

BOARD OF ZONING APPEAL FOR THE

CITY OF CAMBRIDGE

GENERAL HEARING

JANUARY 14, 2010

7:25 P.M.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Thomas Scott, Member

Tad Heuer, Member

Douglas M. Myers, Member

Maria L. Pacheco, Zoning Specialist

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P R O C E E D I N G S

(7:25 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Thomas Scott, Douglas Myers, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call the meeting to order, and as is our custom, we're going to start with continued cases because we don't start our regular agenda until 7:30. We have one continued case tonight. It is 625 Massachusetts Avenue.

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

(No response.)

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

There's a letter in the file from James J. Rafferty, Esq., addressed to this Board dated January 14th regarding this case.

"Please accept this correspondence as a

request to continue the above-captioned case currently scheduled for Thursday, January 14, 2010."

And we have, what did you say, Maria, from the 11th of February?

MARIA PACHECO: The 11th or the 25th.

CONSTANTINE ALEXANDER: They didn't request a date. Why don't we do it the 25th? Is that okay with everyone else? It's a case not heard anyway.

The Chair moves that this case be continued until seven p.m. on February 25th on the condition that the petitioner modify the sign to reflect the new hearing date.

All those in favor say, "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion carried.

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

(7:30 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Thomas Scott, Douglas Myers, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9871, 20-22 Griswold Street. Is there anyone here wishing to be heard on this matter?

(No response.)

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

There's a letter in the file addressed to the Board or Ms. Pacheco dated January 8, 2010. "Dear Ms. Pacheco, please accept this letter as a request to the Board to kindly reschedule the hearing of my petition Case No. 9871 to January 28, 2010. This will allow me additional time to discuss the relief sought with some of my neighbors. Thanking you and the Board in advance, I remain respectfully Robert F. Sullivan who is

the petitioner."

We have a motion to continue this case and the date we have as what, the 11th?

MARIA PACHECO: 28th.

CONSTANTINE ALEXANDER: 28th?

MARIA PACHECO: January.

CONSTANTINE ALEXANDER: The Chair moves that this case be moved to seven p.m. on February 28th (sic) on the condition that the petitioner sign a waiver of notice. Not a waiver -- a waiver of time to render a decision, and on the further condition that he modify the sign indicating the new date for the hearing.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(Discussion off the record.)

(7:45 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Thomas Scott, Douglas Myers, Tad Heuer.).

CONSTANTINE ALEXANDER: The Chair will call case No. 9872, 102-R2 Inman Street. Is there anyone here wishing to be heard on this matter? Please come forward.

As you know, please state your name and state and spell your name and address for the stenographer, please.

SKIP SCHLOMING: The name is -- well, the petitioner is Lenore Schloming, L-e-n-o-r-e S-c-h-l-o-m-i-n-g. 102 Inman Street, Cambridge, 02139.

CONSTANTINE ALEXANDER: And you are?

SKIP SCHLOMING: And I am Skip Schloming.

CONSTANTINE ALEXANDER: You're here before us seeking both a Special Permit and

a variance, and you're obviously needy people.

SKIP SCHLOMING: Well, people who made a mistake the first time around.

CONSTANTINE ALEXANDER: Okay. Which case do you want to take first, the Special Permit or the variance?

SKIP SCHLOMING: Why don't we take the variance first. Actually, let me hand you -- this is a petition signed by five people and they're the -- pretty much the direct abutters.

CONSTANTINE ALEXANDER: I'll read this into the record at the appropriate time.

SKIP SCHLOMING: Okay.

CONSTANTINE ALEXANDER: The variance, you're looking to modify the terms of a variance we granted to you some months ago?

SKIP SCHLOMING: That's right.

CONSTANTINE ALEXANDER: And it was

with regard to window, you want to change the windows on the plans?

SKIP SCHLOMING: Yes, that's right. Just two windows. Let me show you.

CONSTANTINE ALEXANDER: Yes. I think the trouble with these -- but I had trouble with these. These are very detailed plans. I had trouble identifying exactly where the new windows are.

SKIP SCHLOMING: I don't know if this is going to help or not. For the variance we want to look down at this lower right-hand drawing of the front of the house. The only thing that is being changed, we have a high roof here and we had -- we originally had a front door with a transom over it. All we're adding -- this was actually at the suggestion of the architect from the Cambridge Historical Commission. We're adding side lights. A side light next to the French door and then a transom over that, the

side light.

CONSTANTINE ALEXANDER: Those are the windows?

SKIP SCHLOMING: What?

CONSTANTINE ALEXANDER: Those are the windows?

SKIP SCHLOMING: Those are the windows of the variance. They're just a -- you know, since we were coming back here we thought, well, okay let's go for that. One simple change to the original one, to the original variance. It was suggested. It was a nice idea. And so that's what we're asking for on the variance. So that's all it is.

The rest of the proposal that you had last time round stays just as it was except for that.

TAD HEUER: And what was there before, was it just wall where that transom and the window is going to be?

SKIP SCHLOMING: Yeah, it was just wall, right. I can show you how the original -- yeah, this is the front of the building without a lot of extra drawing on it (indicating). So, it's just a -- it was just a single door with a transom over it, and I think the roof is getting -- I don't know whether the roof -- I don't think the roof is getting extended. This is probably not quite accurate, but where this is supposed to go is where this side light and the new side light and transom will be.

CONSTANTINE ALEXANDER: You mention this comes as a result of a suggestion from an architect from the Historical Commission. Do you need to go back for another Certificate of Appropriateness? You got one the last time.

SKIP SCHLOMING: Right.

CONSTANTINE ALEXANDER: And you're now re-modifying the plans.

SKIP SCHLOMING: We've gone through the Historical Commission and they've signed off on this.

CONSTANTINE ALEXANDER: With the new windows?

SKIP SCHLOMING: Yes, for the new window, right. Yeah, they're happy with it. You know, I mean the atrium area that we have here, the connecting addition that you approved --

CONSTANTINE ALEXANDER: Right.

SKIP SCHLOMING: -- has a lot of glass in it. And the suggestion of the architect was, you know, make it be distinctive and more transparent. And so that, you know, the front door area actually matches a little more of the -- this is the area of the atrium to the south with the French doors -- well, yeah, patio doors -- well, these are double hung windows to the side as if they were side lights. And

then transom over all four of those. We're kind of matching that and making it more -- it would be more sunlight coming through and a sense of openness in that area. And that's that.

You want me to go on to the Special Permit?

CONSTANTINE ALEXANDER: No, no. We'll take a vote on this first.

SKIP SCHLOMING: Oh, sure.

CONSTANTINE ALEXANDER: Any questions from members of the Board?

Is there anyone wishing to be heard in regard to this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes there are none.

Let me see. We have submitted to us by the petitioner a petition for the application for a variance and a Special Permit. "Now come the undersigned who have chosen to make

their statement regarding the application of Ralph and Lenore Schloming for a variance and Special Permit regarding windows and porch enclosure within setbacks. And a windows change on the previously approved addition at 102 and 104 Inman Street, Cambridge, Massachusetts. We the undersigned hereby declare our support for the application of Ralph and Lenore Schloming for a variance and Special Permit at 102 and 104 Inman Street, Cambridge, Massachusetts." There are five signatories. I'm just going to read the addresses of the persons who signed. A person at 104-A Inman Street; 97 Amory Street, No. 2; 103 Amory Street; 100 Inman Street and 101 1/2 Inman Street.

And you mentioned these are basically the abutters to the property?

SKIP SCHLOMING: Yes.

LENORE SCHLOMING: Immediate.

SKIP SCHLOMING: Yes, immediate

abutters.

DOUGLAS MYERS: You said pretty much.

SKIP SCHLOMING: I didn't get all of them.

LENORE SCHLOMING: We didn't get all of the abutters.

SKIP SCHLOMING: It doesn't necessarily apply to this -- yeah, I guess it wouldn't apply. I mean, we -- the changes that we are proposing had been submitted to all of the neighbors previously and so we, you know -- well, no, that doesn't have to do with this variance. It's at Special Permit.

CONSTANTINE ALEXANDER: I take it no one expressed any opposition?

SKIP SCHLOMING: No.

CONSTANTINE ALEXANDER: Some people saw them and some people didn't.

SKIP SCHLOMING: I could hardly get them to look at it actually.

CONSTANTINE ALEXANDER: Comments?

TIM HUGHES: I'm good with it.

TAD HEUER: Because we're modifying the variance, for the variance, I don't know how -- to what extent these plans are identical with the exception of that. I would think we would want the variance to be these plans as per that addition only, and the previous plans for the previous variance for the plans to be used for the remainder.

CONSTANTINE ALEXANDER: Well, I assume these plans are going to supersede the other plans?

SKIP SCHLOMING: They do.

CONSTANTINE ALEXANDER: This has all the previous work that we approved.

SKIP SCHLOMING: All the previous work plus -- and then called out on the plans are what we're calling Phase 2.

CONSTANTINE ALEXANDER: So you're representing to us except for the windows

these plans are identical to the plans that we approved --

SKIP SCHLOMING: Previously submitted, yes.

CONSTANTINE ALEXANDER: That we conditioned our variance on.

SKIP SCHLOMING: Right.

CONSTANTINE ALEXANDER: That's a good comment.

THOMAS SCOTT: Since this was suggested by the Historical -- someone from the Historical Commission, why wasn't it incorporated initially?

SKIP SCHLOMING: It was after the fact. In other words, we already submitted our application to you, so we were in no position to be able to change what we submitted to you. So it was a suggestion that was made that we couldn't incorporate at the time. But since we came back for other reasons or that we had to come back for in a

Special Permit, we decided let's, let's add -- make this change.

CONSTANTINE ALEXANDER: Following up on Tom's question, before we granted you the variance the last time you had to go before the Historical Commission.

SKIP SCHLOMING: Right.

CONSTANTINE ALEXANDER: And they gave you a Certificate of Appropriateness?

SKIP SCHLOMING: Right.

CONSTANTINE ALEXANDER: There was no mention at that time of the --

SKIP SCHLOMING: Oh, yeah -- no, that's when it was mentioned.

CONSTANTINE ALEXANDER: It was mentioned. But you didn't mention it to us at our hearing --

SKIP SCHLOMING: No.

CONSTANTINE ALEXANDER: -- that you were planning to change it?

SKIP SCHLOMING: My understanding

is that all of the paperwork had been filed with you and there's no changing after it's filed.

