

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING

October 8, 2009 7:00 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Thomas Scott, Member

Christopher Chan, Member

Tad Heuer, Member

---

REPORTERS, INC.

CAPTURING THE OFFICIAL RECORD

23 MERRYMOUNT RD., QUINCY, MA 02169

617.786.7783/FACSIMILE 617.786.7723

[www.reportersinc.com](http://www.reportersinc.com)

## I N D E X

<u>CASE</u>		<u>PAGE</u>
9822	--	3
9823	--	31
9802	--	43
9775	--	43
9840	--	52
9841	--	74
9842	--	88
9843	--	96
9844	--	107
9845	--	117
9846	--	134
9847	--	140

P R O C E E D I N G S

(7:00 p.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Christopher Chan, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call the meeting to order. As is our custom, we'll start with the continued cases.

The first case we're going to call is the case we heard before, 16 Stearns Street, No. 9822. Anyone wishing to be heard on that matter?

JOE MAGUIRE: Yes, please.

CONSTANTINE ALEXANDER: As you know, give your name and address for the record.

FRANZISKA AMACHER: My name is Franziska Amacher and I'm the architect.

CONSTANTINE ALEXANDER: These are things that are already in the file?

FRANZISKA AMACHER: Yes.

CONSTANTINE ALEXANDER: Okay.

Just for the record, this is a case for a variance for an addition to your structure, a non-conforming structure. And at the last hearing we continued the case basically for two reasons. One, there was a neighbor who objected to the project. And it appeared from what we could tell that there was at least a claim of insufficient communication between you and the neighbor. And we thought it would be good if you did have communications. And also some members of the Board, I think Chris in particular wanted additional, like three-dimensional drawings. More information about the addition itself. And that's where we are. So you can take it from there.

FRANZISKA AMACHER: Okay. So Dani and Joe have been in a lot of communication with this neighbor. And basically we tried to respond to a lot of

the issues that she raised, and she made some good points and so we tried to address those. First of all, we added more texture to the walls so that you can see that we really wanted this to be shingles and also showed more details on the green wall so that you have a better sense of what that might be like. I just want to show you again here these images of green walls and green roofs.

CONSTANTINE ALEXANDER: Is that for us? Thank you. Now, have you changed the shape of the addition at all or just put texturing on the walls?

FRANZISKA AMACHER: No, we actually did change the wall facing the neighbor who didn't like this addition. And we pushed back the upper story so that it would be more of an expression of the original house, and you know minimization of the massing. We also extended the green screen wall, the green wall further

towards the street which was -- it includes a suggestion from the neighbor. Also, I wanted to point out that even in the original scheme, the green roof side was supposed to be covered by the wall that's coming up next to it. So this was one of the concerns by the neighbor. And we also changed the location on the other side of the right side of the house of where the exterior stair is located. This is a change that the other neighbor actually endorsed and preferred.

JOE MAGUIRE: In case it matters there's a letter of support from that neighbor that we changed.

CONSTANTINE ALEXANDER: On the other side. Not the neighbor --

JOE MAGUIRE: That's right. Because we moved the staircase closer to her property line.

CONSTANTINE ALEXANDER: Don't leave me in suspense any longer. How are

you doing with the other neighbor?

JOE MAGUIRE: We think we're there. She can speak for herself. Jodie is here.

CONSTANTINE ALEXANDER: We'll let her speak.

FRANZISKA AMACHER: So there is one thing that we couldn't do which was she wanted us to shorten the house by a couple of feet. And if you look at the plan, that would make it very difficult for -- actually do you want to see the bigger image which makes more clear what is new and what is existing?

CONSTANTINE ALEXANDER: Please.

FRANZISKA AMACHER: The yellow part are the new areas. And she wanted us to cut this wall back.

CONSTANTINE ALEXANDER: In the backyard wall?

FRANZISKA AMACHER: Yeah.

CONSTANTINE ALEXANDER: And why

couldn't you do that?

FRANZISKA AMACHER: Because this here is actually planned to be eventually a separate room used for guests.

CONSTANTINE ALEXANDER: And cutting it back would deprive you of using it as an additional bedroom it sounds like?

FRANZISKA AMACHER: Yeah.

CONSTANTINE ALEXANDER: What would the dimension of the room be?

FRANZISKA AMACHER: It would be just too short. Let me....

BRENDAN SULLIVAN: Gus, do you have the Assessor's plot there?

CONSTANTINE ALEXANDER: I think I do.

DANI ADAMS: It would make it 7 by 13.

