to continue to operate this business, must come back before us to seek an extension or maybe a permit extension of the Special Permit.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Thank you.

* * * * *

(10:55 p.m.)

(Sitting Member BZA-008582-2015:

Constantine Alexander, Timothy Hughes, Brendan Sullivan, Janet Green, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 008582, 18 Beech Street.

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

THOMAS DOWNER: My name is Thomas downer. I'm an architect and I represent the clients. This is Baoqing Yan, B-a-o-q-i-n-g Yan, Y-a-n. And Thomas Downer, D-o-w-n-e-r.

The existing house is a two-family house. They have -- doing substantial renovations on the house currently and had previously got a dormer approved and small addition.

CONSTANTINE ALEXANDER: May 2014.

THOMAS DOWNER: About a year and a half ago.

In the process of doing this work and looking at how they want to use their house, a couple of things have come up that they want, required that we come back

for an additional approval for some Variances. There are four issues I think that are involved:

The first is the existing roof porch in the front of the house is being enclosed to become an entry and they wish to add a landing and front stairs in the front yard. And this is not in compliance with the front yard setbacks.

The, I have some pictures of the neighborhood. The first page is both properties on either side of their current, the current residence. One is a church, the steps come relatively close to the front yard.

The proposal that we have is that the front steps would be at six-foot, nine-inches from the front property line.

CONSTANTINE ALEXANDER: And the

requirement of the --

THOMAS DOWNER: The requirement is for 15 feet front yard setback but steps and landings are allowed to encroach on that depending on where the foundation is. But in talking with Sean, this is where we ended up in terms of what the calculations seem to be.

There are additional, as I said, the house to the east is shown on that -- one of those front first pages, and then the church steps on the other side are shown there, and then there are additional houses, the houses between their house and Mass. Ave. are, again, showing front steps and porches that are all closer than what we're requesting.

The second issue is because they want to add the front room on the first

floor to the second floor unit. We need to divide the first floor into a separate unit and that eliminated one of the means of egress. So we need to provide a second means of egress to that first floor unit and the most reasonable place for that seemed to be to the side yard and we are nine inches too short from being allowed to do it by right. So we're requesting a Variance.

There's, the porch landing and stairs would be less close to the property line than the piece of the house that's already there. And the other two issues are the rear one-story wing in the back of the house which is two bedrooms currently, has ceiling heights of 89-and-a-half inches. They would like to have more headroom in there in order to accommodate

ceiling fans. So we're requesting raising the roof a foot. It doesn't increase the FAR, but it does increase the volume which was an issue in terms of the time since 1946 or whenever that was. And so we are exceeding, if it's non-conforming structure and we need to increase the volume by that amount. And then commensurate with that, there is a deck that is currently on the above -- that area, and right now some of it is along the building line below, but some of it is kind of mid-span and we want to structure it so that the perimeter of the deck is aligned with the outside walls of the first floor. And then one side yard, again, because we're less than seven-foot, six to that side yard, that would be inside the side yard setback. I think

those are the four issues.

CONSTANTINE ALEXANDER: My observation, I'm disappointed you didn't deal with these things last time around. We don't like to see cases every year get more relief being sought. I mean, I refer to it as the salami approach, where you show a little bit now and a little bit later and a little bit later. Is there any reason why these things didn't arise before?

THOMAS DOWNER: They were under discussion at the time we were looking at the second floor unit and it wasn't something that I was aware of at the time. As I said, as they've been doing the work, I think, this is, these are issues that have come up.

CONSTANTINE ALEXANDER: Okay.

Anything -- anything further you want to add at this point? I'll give you another opportunity.

THOMAS DOWNER: I think that's --

CONSTANTINE ALEXANDER: That's it.

No one's in the audience except Mr. Hawkinson. Do you want to speak on this?

JOHN HAWKINSON: No, thank you.

CONSTANTINE ALEXANDER: So there's no one who wishes to be heard from the audience, and I don't think we have any letters in the file.

THOMAS DOWNER: I'm sorry, she did speak to the neighbors and the neighbor on -- the neighbor with the house next-door.

CONSTANTINE ALEXANDER: Not the church, the other side?

THOMAS DOWNER: I don't know.

I'm sorry, you spoke to the neighbor next-door and she said she had no objection.

BAOQING YAN: The next neighbor I didn't speak with because the door after next. I think it's 22-something.

THOMAS DOWNER: She spoke to some of the neighbors next-door and there was no objection at this point.

CONSTANTINE ALEXANDER: Well, certainly no objection's been expressed to this letter. We have no letters in the file.

Discussion or we ready for a vote?

TIMOTHY HUGHES: I'm ready for a vote.

JANET GREEN: I'm ready.

CONSTANTINE ALEXANDER: The Chair

moves that with respect to the Variances being sought we make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being that the changes that were resulting from the Variance are necessary to make the use of the structure much more desirable and efficient.

That the hardship is owing to the fact, to the fact that this is a non-conforming structure. So any changes to the structure requires Zoning relief.

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

In this regard the Chair would note that the relief being sought overall is modest, though disappointing that this is the second time we've had to grant relief in a period of only two years. But notwithstanding, so on the basis of these findings the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the plans prepared by Thomas Downer Architects. They're attached to a plot plan which I have initialled.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

THOMAS DOWNER: Thank you.

(Whereupon, at 11:05 p.m., the
Zoning Board of Appeals
Adjourned.)

* * * * *

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original transcript and Errata Sheet has been delivered to Inspectional Services Department.

INSTRUCTIONS

After reading this volume of the Zoning Board of Appeals transcript, note any change or correction and the reason therefor on this sheet. Sign and date this Errata Sheet.

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**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a Certified Shorthand Reporter, the undersigned Notary Public, certify:

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

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of December, 2015.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 29, 2022

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