CONSTANTINE ALEXANDER: You can change it, but if you do it too late, we may not hear the case in the time that you want us to hear it.

SKIP SCHLOMING: Yeah. Well, that may have -- we were concerned to go forward, so we didn't -- yeah, so we didn't, you know, we didn't bring it up, we didn't want to --

CONSTANTINE ALEXANDER: Hopefully you won't ever see us again. It would have been nice if you had told us at the time --

SKIP SCHLOMING: Yeah.

CONSTANTINE ALEXANDER: -- that we're improving plans, you know, and we're coming back and modify them. Typically I don't like to see variances changed.

SKIP SCHLOMING: Yeah.

CONSTANTINE ALEXANDER: Or

additional relief being granted with respect to the same property, because we don't get the full picture in that time.

SKIP SCHLOMING: Right.

CONSTANTINE ALEXANDER: It's what I call the salami approach.

SKIP SCHLOMING: Right, right.

CONSTANTINE ALEXANDER: It was a very minor change.

SKIP SCHLOMING: It is a minor change.

CONSTANTINE ALEXANDER: And that would have been --

SKIP SCHLOMING: And I can comment on that on the Special Permit on your concern there. I can comment on that on the Special Permit.

CONSTANTINE ALEXANDER: Further comments?

The Chair -- I think we're ready for a vote. Given the fact that this, the changes

to the plans and the new variance is very modest in nature, namely the two windows, I'm just going to make a motion that we make a finding that all of the findings we made at the last -- for the variance be granted on October 22, 2009 in the case No. 9851, all of those findings regarding hardship, special circumstances and non-derogation from the intent of the Zoning By-Law be incorporated by reference and verbatim into this decision so I don't have to go through and read through all of those.

So on the basis of those findings, the Chair would move that a variance be granted to the petitioner to proceed with installation of the two new windows on the condition that the work proceed in accordance with plans submitted by the petitioner. They are dated 11/10/09. And they're numbered A1, A2, A3, A4, S1. First page of which has been initialed by the Chair.

DOUGLAS MYERS: If they're dated 11/10 how can we approve them on October 24th?

CONSTANTINE ALEXANDER: No, these are the new plans. These are the new plans which were incorporated.

DOUGLAS MYERS: I apologize.

CONSTANTINE ALEXANDER: All those in favor of granting the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

SKIP SCHLOMING: Thank you.

Now we proceed to the Special Permit. If I can explain and actually show you what we're doing, it's easier to see them on the plans that we actually gave you the first time around. So just to get a little history of what happened, everything that we're now

talking about under the Special Permit was drawn into the plans that you received the first time around. It's just that we didn't know that you were not actually approving these two changes. So the two changes are relocation of windows within setbacks, and enclosure of a porch within a setback. So, the drawings I'll show you now to tell you -- to illustrate what we're doing, were actually presented to you before as they were to our neighbors. So we have -- you originally received with the first variance, a petition signed by 20 of our neighbors that had explained to them all the changes that we had planned to do with the windows and the porch enclosure, as well as the connecting addition that was the variance that you passed last time.

So, this is the site plan, this is Inman Street down here (indicating). This is a driveway going back to a garage (indicating),

and a single-family with the connecting addition. Now, the windows that are being affected are the ones that are occur on this corner here, going around here, all the way around here (indicating). This is the, this is the --

CONSTANTINE ALEXANDER: Rear porch.

SKIP SCHLOMING: -- the porch (indicating). This is being enclosed like that. There are windows along here (indicating). This you've approved. There's windows here and windows here (indicating). Now, the original -- the way it exists right now, there are 12 windows in the property. Six of them happen to be small awning windows setup high about, you know, starting here and going up like that (indicating). And so the house really feels dark and like a cave and there's no views out. So what we're -- in general what we're doing, and I can go and discuss each window. In

general what we're doing is we are moving the windows to new locations, partly because of the interior design, but mainly to get more, more views and more light into the house. So, this is the view which I was showing you before, the front of the house without -- it doesn't show -- that's the one thing it doesn't show is the new windows there. This we have as of right (indicating). These are new windows here from where I started before. And this is as of right, but this is the new windows here (indicating). This is an awning window right now here, and an awning window right now here (indicating). This is a regular small -- right here, is a regular small double hung window. And in the kitchen another -- no, kitchen has a kitchen door that has lights and glass in it.

CONSTANTINE ALEXANDER: Typically we would be given an elevation that shows the existing windows.

SKIP SCHLOMING: And both of them. I don't have existing windows. I think you have photographs, although I -- that would show you the existing windows.

CONSTANTINE ALEXANDER: There are photographs in the file.

SKIP SCHLOMING: Okay.

This is the view from the north facing south. This is, again, a window in the corner there (indicating). There's a -- currently there's an awning window right here. Another awning window here, right along here (indicating). That one's just being eliminated. So this is the closest neighbor, by the way, that's just 18 feet away from here. So these two awning windows here would be eliminated as far as view. And this is just an angled -- since it's in a corner, it's an angled or oblique view of the neighboring property. So, we think that it's not a visual or a nuisance or a hazard

to the neighbor to make those -- this change.

This is the enclosure on the deck (indicating). We're having -- of course there's no windows there now, on the porch really. There's no windows now, and we're putting -- we're putting, you know, wall-to-wall windows, wrapping around the whole structure.

So, the next view here is the windows -- the view from the east. This is a new window, but there's one right here that's just a little bit smaller, a double hung window (indicating). And then there's a bathroom window that's just being made a little bit larger and being moved a little bit. This is, there's no window here now. So this is new. This is just to give light into a dining area inside (indicating). This is the enclosure of the porch right here (indicating). A door to the outside and two windows here (indicating). So there were

two on the side, two windows here on the door and then there's going to be another window on the side here of the porch (indicating).

This is in the corner of the living room. It almost imitates the -- if you got it, we're doing corner windows rather than, you know, windows in the middle of a wall. And recessed further back, this is the studio former garage. Where these windows are now, there's a single double hung window, and we're just bringing more light into it. We are located right next to 100 Inman Street which is a tall building, so we are kind of in a canyon of darkness where we have a shaded lot. So we need -- we're trying to increase the amount of sunlight and daylight that gets in there for seasonal effectiveness. This is an existing window right now (indicating).

And then on the south, the view from the south from 100 Inman Street, so there are no people inhabiting the area where this is a

parking garage right here on 100 Inman Street (indicating) facing this area here. So there's no people that will know -- this you already approved.

CONSTANTINE ALEXANDER: So the front entrance to the door is going to be on the side facing that big parking garage?

SKIP SCHLOMING: No, no. This is just going out to the garden area. This double door here (indicating) --

CONSTANTINE ALEXANDER: All right.

SKIP SCHLOMING: -- is going to a garden area. The front door is around on this side. Okay? And so this is the deck -- the porch enclosure. Two more windows on the porch. This is the corner of the living room actually. There's one window around here (indicating). There is an existing awning window right now in the middle of this wall up high (indicating). And so, we're adding this window here over in

the corner as well. And yeah, that -- I think that covers --

CONSTANTINE ALEXANDER: All those windows are shown on these plans?

SKIP SCHLOMING: Yes, they are. And they're pulled out, they're pulled out with -- yeah, that's it for the elevation.

THOMAS SCOTT: They were all shown on the original plans.

SKIP SCHLOMING: They were all shown on the original plans that you saw.

THOMAS SCOTT: We just didn't know they were new windows?

SKIP SCHLOMING: That's right. That's right. Sean O'Grady didn't know either. As soon as it was like -- suddenly it was the realization that these are new windows and that's what raised the issue. And I just didn't -- wasn't aware that this was a problem.

TAD HEUER: And how many of them are

actually in the setback? They're not all in the setback?

SKIP SCHLOMING: They're not all in the setback.

CONSTANTINE ALEXANDER: Just six.

TAD HEUER: So which six? Because we don't need to approve the ones that are not. We need to approve the ones that are in the setback.

SKIP SCHLOMING: Let me look at this and count them from here. In the setback there's two windows here (indicating). Three windows here (indicating). So that's five. Six, seven, eight, nine, 10, 11, 12, 13, 14, 15, 16, 17, 18.

CONSTANTINE ALEXANDER: 18 new windows in the setback?

SKIP SCHLOMING: 18 -- 19.

TAD HEUER: These are all in the setback?

SKIP SCHLOMING: 20, 21. Yeah.

CONSTANTINE ALEXANDER: The whole --

TAD HEUER: Is the entire structure in the setback?

SKIP SCHLOMING: The problem is the whole perimeter of the house except for the very center area -- I mean, this is the floor plan which I don't know if you can see the studio garage here (indicating), and the main house here and the addition (indicating). The area that's as of right would be like a swath down the middle. In other words, the setbacks approach from the side. So there's 12 windows now, and many of them are being doubled, turned into double windows that's probably why --

THOMAS SCOTT: That's what I was going to ask: How many are existing?

SKIP SCHLOMING: There are 12 existing windows, none in their original locations.

THOMAS SCOTT: And 21 new?

SKIP SCHLOMING: Yeah. Whatever I counted, that's right.

CONSTANTINE ALEXANDER: You said 21.

SKIP SCHLOMING: Yeah.

CONSTANTINE ALEXANDER: Just in terms of number of windows you're going from 12 windows to 21 windows?

SKIP SCHLOMING: Right, right.

LENORE SCHLOMING: I'm just wondering do these include the studio garage?

SKIP SCHLOMING: Yeah, these include the studio garage, yeah. So it's -- so, it's the windows within the setback that we're concerned about.

CONSTANTINE ALEXANDER: The rear porch.

SKIP SCHLOMING: And the rear porch enclosure, yeah. Well, the porch itself has two -- has six windows by itself. So if it

were -- if you didn't count those, it would be from 15 to 21.

CONSTANTINE ALEXANDER: 12 to 15.

SKIP SCHLOMING: 12 to 15, yeah.

THOMAS SCOTT: What's the new use of the porch, the enclosed porch?

SKIP SCHLOMING: As an office space. Plant area, area for plants.

CONSTANTINE ALEXANDER: Is it going to be heated?

SKIP SCHLOMING: It will be heated.

CONSTANTINE ALEXANDER: Part of the house?

SKIP SCHLOMING: Part of the house, that's right.

THOMAS SCOTT: Are you reconstructing the foundation of that area?