FRANZISKA AMACHER: Up to the door now is 12 feet and shortening it.

DANI ADAMS: It's this side.

FRANZISKA AMACHER: And shortening it that on the other side is eight feet.

CONSTANTINE ALEXANDER: The room is now 8 by 12 that's in your plans?

DANI ADAMS: 8 by 14.

JOE MAGUIRE: It's irregularly shaped.

CONSTANTINE ALEXANDER: And what would the side room be if you cut it back?

JOE MAGUIRE: Six on one wall. Ten on another.

TIM HUGHES: The function of the room?

JOE MAGUIRE: Well, we're trying to make it do multiple functions. And so the initial plans, the preliminary plans, we actually had that room enclosed so that it would actually be separate, and we realized everything is so densely packed here, we might as well get multiple uses out of this room. We were even contemplating for a while, Franziska

suggested a door mechanism almost like a garage door. I would -- we postponed that for financial purposes. So, it is a living room for the time being.

We also investigated actually to try to accommodate this thing and move it within two feet, by actually taking the side door and moving it towards the street a little bit which would give us some leeway.

CONSTANTINE ALEXANDER: The question I guess is for them to answer, but why from their perspective do they want you to shorten? I can see wanting to do things on the side as closer to their property. What's the impact on them if this rear extension being where it is as opposed to being over here? As you understand it. Or if you don't want to answer, I'll let them answer. I'm curious why.

JOE MAGUIRE: I think it's a, you

know, a visual thing. I'm not sure that I do understand so probably --

CONSTANTINE ALEXANDER: Okay.

Don't guess.

CHRISTOPHER CHAN: Are those models yours?

DANI ADAMS: I made them.

CHRISTOPHER CHAN: I didn't care if you made them. I was wondering if they're part of the presentation.

JOE MAGUIRE: Part of the effort to give more information and to sort of do more communication is visual aids. So we made a before picture.

DANI ADAMS: This is the before. This is the back of our house and this is Jodie's house.

CONSTANTINE ALEXANDER: Okay.

DANI ADAMS: And we have photographs taken at each of these spots so you can see. And one taken from here (indicating).

CONSTANTINE ALEXANDER: Okay.

DANI ADAMS: And yes, it is a dream garden. It may or may not succeed. So that -- these trees are already there.

CONSTANTINE ALEXANDER: Are they already there?

DANI ADAMS: So the things that were changed -- so this here (indicating), which is the green wall. Jodie consulted an architect and suggested bringing that farther. This was flat (indicating), and now it's been pushed back so that it would reduce the bulk. And then the other change is this side. This stairway has been moved from the middle to over here so that we actually have a little private patio area (indicating).

JOE MAGUIRE: And there was one more change which was -- that Jodie was concerned about --

DANI ADAMS: These are the windows, the views from these windows was

her concern.

JOE MAGUIRE: Jodie was also concerned what the lip of the green roof looked like, would look like from the side. And we did some research on different choices and actually the solution that we came up with which.

DANI ADAMS: Franziska had already.

JOE MAGUIRE: I want to take claim for it. Was to actually just conceal the lip and with green wall. So that's the other change.

CONSTANTINE ALEXANDER: Questions? I have a technical question. I'm a little puzzled by the dimensional form. You submitted a new dimensional form with the revised drawings. And they are quite a bit different than the original one. For example, the original one shows the house to be 25 feet high. And it continued to be 25 feet with the addition. The

dimensional form I saw now says it's 16 feet high and to go to 17 feet width.

FRANZISKA AMACHER: Well, that's because of the calculation because you average everything out and I had -- before I had just given you the total rather than having the average out.

CONSTANTINE ALEXANDER: Okay. And also the side yard setback, you went from 9.5 to 4.7 between the two forms, and I guess I'm puzzled.

FRANZISKA AMACHER: Right. And again that -- there's actually something that's a little unclear on the Zoning By-Law. I saw that C-1 had a total of 20 feet setback from the side with a minimum, I think, of seven and a half feet, but that actually applies to the next so.... And it's a little unclear. I don't know, so I misunderstood that.

CONSTANTINE ALEXANDER: Okay. For the record, so the relief you need is

basically this setback. You don't have an FAR issue. And you're exactly, again, your forms are different. The original time you came before us you said you were going 9.8 feet to 9.7 feet, and the district required 9.8 feet. That's why you were before us. This time around you show 4.7 feet. But it looks like a different setback. I just want again for the Board to know exactly what relief we're granting you if granted.