SKIP SCHLOMING: Yeah, we are, yes.

CONSTANTINE ALEXANDER: Questions from members of the Board, further questions?

THOMAS SCOTT: So is it more than

just the windows that we're approving?

CONSTANTINE ALEXANDER: And the rear porch.

THOMAS SCOTT: What?

CONSTANTINE ALEXANDER: The rear porch.

THOMAS SCOTT: The entire rear porch.

CONSTANTINE ALEXANDER: The enclosure.

THOMAS SCOTT: Well, the foundation has to be approved as well.

CONSTANTINE ALEXANDER: I think we approved that.

THOMAS SCOTT: I don't think so.

SKIP SCHLOMING: Just the atrium area.

CONSTANTINE ALEXANDER: Now I'm a bit confused. If -- are you replacing the rear porch or just enclosing it?

SKIP SCHLOMING: We're enclosing

it, but --

CONSTANTINE ALEXANDER: To do so you've got to put a new foundation?

SKIP SCHLOMING: Underneath it, yes. We want to do that because it would just be open because it would be hard to heat and keep warm. It's more a matter of, you know, putting the perimeter foundation around.

CONSTANTINE ALEXANDER: And Mr. O'Grady didn't tell you you needed separate relief for a new foundation?

SKIP SCHLOMING: He didn't mention that, no.

CONSTANTINE ALEXANDER: What do you think?

TAD HEUER: (Inaudible.)

THOMAS SCOTT: Well, I'm just asking questions.

CONSTANTINE ALEXANDER: Yes.

DOUGLAS MYERS: Keep on asking them.

CONSTANTINE ALEXANDER: Keep going.

You're right.

Further questions or comments? I'll throw it out to the public.

TIM HUGHES: Is there a roof on this porch now?

SKIP SCHLOMING: Yes.

TAD HEUER: The question is it's not a matter of FAR? Is that --

THOMAS SCOTT: Yes.

CONSTANTINE ALEXANDER: Yes.

THOMAS SCOTT: But you're not removing the roof?

SKIP SCHLOMING: No.

THOMAS SCOTT: You're trying to reconstruct this in place?

SKIP SCHLOMING: The roof will be supported and then the -- yeah, the foundation will be put in -- yeah, so we'll be reconstructing.

TAD HEUER: With the same roof?

SKIP SCHLOMING: Yeah, with the same

roof, yes.

TAD HEUER: I can (inaudible).

CONSTANTINE ALEXANDER: Yes, I would defer to Sean. I mean, he looked at these plans and decided they don't need relief for Special Permit for the windows.

TAD HEUER: Also looked at the plan the first time and didn't see the windows.

THOMAS SCOTT: Right, 21.

DOUGLAS MYERS: There was considerable discussion about the quality of the plans and that they were --

CONSTANTINE ALEXANDER: Yes, there was.

DOUGLAS MYERS: -- and that they just barely gave Sean enough to enforce it. So this was recognized at the time.

SKIP SCHLOMING: We responded. We felt the building inspector would -- we subsequently did have plans drawn up.

CONSTANTINE ALEXANDER: These?

SKIP SCHLOMING: Yes, that's right.

THOMAS SCOTT: The main body of the house other than the porch is not being constructed in any way?

SKIP SCHLOMING: No.

THOMAS SCOTT: You're just removing windows and putting new windows?

SKIP SCHLOMING: Right.

CONSTANTINE ALEXANDER: As part of the whole project you're connecting -- you're doing work, it doesn't require relief tonight.

SKIP SCHLOMING: Right.

CONSTANTINE ALEXANDER: Aren't you connecting?

SKIP SCHLOMING: We're connecting the two structures together so there's a foundation that goes in there as well.

THOMAS SCOTT: Yes.

CONSTANTINE ALEXANDER: Further questions at this point or comments from

members of the Board?

Anyone wishing to be heard on this matter?

(No Response.)

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

We already have a petition that I've read into the record of support for this Special Permit as well as the variance we earlier granted.

Ready for a vote?

TAD HEUER: I would just say one thing just for the benefit of the rest of the Board.

CONSTANTINE ALEXANDER: Sure, go ahead.

TAD HEUER: I do think that even though this is Special Permit is coming to us mistakenly, I think it all would have been done the first time you were here.

SKIP SCHLOMING: Right.

TAD HEUER: Because, again, the way I personally would like to see these cases be taken that the Special Permit for windows not be enclosed and the variance of the component be done separately. Even though this is a slightly strange configuration, I think it's the correct configuration legally by which we should be dealing with this case and other cases.

CONSTANTINE ALEXANDER: You made that point before as well and it's a point well taken.

Okay, the Chair moves that a Special Permit be granted to the petitioner to erect 21 new windows and required setbacks and to enclose a rear porch which is in a setback.

The Chair moves that we make the following findings:

That you cannot meet the requirements of the ordinance with the relief you're seeking. That what you're proposing will

not cause congestion, hazard or substantial change in established neighborhood character. In fact, what's being done is to just move windows around on the house. It doesn't have any impact on congestion, hazard or substantial change.

That the continued operation or the development of adjacent uses would not be adversely affected by what's being proposed. Although new windows in setbacks sometimes can cause privacy issues. The nature of the surrounding properties as such where these windows would face out to, there's just no neighbor -- with one exception, no neighbor who would have privacy issues as a result of this. We're talking about property that faces either blank walls or areas that do not have other residential structures.

That allowing the replacement, or I should say relocation of the windows and the enclosure of the rear porch, would not create

nuisance or hazard to the detriment, health, safety and welfare of the occupants or the citizens of the city. Windows, new windows in fact, will improve the nature of this structure by increasing the amount of light in what has been characterized as a dark lot given the nature of the surrounding structures.

And that the proposed use would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of this ordinance. In fact, as I indicated by increasing the light in this structure, you're improving the aesthetics of the building and improving the housing stock of the city.

The Special Permit will be granted on the condition that the work proceed in accordance with the plans dated 11/10/09. They were dated -- they're numbered A1, A2,

A3, A4 and S1 and initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

SKIP SCHLOMING: Thank you very much.

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

(A discussion off the record.)

(8:15 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Thomas Scott, Douglas Myers, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9873, 125-127-129 Elm Street. Is there anyone here wishing to be heard on that matter? Please come forward.

JEFF MCMATH: Good evening.

CONSTANTINE ALEXANDER: Good evening. For the record, give your name and address to the stenographer.

JEFF MCMATH: My name is Jeff McMath, M-c-M-a-t-h. 13 Tech Circle, Natick Mass., 01760.

CONSTANTINE ALEXANDER: Okay.

Your case, you want to build some stairs?

JEFF MCMATH: Well, yes. I'll give you a short summary of what happened. The house was torn down, three condos were put up. The homeowner passed away. The house transferred to the daughter. The company I work for held the mortgage, wasn't getting done, we took it back in lieu of deed. Okay? I went in and finished. Michael Glover was the building inspector. He went through the whole place. I went to get my occupancy permit at the end, okay. After being inspected, both Michael and myself did not know that the back stairs that the previous owner put on were in violation of the setbacks. Okay?

So we went through different scenarios to try to rectify it. And at one point I was given 180-day temporary occupancy permit to keep the stairs on and come in front of the Board here. But the next day that was

rescinded because I guess it was -- I had to be on the agenda before he would give me the temporary occupancy permit. I took down the stairs and got my occupancy permit.

Now I'm back in front of you to try to get the stairs up. This is what is there now.

CONSTANTINE ALEXANDER: And that's a second floor, there's no stairs at all?

JEFF MCMATH: Let me show you that.

CONSTANTINE ALEXANDER: Before you get into the photos. One of the dilemmas I have and other members of the Board have is we can't tell from your dimensional form what relief you're seeking. I mean, you want a variance but how badly -- you say we grant you relief, the dimensions is exactly what it is before. If that's the case, you don't need a variance.

JEFF MCMATH: No, I need a variance for the stairs to come off this balcony.

CONSTANTINE ALEXANDER: Yes, but

why? How much is a variance? What is your problem? What's the setback and how much will the setback be invaded by your stairs?

JEFF MCMATH: Okay. I was hoping to show you the pictures first and then explain that.

CONSTANTINE ALEXANDER: It's easier for us to just start from the mechanical first.

JEFF MCMATH: Okay. The setback on the house is 14. And 14.4....

CONSTANTINE ALEXANDER: Which setback, the left, right?

JEFF MCMATH: We're on the right -- Elm Street looking down the property we're on the left side. It's 14.43 feet.

CONSTANTINE ALEXANDER: That's where it is now?

JEFF MCMATH: That's where the house is now, yes.

CONSTANTINE ALEXANDER: And

according to your form, the zoning requirement is 14.43. So you're right on the --

JEFF MCMATH: Correct.

CONSTANTINE ALEXANDER: An inch more and you've got a problem.

JEFF MCMATH: Right, if the foundation was off, they would have had to take it off and put it --

CONSTANTINE ALEXANDER: How much now if we were to grant you the relief, how many feet will you with be from the lot line?

JEFF MCMATH: At the stairs I'll be 11 plus feet. The stairs are three, 40 inches deep. So three feet, four inches. So I'm 11 plus feet for the stairs the left in the yard.

CONSTANTINE ALEXANDER: I'm sorry, give me again.

JEFF MCMATH: The stairs are 40 inches, so three feet, four inches. All

right?

CONSTANTINE ALEXANDER: So you'll go from 14.43 to 11.3, 03.

JEFF MCMATH: Yeah.

CONSTANTINE ALEXANDER: Okay.

TIM HUGHES: Four inches is a third so it would be 11.1. 33 from 43 gives you .01, right?

CONSTANTINE ALEXANDER: Okay.

Thank you.

You're intruding to setback by three, three feet plus.

JEFF MCMATH: Correct.

CONSTANTINE ALEXANDER: And that's the relief you're seeking?

JEFF MCMATH: Yes.

CONSTANTINE ALEXANDER: All right, now we understand. At least now I understand. Keep going.

JEFF MCMATH: All right. So the stairs were up, okay? And the issue was

getting the occupancy permit.

THOMAS SCOTT: And they're required for egress?

JEFF MCMATH: That's the issue that the previous owner took some liberties, okay, and when we took it over, we thought she was all set, but obviously she wasn't. Okay? There are egresses down on the grade level which is the garage. I'm going to call that the street level. That's the front of the house as it sits.

CONSTANTINE ALEXANDER: Let's go from the plans -- that's useful. But I want to see from the plans.... We have, right now you get into the house through the garage?

JEFF MCMATH: Well, yeah, there's a door beside the garage door.

CONSTANTINE ALEXANDER: Right.

JEFF MCMATH: Okay? They're counting that as one egress.

CONSTANTINE ALEXANDER: Right.

JEFF MCMATH: Okay? There is a door in the back -- I'm sorry, on the opposite side, behind the garage.

CONSTANTINE ALEXANDER: Yes.

JEFF MCMATH: Which they're counting as the second egress. They're both on the ground level. The bedrooms are up on the third level.

CONSTANTINE ALEXANDER: Right.

JEFF MCMATH: Okay? In order to get out in case of a fire or a break-in or anything like that, you have to walk down the stairs to the second floor, through the kitchen, downstairs into the ground floor and out. Now, you have to walk to the garage to get to the second egress door. All right? The garage door and the front entry door are three feet apart. All right? Then you have to walk 20 feet -- 22 feet back into a garage. If there's a car there, golf clubs or whatever, you have to walk through that to get

there. So we're looking to get an egress off the second floor so you would come down in case there was a grease fire in the kitchen, you wouldn't have to walk passed that fire to go downstairs. If there was a break-in in one of the downstairs egress doors, you wouldn't have to pass the intruder halfway down the stairs.

CONSTANTINE ALEXANDER: Right.

JEFF MCMATH: Okay? So that's what we're seeking the egress stairs for.

TAD HEUER: So your concern is that you have two egresses that are essentially, for practical purposes, in the same place?

JEFF MCMATH: Correct. It would be much easier if these are -- there are two bedrooms, if there's a child in there or a guest or anything like that, you have to walk all the way down to get out. And that's basically the issue. Okay? We're looking at some relief to be able to get out of that,

exit out of that house easier down to the grade level.

TAD HEUER: And these will lead into a grass side yard or paved side yard?

JEFF MCMATH: Correct. The side yard which is grass. It's gravel against the house for drainage and there's a spot of grass.

TAD HEUER: Okay.

JEFF MCMATH: That goes along the side of the house from Elm Street to the property.

THOMAS SCOTT: The balconies do not exceed the setback right now?

JEFF MCMATH: The balconies were smaller than what they approved. They approved three and a half feet by six feet. These are four foot, four by -- these are three and a half by four foot, four. These are smaller than what's approved. If it was a balcony, people would sit up there. These

are --

CONSTANTINE ALEXANDER: Platforms.

JEFF MCMATH: -- platforms. Code made platforms. So nobody is going to be sitting up there. You're going to get out there and go down.

DOUGLAS MYERS: Landing on a staircase?

THOMAS SCOTT: You said they were approved by who?

JEFF MCMATH: Again, they're in the plan.

THOMAS SCOTT: Okay.

JEFF MCMATH: Okay? And when the previous owner, before we took it back, she, she had built the stairs.

THOMAS SCOTT: Yes, okay.

JEFF MCMATH: Okay? All right? And Michael Grover inspected them. He rejected them for a step height restriction, not a zoning restriction. So, I fixed the

height requirement on the stairs. But then when we went for the occupancy permit, this issue was brought up. Okay? And for a week and a half we tried to work to see which way we can do it, and finally Ranjit said take them down and I'll give you an occupancy permit. And they were down in an hour.

THOMAS SCOTT: If the balconies themselves, or whatever they are, platforms, are not in excess of the setback?

JEFF MCMATH: No.

THOMAS SCOTT: 147.43?

JEFF MCMATH: No, balconies, just what they hangover.

THOMAS SCOTT: So as a balcony it's acceptable in the setback?

CONSTANTINE ALEXANDER: I didn't think so.

THOMAS SCOTT: I didn't think so either.

CONSTANTINE ALEXANDER: Tom's point

is that it's -- if the stairs violate the setback, then by definition that platform does too.

THOMAS SCOTT: Yes.

JEFF MCMATH: I was told the stair violates a setback when it reaches the ground. The plans that you have show a balcony on it and they've been approved and building permit was issued.

THOMAS SCOTT: Yes, but if it's in violation of the setback, does it matter?

TAD HEUER: If we grant this tonight, it would be moved.

THOMAS SCOTT: It would be moved, right.

JEFF MCMATH: These were modular homes. They were shipped -- the first floor the ground level the garage door, that was stick built. From the second floor the living room, kitchen and stairway up were modular and came with.

CONSTANTINE ALEXANDER: And so the reason you're here before us tonight is because it was brought to your attention you've got a problem by Inspectional Services Department --

JEFF MCMATH: Correct.

CONSTANTINE

ALEXANDER: -- regarding getting occupancy permits.

JEFF MCMATH: Yes. They would not issue me one unless that was changed to a balcony and the stairs were down. The first offer was to give me a temporary occupancy permit for 180 days. Come in front of the Board and see what happens.

These houses were marketed and sold with stairs on them. So we had to go back to the future owners and say, you know, this is what we have to do.

TAD HEUER: How far is the balcony out right now?

JEFF MCMATH: Three and a half -- it's --

TAD HEUER: Three, six?

JEFF MCMATH: Three foot, six inches comes out. And that's the actual decking. The decking on it.

TAD HEUER: Right.

JEFF MCMATH: Okay.

TAD HEUER: So really if we're going to grant here, we've got to be granting a three-six setback and not a three-four because otherwise we're still --

JEFF MCMATH: I'm sorry.

TAD HEUER: Is that right?

JEFF MCMATH: It's four foot, three inches long and it's six -- three feet -- it's three feet and then I have a three and a half -- a three feet, three and a half.

TAD HEUER: Right. So the relief would have to be three, six.

THOMAS SCOTT: If we decided not to

grant relief for the stair, wouldn't we have to grant relief for the balcony?

TAD HEUER: Why?

THOMAS SCOTT: Because it exceeds the setback.

TAD HEUER: Then I mean really, we would go to the building inspector and notify them there's an enforcement problem.

CONSTANTINE ALEXANDER: Yes, that would be my answer as well. It's up to Ranjit and Sean as to whether they would enforce it for the balcony to come down. I would think they have to.

THOMAS SCOTT: It's a zoning issue though.

CONSTANTINE ALEXANDER: It's a zoning issue. It's not an issue before us tonight.

THOMAS SCOTT: No, it isn't.

TAD HEUER: I mean it could get back before us if he decided -- if Ranjit decided

to enforce and the petitioner protested and they come back to us on appeal. But that's not....

CONSTANTINE ALEXANDER: When we grant relief, we tie them to plans so that when the building -- when the certificates are issued, they can compare them against the plans. I'm troubled as to whether these plans are sufficiently detailed to allow -- I mean, it doesn't show the three, the dimensions of the stairs. So how do we know, how would Ranjit or Sean know that the stairs are the ones we approved?

JEFF MCMATH: They came out to the site.

CONSTANTINE ALEXANDER: No, no, that doesn't do anything.

JEFF MCMATH: Okay.

THOMAS SCOTT: Is there a site plan associated with it?

JEFF MCMATH: That's --

THOMAS SCOTT: I would think we need a site plan showing the setback to the stair. But is the stair shown?

CONSTANTINE ALEXANDER: It may be the original site plan. Let's see. It doesn't show the stairs.

JEFF MCMATH: It doesn't show it at all. The previous owner took liberties and changed.

CONSTANTINE ALEXANDER: We want to make sure no further liberties are taken.

JEFF MCMATH: I'm just trying to put these back.

CONSTANTINE ALEXANDER: We understand.

JEFF MCMATH: Okay.

CONSTANTINE ALEXANDER: We're not trying to be difficult here.

JEFF MCMATH: I know.

CONSTANTINE ALEXANDER: You have to understand, from our perspective if we're to

grant relief tonight, we have to do it in a definitive way so when you finally go to pull your certificate of occupancy, Sean or Ranjit can pull out our decision which would be tied to some plans, look at what you're going to do and see if they match. We don't have that ability right now as far as I can tell. All we have are your photos and your assurance you're going to build stairs. We need plans which show exactly the dimensions of the stairs and how much they intrude into the setback. How big the stairs are going to be.

THOMAS SCOTT: And that plot plan would need to be revised to show the stairs and platforms with dimensions to the property line.

CONSTANTINE ALEXANDER: Exactly.

THOMAS SCOTT: So it's tied to something. Right now we don't have anything. There's no dimensional data.

CONSTANTINE ALEXANDER: No. Do you

follow what we're saying?

JEFF MCMATH: I understand you completely, sir.

CONSTANTINE ALEXANDER: What we typically do in a situation like this is continue the case to allow you to submit plans --

JEFF MCMATH: Okay.

CONSTANTINE ALEXANDER: -- doing what we just said you have to do. Take this plot plan and put the stairs onto scale so we see exactly what the -- how big the stairs are going to be, what the intrusions and setbacks are.

JEFF MCMATH: Those dimensionalized for you and put them on a plot plan.

CONSTANTINE ALEXANDER: That's mostly the inside. We don't care about that.

THOMAS SCOTT: We need it on a site plan showing property lines.

CONSTANTINE ALEXANDER: Take the

site plan. More than this. And put those stairs on.

JEFF MCMATH: If we can continue then?

CONSTANTINE ALEXANDER: We're going to have to continue to a time when all five of us are available. We call it a case heard. So in order to continue it all five of us -- the same five people. So 25th is the earliest date available, Maria?

MARIA PACHECO: January 25th or February 11th?

CONSTANTINE ALEXANDER: Everybody available for --

TIM HUGHES: I'm already here on the 11th.

DOUGLAS MYERS: Me too.

THOMAS SCOTT: The 11th of February?

CONSTANTINE ALEXANDER: Can you get them done? Our rules are if you're going to do it on February 11th, you have to have

these -- this plan we're talking about in the file at the Building Inspector's office by five p.m. on the Monday before which is the 8th of February.

JEFF MCMATH: No problem.

CONSTANTINE ALEXANDER: No problem?

JEFF MCMATH: No problem.

CONSTANTINE ALEXANDER: Okay. We also need you to sign a waiver of the time for us to render our decision.

Do you have a copy of the waiver?

In other words, just sign a piece of paper that waives the time that we have to render our decision to allow us to wait until February 11th.

JEFF MCMATH: Sure.

THOMAS SCOTT: And that -- are there neighbors that face this side of the building, people who may have an opinion about whether these should even be there or not?