FRANZISKA AMACHER: 4.7 due to this calculation with --

THE STENOGRAPHER: I'm sorry, what?

FRANZISKA AMACHER: Is due to this calculation --

CONSTANTINE ALEXANDER: If you're going to be -- it's 4.7 and you're going to be 9.7 or 8, you have no variance issue.

FRANZISKA AMACHER: Right.

CONSTANTINE ALEXANDER: So what is your variance that you're seeking? I think it's the other setback now.

FRANZISKA AMACHER: It's the other side that's the problem.

CONSTANTINE ALEXANDER: Okay. It wasn't before on the last form but now you say it's a problem on this side?

FRANZISKA AMACHER: No, we always said there was a problem on the right side.

CONSTANTINE ALEXANDER: Okay. So, it's a right yard setback.

FRANZISKA AMACHER: Yes. And that was the reason why we were seeking a variance from the start. That was always that.

CONSTANTINE ALEXANDER: Okay.  
Anyone wishing to be heard?

JODIE GARBER: I want to hand this out and also read it.

CONSTANTINE ALEXANDER: Sure.

JODIE GARBER: But I wanted a point of information if --

CONSTANTINE ALEXANDER: First of all give your name and address for the stenographer.

JODIE GARBER: Oh, sorry. Jodie Garber, 18 Stearns Street.

CONSTANTINE ALEXANDER: Are you going to read this so I don't have to read it for the record?

JODIE GARBER: Yes.

CONSTANTINE ALEXANDER: Okay, fine.

JODIE GARBER: I thought last time because the FAR for the extension exceeded X percentage of what the house was, a variance was also called for?

CONSTANTINE ALEXANDER: According to their form, just so you know, the district requires no more than .75 FAR. And their project is going to go from .35 which is well under, to .62 which is still

under. So they don't need a -- they have no FAR issues.

JODIE GARBER: But the fact that it was doubled, what existed also doesn't trigger something?

CONSTANTINE ALEXANDER: It depends on the lot size, too.

SEAN O'GRADY: If the building is not conforming, they're limited to a ten percent. The building's not conforming, then 10 percent. 25 percent by Special Permit. After that they would need a variance. So they go from .3 to .6. Yes, they would need a variance for FAR.

CONSTANTINE ALEXANDER: They need a variance but they're still within the requirements of the district in terms of FAR. They're not overly dense.

JODIE GARBER: Right. But they would need a variance.

CONSTANTINE ALEXANDER: They need a variance, oh, yes.

JODIE GARBER: I'm just addressing that.

CONSTANTINE ALEXANDER: No question they need a variance.

FRANZISKA AMACHER: And that's what we're seeking a variance.

JODIE GARBER: I understand. I understand. I thought -- there was some discussion that they might not need a variance so I just wanted to clear that up.

Anyway, I'm standing here today between a rock and a hard place. As suggested by the Board at the initial hearing last July, Joe, Dani and I met a few times over the summer to review the plans for the proposed renovation and to try to come to some mutually agreeable accommodation. I had expected that we both compromised a little bit, neither of us would be perfectly happy, but both parties would have felt more or less

satisfied with the outcome. In addition, the process itself would have been constructive. As this has played out, however, I have two issues I'd like to address. The first is fundamental and has to deal with the rules of granting of a variance. It had been my long time understanding the petitioner has to demonstrate a hardship in order for a variance to be granted. I know that what constitutes a hardship is often in the eye of the beholder, but that's where I would expect the Board to be the arbitrator. The way this process has evolved however, I as an abutter have been put in the position of having to say why I do not want something to happen rather than the petitioners being the ones to demonstrate why it's critical that it does. It's as if the burden of disproof is on me rather than the burden of proof on them.

The second issue, however, is what

happens when one party, in this case the petitioner, chooses not to compromise on the one issue that really matters to the other party. That that would be me. And I'm sure that, you know, whatever. Truth be told, I think the proposed plans in general are an overreach. In my opinion it seems that Joe and Dani are trying to put a square peg in a round hole. The addition is too large for the existing house and yard, trying to do too much in too small a place. And yet not taking advantage of the charms, such as it is of the existing structure. In any event, I have nothing to say about that. It's a matter of taste on which we can agree to disagree. My main concern, however, as it affects the enjoyment of my property is the size of the addition to the rear of the house. I said if they would reduce the size by two feet, I would not object to the granting of a variance. This would

leave them with a room of approximately 14 by 28 feet instead of 14 by 30. So it's also confused as to what you were talking about earlier. I couldn't hear very well. I replied that they're unable to reduce the size of the room by two feet as it would not then fit their needs. And that if they had to make the room smaller, it wouldn't make sense for them to do any renovations at all. When Joe and I met on Tuesday night we both realized that we had come to an impasse. I wanted two feet less and they did not. We had clarity but we also had a problem. Joe said, "I guess this is where we stand unless one of us blinks." So I'm here tonight to say that I will be the blinker, they can be the blinke. I wish sincerely that Joe and Dani would have agreed to reduce the size of their addition, but since they've refused I don't think that two feet are worth losing the neighbor's good will.