JEFF MCMATH: I have one of the owners and a neighbor on the other side.

THOMAS SCOTT: I mean it would be helpful to know whether the neighbors are okay with this.

JEFF MCMATH: Okay.

CONSTANTINE ALEXANDER: Please, if you get something in writing in particular, you heard, a petition of some sort or a letter that would be great. Okay.

The Chair moves that this case be continued as a case heard until seven p.m. on February 11th on the condition that the petitioner sign a waiver of the time for decision, which the petitioner has. And on the further condition that -- what you have to do, sir, is go back to the sign that's posted on the property --

JEFF MCMATH: Yes.

CONSTANTINE ALEXANDER: -- get a magic marker and cross out today's date for

the hearing and put February 11th.

JEFF MCMATH: Okay.

CONSTANTINE ALEXANDER: Okay.

All those in favor of granting the motion to continue the case, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. We'll see you on the 11th.

JEFF MCMATH: Thank you very much.

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

(A discussion off the record.)

(8:30 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9874, 64 Linnaean Street. Anyone here wishing to be heard on that matter? Second bite of the apple on this.

ATTORNEY ARTHUR KRIEGER: We've changed apples.

CONSTANTINE ALEXANDER: Because you listened to us.

ATTORNEY ARTHUR KRIEGER: My name is Art Krieger from Anderson and Krieger representing At&T. With me is Maria Apps from Harvard. And Mark Verkennis from

Harvard to my left. And Dan Valazekian our consultant and radio frequency -- our RF engineer covered perhaps when we get to those.

So you've already eluded to the history. We were here in the fall on the Hilles Library for the Radcliff Quad. You weren't wild about it. The Planning Board wasn't either. We continued that hearing to give us time to come back here tonight. We looked at the different locations, including the Observatory Hill and we settled on the -- on Gilbert which is just, it's within the quad just to the north of Hilles. And before I get into too many details, we filed an application for Gilbert on November 23rd with exhibits that you've all seen copies of it.

CONSTANTINE ALEXANDER: This packet right here.

ATTORNEY ARTHUR KRIEGER: That's

correct. And what we have operating is a cell on wheels at the south end of the quad which is a temporary facility until we get something permanent, and the COW will come down. And so that's where we are.

What I'd like to do is let Ms. Apps describe Harvard's interest in this which you've heard some of before, but this is really for the application. Harvard shares the interest more than the typical landlord. This is not money for Harvard. It's something more than that.

MARIA APPS: Primarily we're looking for relief to augment signal strength in the quad to help in our public safety efforts. Recently we installed a system at Harvard that allows us to text message subscribers in the event of an emergency with instructions on what to do. And recently -- as recent as last May we did have an event on campus where we did have to use

our emergency notification system, sent out text messages, and we got several complaints from residents of the quad and people who were in the quad who did not receive these text messages in a timely manner which alerted us to a condition that really not what we would want for the students that live on that part of the campus. So we spoke to At&T at the time to see about having them put some sort of a structure in place that would allow us to augment the signal strength. So then we then looked at other buildings to try and put up an antenna. Prior to that we had looked at some in-building solutions to try and avoid putting an antenna outside, but that became too problematic because we have historical buildings, it requires very large room with a significant amount of power and battery backup requirements that we did not have the space for, and would also encroach on some of the property outside of the

buildings, and it would pose some historical board issues. So this became the best alternative for us to continue to provide public safety for our students and only in this area.

CONSTANTINE ALEXANDER: Why don't we start with Hilles and come with Gilbert? Why didn't you start with Gilbert in the first place?

MARIA APPS: Hilles was more centrally located and better located for the antenna to reach a greater portion of the quad. Given the concern that the Planning Board had and you had, we were able to move it over another building. It's not optimal, but it's still sufficient.

CONSTANTINE ALEXANDER: That's the question. Sufficient.

MARIA APPS: Yes.

DOUGLAS MYERS: In what respect was Hilles more central?

MARIA APPS: And I can't speak to this specifically. We can ask Jobet to come up and talk about RF and how it propagates. But the location of Hilles being, you know, a flat roof and in the position it was at the quad, it allowed the signals to propagate further throughout the quad area. Where we are now there's some, you know, hindrances in some places so that when we are sort of beaming the signals out there are place where the signals are not going to propagate as far. However, given our options, this would still be sufficient to meet, you know, in greater proportion of the need than, you know, not having the antenna on the site.

ATTORNEY ARTHUR KRIEGER: Hilles also has the big penthouse on the side of it. It was thought that would be a less obtrusive design because it would be tucked lengthwise on this table rather than sticking out towards the edge of the building. Be that as

it may, we're not doing Hilles. We'll be happy to apply for Gilbert. So what I'd like to do is pass out a sheet that's the key to the photo sims that I'll show you. But it also tells you exactly the location that we're talking about.

CONSTANTINE ALEXANDER: This is in our files anyway. This is another copy of what's in the file?

ATTORNEY ARTHUR KRIEGER: That's correct, yes. The photo sims are Exhibit 6 and 7, and this sheet is in Exhibit 6. So Hilles is the big white rectangle for the quad. And above that is Daniels and Gilbert. So Gilbert is the site. And you see the five photo sims that I'll get to in -- clockwise starting from across the quad and going all the way around to the end of Garden Street. So I assume you're familiar enough with the campus. The -- before I get to the photo sims, what I'd like to do is just show a blow

up of the plan that is also in the file. This is sheet Z4. And just show you the schematic -- isometric actually of the proposed facility.

So the existing penthouse runs lengthwise, if you will, on the building and the proposed penthouse is at right angles pointing into the campus. That's the -- it's the screen wall. It's not a penthouse, it's just a screen wall around the cabinets. But not visible from the streets as you'll see in the photo sims. So one set of antennas. Actually, in that screen wall enclosure at the very top center of the picture, left-hand side of the existing penthouse, which is just for its -- it's an elevator penthouse not telecom. That's another set of antennas there. And the third set with a cable tray across it is on the other end of the building. It's concealed inside a false chimney that will look like the existing shaft and other

protections along the roof there. The screen well and the equipment cannot be tucked against the long side of the existing penthouse because of that door you see in the middle of that wall in the penthouse dotted line. It says existing access door. So unless we completely reconfigure the existing penthouse, this is the way the equipment had to go.

The Planning Board was happy with this proposal. I think you've got their recommendation.

CONSTANTINE ALEXANDER: We have a letter. I'll read it into the record at the appropriate time.

ATTORNEY ARTHUR KRIEGER: Okay. Without further ado let's get to the photo sims.

CONSTANTINE ALEXANDER: And these are again the ones in the file?

ATTORNEY ARTHUR KRIEGER: Correct.

I reformatted them to make them easier to handle. Each sheet has four or five sheets with a before and after. Five sheets, photos 1 through 5.

So No. 1, this is really the only place you can see the penthouse. And that's from across the quadrangle itself. The others are pretty minor. I'll give you a minute to look at them.

TAD HEUER: I guess the screen and the false chimney material, is that painted to match or is that a variegated material that simulates brick? What's the plan, have you thought about it?

ATTORNEY ARTHUR KRIEGER: The screen wall itself?

TAD HEUER: The screen wall and the false chimney, are those the materials for those -- are those intended to be painted to match on the flat or is that going to be a variegated type material that would

simulate, you know, the light impact on brick that it would -- is it a flat paint or is it something that would --

MALE AUDIENCE MEMBER: More specifically it's raised, you know. It's --

ATTORNEY ARTHUR KRIEGER: It's a fiberglass screen wall.

TAD HEUER: Okay.

ATTORNEY ARTHUR KRIEGER: So the texture. If there are no questions on the photo sims, I'll just move to our coverage issues.

CONSTANTINE ALEXANDER: Anybody have questions on the photos?

ATTORNEY ARTHUR KRIEGER: Do you want to just describe?

CONSTANTINE ALEXANDER: Just give your name to the stenographer.

JOBET MARIANO: Jobet Mariano, J-o-b-e-t M-a-r-i-a-n-o, At&T engineer.

In a nutshell in Cambridge the bottom

right now in-building with our coverage especially in the Harvard area, this is right where the quad campus. And everything that's green right now is where we have our in-building. And blue is (inaudible), and yellow is just on street coverage. We tried to improve the surrounding areas in Harvard Radcliff and also in additional area here (indicating). So it would be much better for us for in-building coverage.

CONSTANTINE ALEXANDER: You wanted to make it all green in effect?

JOBET MARIANO: Yes. This is what that quad is concerned (inaudible). So we're hoping to have the quad and the other side of Harvard campus.

TAD HEUER: And what's the one in the bottom right-hand corner, is that --

JOBET MARIANO: This is a future Rindge.

ATTORNEY ARTHUR KRIEGER: Two

weeks. That's on for the 28th, that's right.

TAD HEUER: I won't be sitting.
Have you posted the sign yet?

ATTORNEY ARTHUR KRIEGER: It just
went up I think.

TAD HEUER: Nice. I haven't been
home yet. I'm going to give you the benefit
of the doubt.

ATTORNEY ARTHUR KRIEGER:
(Inaudible).

THOMAS SCOTT: What's today's date?
14?

ATTORNEY ARTHUR KRIEGER: That's
the RF story. Let.

Me just turn now to the legal
requirements. I'll do it as briefly as I
can. But stop me if you want to address any
of the other issues. We are seeking a
Special Permit under Section 4.32 of the
Ordinance and any other zoning relief that's
required. Attached to the application

package is Exhibit 2, is a zoning compliance table which walks through every requirement; specifically the telecom, generally for Special Permits and for design, urban design objectives and anything else applicable.

CONSTANTINE ALEXANDER: And included in that, I think you did as I recall, I read the application but you're dealing with the fact that this is a residential district. So we have to make certain additional findings.

ATTORNEY ARTHUR KRIEGER: And that's really what I was going to focus on. In fact, the last time the Chairman prompted me to ask the Board to make that kind of finding. So the Subsection 3 of footnote 49 -- 4.40, footnote 49 says: In a residential zoning district the Board should grant a Special Permit for a facility only upon a finding that non-residential uses dominates in the vicinity of the location.

And the facility's not prevailing within the character of the neighborhood. Those are the two criteria in that paragraph. I think we meet both of those criteria.

Institutional use predominates in the vicinity I think it's fair to say. So north, east and south -- reorient the map slightly, are Harvard buildings. Across Linnaean to the north is the Harvard Botanic gardens for the entire block. Across from that is more Harvard. More across Walker Street (inaudible) which is a private school and no residences on that block. And you've got an Observatory Hill taking part of the western side. The only place of the residence is south.

CONSTANTINE ALEXANDER: Across the street?

ATTORNEY ARTHUR KRIEGER: Right.

CONSTANTINE ALEXANDER: On Garden Street?

ATTORNEY ARTHUR KRIEGER: That's right. Right across Garden. And you can see them on this photo sim key. These are obviously all residences to the left. But -- and then there are residences on the other side of Hilles to the south across Shepard. But every place else essentially, at least immediately surrounding is institution, Harvard and private school. I think it is certainly fair to conclude that non-institutional use predominates in the area.

As to the second criterion --

TAD HEUER: You mean non-residential?

ATTORNEY ARTHUR KRIEGER: Did I say institutional? Non-residential. Thank you.

CONSTANTINE ALEXANDER: The second one is your facility is not inconsistent with the character --

ATTORNEY ARTHUR KRIEGER: That's right. And that's largely a function of the visual impact, whether it's obtrusive or not. And I think you can see from the photo sims that the only measurable impact is from the quad itself. It's not on any of the surrounding street. So I think it is consistent with the character prevailing in the neighborhood, whether that neighborhood is residential or not. It's consistent. So it's going to make those two particular findings. The only other thing I want to focus on in granting the Special Permit, the Board shall set forth circumstances and procedures from any of the operating equipment. And we went through this at MIT, and your conclusion that it could upgrade as long as it stayed within the same equipment cabinet or shelter, and stay within the same size facilities that's in terms of visible facilities. I would just ask for the same

here.

CONSTANTINE ALEXANDER: Anyone wishing to be heard -- any questions from members of the Board? Comments?

Anyone wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

The Chair will read into the record a letter from the Planning Board dated January 7, 2010 regarding this matter. "The Planning Board reviewed this proposal for telecommunications installation and found that the installation use of the existing rooftop features as well as the creation of a new rooftop feature finished to match the existing building to be a good solution that will not be very visible from the public way and takes advantage of existing features on the building. As usual the Planning Board requests that any installations granted be

required to ensure that the installations match the finish of the existing building and that the cables be secured as tightly as possible to the facade to minimize their visual intrusiveness."

I trust you have no problems with complying with those.

ATTORNEY ARTHUR KRIEGER: Yes.

CONSTANTINE ALEXANDER: The Chair will also note that there's a letter in the file from -- it is from an Ioana, I-o-a-n-a Preston, P-r-e-s-t-o-n who resides at 52 Garden Street, apartment 5. "Please note that I have no objection regarding the subject of the above-mentioned petition." And that above-mentioned petition is the one before us tonight. It's a letter of -- I won't say support, but certainly not an objection. That's all we have for public testimony.

Further comments or questions from

members of the Board? Are we ready for a vote?

TAD HEUER: I just want to say you've done a really good job here particularly in coming back to us, you know, with the concerns we had about the library building. I know you're trying to get something in there expeditiously because of the safety needs. But, you know, just personally I really appreciate you going in and looking at the other buildings you had available. The kind of installation being put up there, both the Planning Board and our Board, speaking again for myself, I think for others members, you've come up with a solution that's met both our concerns and also the needs of the community. So from my perspective it's very well done.

ATTORNEY ARTHUR KRIEGER: Thank you.

THOMAS SCOTT: I second that. I

want to say architecturally I think it's a much better solution for a variety of architecture in that area. I think this is a much better solution. It's much more stealth and it's, you know, existence. And I think it's a very nice effort to come back and comply with some of the wishes of the Board.

CONSTANTINE ALEXANDER: Ready for a motion?

The Board moves to grant the petitioner a Special Permit to install two panel antennas melded inside a fiberglass screen wall enclosure penthouse extension; two equipment cabinets on the roof; two panel antennas mounted inside a false chimney; two facade mounted antennas painted to match the existing penthouse equipment cabinet on the roof, and telephone utilities. The Board would make the following findings in connection with that Special Permit:

That for non-residential uses predominate in the vicinity of the proposed facilities location. In fact, most of the area with the exception of one street, adjoining street is institutional or mostly institutional in use.

That a telecommunication facility is not inconsistent with the character that prevails in the surrounding neighborhood. In fact, it is not visible to the outside of the institutional use.

That most of the visual impacts such that it is, is directed toward the institutional use and doesn't impact the residential nature of the neighborhood.

We have to make additional findings. That the petitioner is a licensed FCC carrier.

That the petitioner has made a very good attempt, and I think has succeeded in limiting the visual impact of the elements of

the proposed facility by making the new structures visually consistent with what appears on the building already.

And that we have to make further findings for any Special Permit. That allowing these telecommunications antenna will not cause congestion, hazard or substantial change in established neighborhood character. In fact, we're talking about visually disguised additions to top of a dormitory structure that has no impact and creates no hazard or congestion or change in established neighborhood character as previously identified.

That the continued operation of adjacent uses would not be adversely affected by the proposed relief being sought.

That there would be no nuisance or hazard created to the detriment of the health, safety or welfare of the occupants or citizens of the city. In fact, safety would

be enhanced with respect to Harvard University students or visitors on this part of the quad by virtue of this telecommunications coverage. That in fact is the purpose of why the proposal is being made to improve the ability to communicate and for safety reasons.

And that the use would not impair the integrity of the district or adjoining district or derogate the intent or purpose of this ordinance.

As previously indicated, the neighborhood would not be adversely impacted, and in fact the safety of those persons using the quad or in or about the quad would be enhanced by the erection of this telecommunication facility.

The relief would be granted subject to the following conditions: That the work proceed in accordance with plans submitted by the petitioner prepared by Dewberry,

D-e-w-b-e-r-r-y -Goodkind, Inc. I don't see a date. But anyway, they're numbered -- they're dated 11/19/09. The sheet T-1, Z-1, Z-2, Z-3 and Z-4. The first page which has been initialed by the Chair.

And further in accordance with -- consistent with photo simulations submitted by the petitioner prepared by Dewberry. There are 1, 2, 3, 4, 5 pages. First page, again, which has been initialed by the Chair.

On the further condition that the work proceed in a manner as indicated on the plans to minimize the visual impact of the proposed new facilities by blending, to the maximum extent possible, with the existing structure and to secure the cables as tightly as possible to the facade to minimize the visual intrusiveness.

On the further condition, and the last condition that to the extent that this

facility be abandoned and not used for any period of six months or second period of six months or so, that the new facilities be removed and the building restored to its prior condition to the maximum extent possible.

TAD HEUER: It's my impression that as a matter of right but last time we did this we included it as, you know (inaudible).

CONSTANTINE ALEXANDER: Would you like us to add a direct replace?

ATTORNEY ARTHUR KRIEGER: It says the Board shall set forth under its decision the permit shall be allowed to replace and upgrade without Special Permit. If you're reading that to mean the default position is that we can do anything within the existing footprint.

CONSTANTINE ALEXANDER: Footprint and visual impact.

ATTORNEY ARTHUR KRIEGER: Footprint

and visual impact if you don't mind making the same finding, I'd like that.

CONSTANTINE ALEXANDER: You have a right to replace or repair the facilities you're proposing to erect providing that the replaced facilities fit the same footprint as the existing one, and that visual impact is no different and no more adverse than what's shown on these photo simulations.

All those in favor of granting relief on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

(A discussion off the record.)

(9:00 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Tad Heuer, Douglas Myers, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9875, 61 Sacramento Street. Anyone here on that matter?

Please come forward. For the record,

give your name and address, spell your name for the stenographer, please.

TIMOTHY GARVEY: Tim Garvey. 203 Lakeview Avenue, Cambridge.

LESLIE PINOSA GARVEY: I'm Leslie Pinoso Garvey. Also 203 Lakeview Avenue and we're the owners of 61 Sacramento.

CONSTANTINE ALEXANDER: You're the owner of 61 Sacramento?

TIMOTHY GARVEY: That's right.

CONSTANTINE ALEXANDER: Are you planning to move into it or just develop it?

TIMOTHY GARVEY: Developers.

CONSTANTINE ALEXANDER: The floor's yours. You want a Special Permit --

TIMOTHY GARVEY: Yes, for three windows. To install three new windows.

CONSTANTINE ALEXANDER: In a setback?

TIMOTHY GARVEY: Yeah, that's right. I have plans here. And if you

want --

CONSTANTINE ALEXANDER: My

dilemma --

TIMOTHY GARVEY: These are the windows that we're proposing to install.

CONSTANTINE ALEXANDER: That's what we're not interested in. What I did find missing unfortunately, we like to see elevations showing how it is now and how it will look after.

TIMOTHY GARVEY: I have that.

CONSTANTINE ALEXANDER: You have that? I didn't see that. Right. One, and not the other.

TIMOTHY GARVEY: Okay. This is the --

LESLIE PINOSA GARVEY: That's the current and that --

CONSTANTINE ALEXANDER: I think you show us the new ones. Don't show us the old ones.

TIMOTHY GARVEY: This is the new one here, showing.

CONSTANTINE ALEXANDER: Is it just blank wall now?

TIMOTHY GARVEY: Just blank wall, yes.

LESLIE PINOSA GARVEY: And you saw some photos where they had windows there, where the one window that they blocked.

TIMOTHY GARVEY: That's the one window that they blocked off.

LESLIE PINOSA GARVEY: Because it was originally a single and had been chopped up.

CONSTANTINE ALEXANDER: And the purpose of the new windows is?

TIMOTHY GARVEY: To get more light basically to the house.

CONSTANTINE ALEXANDER: More light. Did you talk to the neighbors who would be most impacted from a privacy point of view

by having these windows added?

TIMOTHY GARVEY: Not in detail really. I spoke to the neighbor that's closest on this side on a number of occasions. She was delighted we were working on the house.

CONSTANTINE ALEXANDER: You say this side, the person that faces the windows?

TIMOTHY GARVEY: Yes.

CONSTANTINE ALEXANDER: Is that across the street, by the way or is she --

TIMOTHY GARVEY: Same side. It's driveway between us.

TAD HEUER: Up Crescent.

LESLIE PINOSA GARVEY: And her house was all redone, too. She bought it a couple years ago. Both neighbors on Sacramento and the Crescent side have been very supportive and very nice, and we've been very careful to keep things very tidy and neat. And they've let us use their driveways to have access.