CONSTANTINE ALEXANDER: Thank you.

For the record, I just want to say that we never got to it in the hearing about the substantial hardship. In their filing they do deal with the issue of hardship. And I'll read so you know what they said. They said they believe there is a hardship because quote, the owner would have to move elsewhere and lose the connection to this neighborhood since there is not enough space in this 1,000 square foot room for him, his partner, and his Home Office. He has known some of his neighbors for 25 years and has known many of the children since before they entered school. So they did try to address it. Basically the hardship is the house is too small. That's the hardship.

Anyone else wish to speak?

(No response).

CONSTANTINE ALEXANDER: One letter already been read into the file. The

other one was submitted to us tonight from Robin Streit, S-t-r-e-i-t at 10 Stearns Street. "I live at 10 Stearns Street abutting the property at 16 Stearns Street. I have seen the revised plans for the addition to that property as submitted to the Cambridge Board of Zoning Appeal for the hearing 8, October 2009. I approve of these plans, including the plans to move a more rear entryway closer to my property line and support the application for variance."

I'll close public testimony at this point. Members of the Board want to comment? You want to go to a vote? What's the pleasure? Brendan?

BRENDAN SULLIVAN: Well, I think I would agree with the neighbor that the addition is fully substantial, but then I also look at how that house on the right morphs the proposed house before us in height and I think in volume also. And

to -- when I pulled up the Assessor's plot, if you looked at the petitioner's house, it's sort of sandwiched between two fairly large houses on either corner and then this one next to it. Petitioner's house and the one next to it are the ones that are sort of out character with the rest of the street. So, yes, it is a substantial addition, but I think that it, you know, it's the volume in the front I think that would bother me and that has not be touched. So however you draw your conclusions on that as it makes its way around the table. Go.

CONSTANTINE ALEXANDER: People don't have to speak if they don't want to. Tom?

THOMAS SCOTT: I kind of like the way the second story if the model is correct, has some alignment with the rear this house so that the larger structure is not imposing in the backyard. The only

thing that's imposing in the backyard is the lower one-story structure. And they've taken some great pains to do some screening elements to soften that edge of the house. And I think, you know, if the landscape ever does become as lush as that, it could be very nice.

JOE MAGUIRE: Keep your fingers crossed.

THOMAS SCOTT: So I think the improvements are good.

TIM HUGHES: I was in favor of the original design.

JOE MAGUIRE: I hope we didn't screw it up.

TIM HUGHES: I actually like this better. I like the way it's stepped back some. I like it adds some character and dimension to that side of the house. I'm still in favor of it.

CONSTANTINE ALEXANDER: Want to comment or not?

CHRISTOPHER CHAN: Yes. I mean, I think on the plan, and you talked there was some more understanding. I guess I find the argument that you couldn't bring that back two feet somewhat hard to legitimize, but I don't know if I would not vote for it because of that. I'm sure there's -- I mean, I can see there's an issue with this triangular piece coming off that connects the two areas, but that extra was to create another room on the bottom floor? A separate room?

JOE MAGUIRE: I know that the interior of the plans, the way they look now, it looks like a rather grand, you know, expansive, you know, 28 feet or something. But the ultimate plan when we can afford it, is that that room will be enclosed. And so the house has a lot of small rooms as it is. Right now Dani is in -- Dani's office is also in a closet. It's six, seven feet by nine feet or

something. And, you know, we want that to be a guest room that has a little elbow room. And a living room. And we're having a hard time visualizing it be that functional.

FRANZISKA AMACHER: And also the first floor has to become quite functional for the future for accessibility issues. So, you know, it's like you can escape to the second floor.

DANI ADAMS: Also the original concept, as you can tell I care about the garden, and in order to have enough interior room, that meant I had to give up a lot of my garden. And so the design of it was to not be just a living room or a guest room but it's actually supposed to be part of the garden. And if the windows around it are very important part of bringing the inside and outside together, and the other effect of bringing it back would be to cut in half the number of

windows. We can have -- that will look out on our one little private area outside.

CONSTANTINE ALEXANDER: Well, like Chris I'm a little puzzled why you couldn't -- so like him, I respect what you're saying you couldn't find two feet. But that's to my mind it's equivalent. I think like overall like other members of the Board I think what you're doing is noteworthy -- not noteworthy. But certainly it's appropriate and it did meet the concerns of the Board for lack of a better term. I think I'm ready for a vote.

These are the plans, these two pages. So, when we take the vote, we tie them to plans. And you can't change them unless you're going to come back before us.

FRANZISKA AMACHER: Yes, that's fine.

CONSTANTINE ALEXANDER: Okay. You understand?

FRANZISKA AMACHER: Yes.

CONSTANTINE ALEXANDER: The Chair moves to grant the petitioner a variance to proceed with the project proposed in their application.

The Chair moves that the Board find that there is a substantial -- that a literal enforcement of the zoning ordinance would involve a substantial hardship to the petitioner. Such hardship being that they, occupying an older, basically undersized structure that requires additional living space, and giving the non-conforming nature of the structure, any additional living space is going to require zoning relief.

That the hardship is owing to basically the shape of the lot. It's a long and narrow lot. Again, leaving very little room for any type of addition

without compromising the Zoning By-Law. And that we can grant relief, the Board would -- the Chair moves on the basis that there be no substantial detriment to the public good, and would not be nullifying or substantially derogating from the intent or purpose of this ordinance. In fact, we would be carrying forth some of the purpose of the ordinance by encouraging better housing in the community as housing that is consistent with the general overall pattern of the neighborhood. It's kind of housing that allows families to continue to stay in their homes as they get older or they need additional space.

The Chair would further note that there's no -- except for one reluctant approval, there's been no opposition from the neighborhood. There's substantial support in fact in the neighborhood.

On the basis of all these findings,

the Board would grant the variance on the condition that the work proceed in accordance with the plans numbered A2 and A3, dated October 2nd and prepared by Amacher and Associates Architects, which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(Whereupon, a discussion was held off the record.)

(7:30 p.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer,

Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call two cases -- let me do Locke Street. We're going to call case No. 9823, 22 Locke Street. Anyone here on that matter?

Again, you know the drill. Give your name and address.

ARNOLD JOHNSON: Arnold Johnson, Community Builders, 24 Webster Avenue, Somerville.

PAUL BRENEMAN: Paul Breneman, 77 Tremont Street, Cambridge, Mass.

CAROL YOURMAN: Carol Yourman, 22 Locke Street.

DAVID GROSSER: David Grosser, 22 Locke Street.

CONSTANTINE ALEXANDER: This is a case that's been continued. And continued basically for two reasons. You were here before us for seeking a zoning relief for both FAR and height. And a number of us

on the Board had a problem with the height issue. And also there was a neighbor who objected. And we're trying to deal with the neighbor as well.

You've submitted new plans timely, I would note for the record. And the new plans seem to solve the height problem.

PAUL BRENEMAN: Yes.

CONSTANTINE ALEXANDER: You no longer need a -- you took some very helpful suggestions on how to redesign the property.

PAUL BRENEMAN: Yeah.

CONSTANTINE ALEXANDER: I'm sorry. The only issue left from a technical zoning point of view is FAR. And right now, according to my reading of what you have, the building -- the district has a max of .5. Right now it's a non-conforming structure of .57. With the new plans you're going to .69.

PAUL BRENEMAN: That's right.

CONSTANTINE ALEXANDER: And I would note the last time you wanted to go before us you wanted to go to .71. So you've also somewhat reduced the FAR. So you're still not in compliance.

And I would also note that we do have a letter in the file from your neighbor. And I'm going to read into the record right now so we get this issue behind us. It's from Mary E. Sullivan at 24 Campbell Park, Somerville, Mass. "I am withdrawing my opposition, dated August 7, 2009, to the petitioner regarding the following." It identifies your property. "The owners of the property at 22 Locke Street have responded to my request to improve the condition of the property that abuts my property." So the neighbors are all copacetic at this point, all right?

And you want to just go over the plans a little bit, the revised plans a little bit?

PAUL BRENEMAN: Well, it turned out, you know, when we came, when we did the initial application, we didn't realize that the 35 foot height was such a hard ceiling. And we did the height of the existing building from a projection. After the last meeting I went back with a ladder and actually did the actual height with a tape, and it came out to just under a foot shorter than our projected height. So the actual height of the building is 30 feet, 7 inches.