And we've re-roped it and they've been really, really nice.

TAD HEUER: So that the double hung on the second floor is one of those is going back in the space where the old one that's boarded up is?

TIMOTHY GARVEY: Yes.

LESLIE PINOSA GARVEY: Exactly.

TAD HEUER: And on the plan you originally had it, it said a new bay window. It's not bay window?

TIMOTHY GARVEY: No. It's -- I spoke to Ranjit the other day about that.

LESLIE PINOSA GARVEY: It's just a flat window.

TAD HEUER: Okay.

LESLIE PINOSA GARVEY: And they're really nice windows. They're wood.

TIMOTHY GARVEY: Nice windows.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Anyone here wishing to be heard on this matter?

(No Response.)

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

I have no questions. I mean, it's pretty straight forward. I'm ready for a vote if everybody else is.

DOUGLAS MYERS: Is there sufficient notice?

CONSTANTINE ALEXANDER: There better have been. I have to check, but I, assume Maria, there was notice sent to the abutters as far as you know?

MARIA PACHECO: Yes.

CONSTANTINE ALEXANDER: Required statutory notice?

MARIA PACHECO: Yes.

CONSTANTINE ALEXANDER: Right here.

The Chair moves that a Special Permit be granted to the petitioner to construct

three windows in a required setback on the basis of the following findings:

That to add these windows you could not meet the requirements of the ordinance without the relief being sought.

That what you're proposing will not cause congestion, hazard or substantial change in established neighborhood character. As mentioned, we're talking about windows and not means of egress or access that might cause congestion or hazard.

That the development of adjacent uses would not be adversely affected by the nature of the proposed use. The only impact, if any, would be privacy. And the petitioner represented to us that the neighbor most affected by these windows has expressed no opposition to the proposed relief.

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

citizens of the city. Again, on the basis that we are talking about three windows being added to the side of the house.

That the proposed use would not impair the integrity of the district or otherwise derogate from the intent or purpose of the ordinance. In fact, the windows will make the building more inhabitable by increasing the amount of light for the structure.

The Special Permit will be granted on the condition that the work proceed -- let me just say right there. You haven't been before us. We're going to grant relief subject to the work going ahead in accordance with these plans. These are the plans. Because if you're going to change them, you have to come back before us. You understand?

TIMOTHY GARVEY: Yes.

CONSTANTINE ALEXANDER: The work proceed in accordance with the plans prepared by Aesthetic Images, dated November 15, 2009.

They are the cover page and page A1 and A2, three pages in all. The cover page having been initialed by the Chair.

All those in favor of granting relief on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. You got your Special Permit.

(Alexander, Hughes, Heuer Myers Scott.)

(A discussion held off the record.)

(9:05 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9876, 136 Fayerweather. Is there anyone here wishing to be heard on

that matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard, but we are in receipt of a letter addressed to Whom It May Concern regarding this hearing. "As co-owner of the above property -- the above property being 136 Fayerweather Street -- as co-owner of the above property (with Scott Kenton, K-e-n-t-o-n), I respectfully request a continuance of our public hearing for the month of February. We have submitted a design to the Historic Commission who met last Thursday. They requested that we make revisions to our proposal for their review on the February 4th hearing when we hope they shall approve a redesign and sign off on the waiver from a six-month demolition delay." And the letter is signed by Merek, M-e-r-e-k Franklin, manager Alpine/Fayerweather, LLC.

The Chair moves that we grant a motion

to continue this case as a case not heard until February 25th -- until seven p.m. on February 25th on the conditions that the petitioner sign a waiver of notice for the time to render the decision. And on the further condition that the petitioner modify the sign on the premise to indicate the new hearing date. That date being February 25th.

All those in favor, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: I'm sorry?

MALE AUDIENCE MEMBER: Will the abutters be notified of this change?

CONSTANTINE ALEXANDER: Only through the modification of the sign. There would be no further mailing. So the sign that notifies the world on the property will be modified and you'll see there's a new hearing on February 25th. But nobody will get another letter like they got the first

time.

Are you here with regard to this petition, sir?

MALE AUDIENCE MEMBER: I am. I am right across the street.

CONSTANTINE ALEXANDER: Okay. Of course if you want to alert your neighbors to the fact --

MALE AUDIENCE MEMBER: I will definitely.

CONSTANTINE ALEXANDER: As a matter of law or procedure, we don't send another notice out.

MALE AUDIENCE MEMBER: So the 25th at seven o'clock?

CONSTANTINE ALEXANDER: At seven o'clock.

TIM HUGHES: Correct.

TAD HEUER: And of course, you can always submit anything written if you can't come or any of the neighbors want to as well.

MALE AUDIENCE MEMBER: Okay, thank you.

CONSTANTINE ALEXANDER: All those in favor of granting the motion to continue on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Motion carried.

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

(A discussion off the record.)

(9:10 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair

will call case No. 9877, 55 Magazine Street. PH Unit on fifth and sixth floors. Anyone here wishing to be heard on that matter?

Please come forward.

DENNIS RIESKE: My name is Dennis Rieske. I'm an architect representing Mr. Space and Mary Yntema, the owners at penthouse unit on Magazine Street.

CONSTANTINE ALEXANDER: Before we get into the merits of the matter, I've got a serious concern about the relief being sought. I think you need a variance. I don't think you need -- I don't think a Special Permit -- I don't think the Special Permit procedures apply to the kind of relief you're seeking. I think I can elaborate on that, but I, I don't think, and I'm speaking for myself, other members of the Board may have different views, I don't think this is a proper -- you've got to come before us with variances and re-advertise for that with

variances.

DENNIS RIESKE: I did get a call from Ranjit today and, again, I apologize if somewhere along the line --

CONSTANTINE ALEXANDER: No apologies necessary.

DENNIS RIESKE: I was under the impression that I was following the rules and regulations. Being an architect, I thought I was doing the right thing. And, in fact, the letters were written speaking about variance.

CONSTANTINE ALEXANDER: I noticed that in the file.

DENNIS RIESKE: And we also realized that -- and I looked at the documentation after Ranjit called me, and I think I might have mistakenly pulled out the page for six instead of five.

CONSTANTINE ALEXANDER: It's not so much what you filled out. It's just, that

again, the nature of the relief -- you're looking for relief that doesn't allow -- Special Permits don't --

DENNIS RIESKE: I believe we were asking for a variance.

CONSTANTINE ALEXANDER: You did. You didn't advertise for a variance. You advertised for a Special Permit. We have the advertisement right here. You're seeking a Special Permit. And so we can't hear a variance case because it's not properly advertised.

DENNIS RIESKE: Oh.

CONSTANTINE ALEXANDER: You want a variance. I know you talked about a variance in your letters, I saw that. But when you went to file or someone did, when you went to advertise and formally applied for relief, the application for a Special Permit --

DENNIS RIESKE: That, I wasn't -- I think I filed everything that was possible.

If we made a mistake, I apologize and we will re -- I assume that what you're asking me to do is to re-file it as a variance?

CONSTANTINE ALEXANDER: Yes. I mean, Tad is pointing out to us the paperwork that's submitted talks about a Special Permit.

TAD HEUER: A Special Permit form.

CONSTANTINE ALEXANDER: A Special Permit form. I mean you did talk about in your supporting arguments was variance, but the form you used was a Special Permit. And that's why the case was advertised as a Special Permit case.

DENNIS RIESKE: Oh, dear.

CONSTANTINE ALEXANDER: Again, no need to apologize to us. We can't hear the case tonight. You're going to have to re-advertise or advertise it for a variance. You might want to -- I'm going to suggest to you that you continue this case as a Special

Permit just in case if we were to turn down the variance, you can try to come back and persuade us that -- that you didn't need a variance in the first place. You're entitled to a Special Permit. I don't think you're going to succeed in that argument at least with me. But I think it's probably the most prudent from your respect not to get any advice in this case. But I think the case is a variance case.

DENNIS RIESKE: And that's what I thought I was filing for.

CONSTANTINE ALEXANDER: You probably did, but unfortunately you didn't. And more importantly it's not advertised as such.

DENNIS RIESKE: And that is the case.

CONSTANTINE ALEXANDER: We can't hear the case, very simple.

DENNIS RIESKE: All right.

CONSTANTINE ALEXANDER: Now, we're going to continue the case in a second. Just for safety purposes, let me make one other observation. In reading the file I see one of the things you're proposing to do or you're proposing to do is to put a 20-foot antenna on the roof of the building. It's not at all unclear to me that doesn't require zoning relief. Have you got a determination from the Building Department that you can do that as a matter of right?

DENNIS RIESKE: Yes, sir.

CONSTANTINE ALEXANDER: You're sure?

DENNIS RIESKE: It was on the plans.

CONSTANTINE ALEXANDER: I talked to the Building Department. They're a little skeptical. I suggest you get some confirmation in writing. Request a confirmation that you have a right to do this as a matter of right. And if they agree, then

end of story. If they don't agree, you can either appeal that decision or seek a variance or both.

DENNIS RIESKE: Obviously I submitted the plans and we went through every aspect of this proposal, and the three things that I was listing were the only three that were highlighted by the Building Department.

CONSTANTINE ALEXANDER: You know, I looked at the plans, too. And the plan talks about a proposed antenna depending on cost estimates. So I don't know whether the Building Department thought you were going forward.

DENNIS RIESKE: That's very clear.

CONSTANTINE ALEXANDER: My suggestion, again, get something in writing and if it's clear and they have no problem, end of story from our perspective. But I don't want you or I don't want us to be in a position where if we do grant you relief and

you do go to start, you got to pull your Building Permit and someone says wait a minute, you need zoning relief for that antenna. You'll have to come back before us. I want to cut that off one way or another. It's either get it resolved now or make sure there's no issue, because I think there could be an issue.

DENNIS RIESKE: There was -- after we filed all of the applications, it was also another request from the Building Commissioner that I contact the Planning Department. And there is some proposed new zoning legislation in the City of Cambridge dealing with green roofs. And so there was -- we'd already filed everything, and knowing that the process normally takes one or two trips back here, my thought was that we should come here anyhow because the proposed legislation or proposed zoning changes has gone from the Planning Department

to the City Manager and is planning -- and will be presented to the City Council in -- probably the next month or so. It would change the underlying rules and regulations to some extent. And it appears if it was adopted as written, it would be a Special Permit from the Planning Board not the Zoning Board. I did bring copies of that if that's of any relevance.

CONSTANTINE ALEXANDER: It's your call. You can wait and see how the legislation ultimately ends up and maybe you don't need to see us on that matter. Or you can go before us. You don't have to wait until then. You can seek your variance now from us. And if we granted it and you would be grandfathered, if you will. You wouldn't have to worry about whatever the City Council adopts.

TAD HEUER: For instance, last year when they had the wind turbine situation,

that was in the works. And there were several businesses asking for wind turbines under the variance, under the catch-all variance standard they could have waited and they would be under the new wind turbine mechanicals provision, but they didn't. They got the variances and they're fine. So it's a similar situation that would occur here where you would come.

DENNIS RIESKE: One of the things -- and the only three things, I can rank them in terms of importance. In terms of construction, we have -- there is a building permit, construction is going on in their unit.

CONSTANTINE ALEXANDER: Right.

DENNIS RIESKE: Of the three things, the penthouse is the most critical in terms of the scheduling of the construction. And basically it's an internal handicap lift to allow them to move between the two floors, and

eventually to get up to the roof. That is the only piece that is at times that's critical. And again, when I take a look at the way the Zoning Ordinance was written, if there is under Article 2, Section 7, the elevator shaft and stairwells on floors where there's no other area which call upon to be the area is not counted as gross floor area.

CONSTANTINE ALEXANDER: I don't want to get into --

DENNIS RIESKE: Again, that is the only issue.

CONSTANTINE ALEXANDER: Let me suggest and that -- I'm not in any way prejudging this case, but I think that's intended to be an apartment building where you're going to have an elevator that's going to service all of the occupants in the building. And you need a penthouse on the top for the elevator shaft. You're talking about an elevator that's just going to serve

one unit, as I understand it, and it's for handicapped -- for people who are not handicapped, but in anticipation you might be handicapped. It's a different set of circumstances. It doesn't mean you're not entitled to relief. I don't think you can say because of that this should be a slam dunk. There are different issues. And we'll decide that when we hear the variance case.

DENNIS RIESKE: Right.

CONSTANTINE ALEXANDER: So, I would just suggest that we continue this case probably for a couple of months. I don't know how long it will take for you to get -- to apply for a variance. Why don't we say three months? You have some dates out, Maria?

MARIA PACHECO: I mean, if they can get their application in, we can do it for March 11th.

CONSTANTINE ALEXANDER: We can do

the variance application for March 11th.

MARIA PACHECO: If I get the application within the next week or so.

CONSTANTINE ALEXANDER: Why don't we continue this case to March 18th.

DENNIS RIESKE: 18th or the 11th?

CONSTANTINE ALEXANDER: 11th is the one you should shoot for. But just to preserve your rights, I'm going to keep this case alive until March 25th. Again, in case you -- you want to -- you lose your variance case and you want to try to come back and persuade us that you really didn't need a variance, you needed only a Special Permit, you'll be able to do that on March 25th. Otherwise we'll withdraw the case and you can never come back for a Special Permit for the next two years for relief. You don't want that.

DENNIS RIESKE: No.

CONSTANTINE ALEXANDER: This is

procedural. You should focus on getting an application at least properly advertised for a variance for whatever relief you need, and again I urge you to make sure you're signed off on the antenna for what you want to do now. You'll have to work with Maria to get the paperwork done in time to advertise so we can get you on the agenda for March 11th for the variance which will be presumably the definitive case.

The Chair moves that this case be continued until seven p.m. on March 25th on the condition that the petitioner sign a waiver of notice for time of decision. Which you'll have to do if you want us to continue this case, otherwise we'll turn you down.

And on the further condition that the sign that's on your premises now be modified with a magic marker to reflect the new date of March 25th.

Now, when you apply for your variance,

you're going to have a second sign. And that sign will advertise a variance. So in due course you'll have two signs; one for the variance on the 11th that will appear, if that's the date you're going to make and the modified one for the 25th.

DENNIS RIESKE: So March 11th will be --

CONSTANTINE ALEXANDER: If you do the paperwork with Maria, that's when you come back before us seeking a variance.

All those in favor of granting the motion to continue the case until March 25th say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(9:25 P.M.)

(Sitting Members: Constantine Alexander,

Tim Hughes, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9878, 54 Garden Street. Is there anyone here wishing to be heard on that matter?

For the record, your name and address, please.

CHARLES MCCANNON: Charles McCannon, 54 Garden Street.

CONSTANTINE ALEXANDER: And, sir.

JONATHAN BOLLEN: Yes, my name is Jonathan Bollen with Sam and McNary (phonetic).

DOUGLAS MYERS: Jonathan Bollen.

JONATHAN BOLLEN: B-o-l-l-e-n.

CONSTANTINE ALEXANDER: You're seeking a variance to construct an addition to a non-conforming structure. One of those unique situations. Your problem is you're seven inches into the front yard setback.

And because of that, and you want to build a new garage and shed and addition on the back. And because of those seven inches you need relief from us or you can modify your front porch as a matter of right to take off the seven inches and you don't have to see us.

CHARLES MCCANNON: We thought of that. The only problem is we'll sheer the whole -- we bought the property in 2006, my wife and I, and, you know, I had no idea that there was any problem. With the previous owner in all good conscious, thought that what he had constructed for him in 2003 was appropriate, you know. No violation of the ordinance. And when Sam and McNary did the site plan for us, they said, sorry, one corner of your porch not the entire, it's -- the house is pitched a little bit to the street line. And as a result, we encroach.

CONSTANTINE ALEXANDER: The house is built in 2003?

CHARLES MCCANNON: No. The porch was added. The house was built in 1930.

TAD HEUER: Just out the curiosity, so if the addition built in 2003 and it's non-conforming, it's a setback, is that in violation and also requires relief?

CONSTANTINE ALEXANDER: Isn't it a statute repose?

TAD HEUER: I thought it was longer.

CONSTANTINE ALEXANDER: It probably is longer than that. I don't know. I'll leave that to Sean and Ranjit if they want to bring an enforcement action. I hope not.

DOUGLAS MYERS: That raises a question as to what sort of non-conformity this is. It appears to be, in this nature, in violation.

CONSTANTINE ALEXANDER: Yes, but the relief doesn't. The non-conformity causes a need to seek relief, but the relief is not tied to the non-conformity.

Everything they want to do with the form is a matter of right to the Zoning Code. It just happens that something else on the property, i.e. the porch, the corner of the porch causes them to have a problem that requires them to come before us. We don't have to satisfy the issue that Tad correctly raises in my judgment.

CHARLES MCCANNON: I have met with and communicated with all of the abutters.

CONSTANTINE ALEXANDER: I think we have a letter of support which I'll read into the record.

CHARLES MCCANNON: I didn't know.

CONSTANTINE ALEXANDER: One letter of support.

CHARLES MCCANNON: But nobody has objected. People asked me if I wanted them to write letters, and I said if you feel you want to, but I didn't solicit it from them.

CONSTANTINE ALEXANDER: The purpose

of the addition is?

CHARLES MCCANNON: We have a kitchen, a very small kitchen at the back of the property. The house is very small. It's very -- it's sort of vertical. And on the first floor is just two rooms, and the back half of the house is a kitchen, elongated kitchen/dining room which is pretty tight. And we wanted to put the one-story addition off the back to extend the kitchen and create a dining room and put a very small garden and as a step down, a single step down to the garden. In addition to that, we have a garage that is on one side of the property where the driveway used to be. And two years ago we moved the driveway to the other side with permission because we were forced to back out on to Garden Street where the garage was. And it was so narrow on one side of the house. So it's wider on the other side of the house, and it allows us to turn around and

head out to Garden Street. So we're going to take down the -- with permission, we're going to get a demolition permit to take down the existing garage and tuck a garage of the same dimensions, really, in the back right rear corner with an -- it's a single bay garage with a potting shed off of it. That's what we call it, a potting shed, right?

CONSTANTINE ALEXANDER: And that garage would be completely compliant with the zoning requirements?

CHARLES MCCANNON: Yes. As will the shed.

CONSTANTINE ALEXANDER: If we grant relief, we tie them to the plans. I want to make sure that these are the final plans. Because if you're going to modify them, you're going to have to come back before us.

Is there anyone here wishing to be heard?

(No Response.)

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

The Chair would note that we are in possession of a letter. The letter is from an Ioana, I-o-a-n-a Preston, P-r-e-s-t-o-n who resides at 52 Garden Street, apartment 5. It's addressed to us. And it says: Please note that I have no objection regarding the subject of the above-mentioned petition. And that petition being the one before us.

So actually a letter of non-objection perhaps as opposed to a letter of support.

Questions, comments from members of the Board?

TIM HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that a variance be granted to the petitioner on the basis of 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 petitioner would be having a choice of either reconstructing a front porch that has just a very slight setback violation, or not proceeding with the addition as planned which would provide needed living space to an otherwise small structure.

That the hardship is owing to circumstances relating to the size and the shape of the lot. It's really a long and narrow lot, plus the siting of the structure on the lot now for which the petitioner inherited when he and his wife bought the property.

And that relief may be granted -- there would be no substantial detriment. The proposed relief would not cause substantial detriment to the public good or derogate from the intent or purpose of the Zoning By-Law. In fact, the proposed addition will be fully

compliant with the Zoning By-Law.

That the relief -- for the relief is technical in nature because of a slight setback issue on the front porch which is not involved in the construction involved.

That there has been no neighborhood opposition. In fact, there's been one letter of non-objection.

And that the result of this project if it goes forward, will be to improve the housing stock of the City of Cambridge which is one of the intents of our Zoning By-Law.

The variance would be granted on the condition that the work proceed in accordance with plans submitted by the petitioner prepared by Benjamin Nickerson. Dated September 1, it looks like 2009. It's been cut off. 2009. There are one, two, three, four, five pages in length or five pages in number, and the first page which has been initialed by the Chair.

All those in favor of granting the relief on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

(Whereupon, at 9:30 p.m., the meeting adjourned.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the
undersigned Notary Public, certify that:

I am not related to any of the parties
in this matter by blood or marriage and that
I am in no way interested in the outcome of
this matter.

I further certify that the testimony
hereinbefore set forth is a true and accurate
transcription of my stenographic notes to the
best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set
my hand this 22nd day of January 2010.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

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