CONSTANTINE ALEXANDER: So you haven't changed the height from before, you just mismeasured it?

PAUL BRENEMAN: Basically, yeah. We're going to bring it down just a little bit. It doesn't require us to bring it down. That's why we don't really have to change the profile at all. We can make the stair work, and we can make that dormer, the existing dormer area usable

without having to think about doing a shed dormer.

TAD HEUER: Just so I'm clear, before we weren't sure you could do it without the height but now that you've measured and you don't need a height variance you can do what you said you couldn't do before?

TIM HUGHES: No, that's not what he said.

TAD HEUER: Right. I'm still a bit confused.

PAUL BRENEMAN: No. I thought before with what we thought was the existing height of 31 and a half feet, that we couldn't just raise the roof and get the stairway to work without intruding too much on the second floor. And also that existing dormer, because the ridge line of that dormer is lower than the main ridge line, that if we had to come down a whole foot, that would have made that

unusable or a very small portion of that usable. So, now, once I measured and found the actual height of the existing house was 30 feet, 7 inches, we can stay within the 35 feet and just raise the existing roof without changing the profile and have the stairway work and get enough of that dormer area usable that it would work in the floor plan.

TAD HEUER: Right. So you're getting the same neck changing space, it's just that you don't go over 36. You don't go to 36 feet now?

PAUL BRENEMAN: Right.

CONSTANTINE ALEXANDER: You have redesigned the second floor have you not?

PAUL BRENEMAN: Well, the second floor plan was not part of the original submission. So we gave you the second floor plan. You requested that.

CONSTANTINE ALEXANDER: These are the same plans we saw before?

PAUL BRENEMAN: All the other parts of the plan are the same, but we just added the second floor.

CONSTANTINE ALEXANDER: I understand that. The project is exactly as shown to us before?

PAUL BRENEMAN: Yeah, right, right. In terms of the layout, yes. Yeah.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TAD HEUER: Can you explain the change in the FAR numbers from the original dimensional form to the current one?

TIM HUGHES: I can explain it. Well, I can guess that they're going to lose some of the dormer height with the lowering of the roof.

TAD HEUER: That might be true, but they've also --

TIM HUGHES: The dormer is usable

space now. What?

TAD HEUER: They've also gone down 300 feet in the base line.

PAUL BRENEMAN: In the basement?

TAD HEUER: No, the base line.

So you started -- in your old form you're 2,368. Your new form you say you're starting from 2,075. That means that you've -- you're claiming that you have 300 square feet less than you started with last time? That's what I'm confused by.

PAUL BRENEMAN: What was the original?

TAD HEUER: The original was -- you said you were starting, in your original form, at 2,368.

PAUL BRENEMAN: Okay.

TAD HEUER: Your new form says you were starting at 2,075 which is 300 feet less. What happened?

CONSTANTINE ALEXANDER: I think

the issue was the basement I think. The last time around there was a question about whether the basement should or should not be FAR.

PAUL BRENEMAN: The basement is not counted now because --

CONSTANTINE ALEXANDER: Because the basement is high how?

PAUL BRENEMAN: It ranges between six, three and six, eight.

TAD HEUER: So the basement was counted before?

CAROL YOURMAN: Yes, I think it was.

TAD HEUER: When I looked at the transcript I thought the basement was not counted which is why I was concerned. All right.

PAUL BRENEMAN: But, you know, we also just went back and we just did really careful measurements on every part of the house.

TAD HEUER: Right.

PAUL BRENEMAN: And we calculated it.

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

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one wishes to be heard. I think the only new correspondence we have in the file is what I've already read into the record, which is the letter from Mary E. Sullivan. While Brendan is looking that over, anybody have any comments? I think we're ready for -- people want to comment? So the news is good. It's always good. I have no comment.

BRENDAN SULLIVAN: So the added time was worth it? It makes for a better product at the end.

CONSTANTINE ALEXANDER: Ready for a vote?

The Chair moves to grant the

petitioners the variance they seek on the basis of the following findings:

That a literal enforcement of the provision of the ordinance would involve a substantial hardship to the petitioners. The petitioners need additional living space in a rather otherwise undersized home. That the -- and that's the reason for the proposed addition.

That the hardship is owing to the fact of the -- to the non-conforming structure in a small lot which makes any additions problematical in terms of FAR.

That substantial relief -- that we can grant relief without substantial detriment to the public good or without nullifying or substantially derogating from the intent or purposes of this ordinance.

On the basis that the relief being sought is rather modest in nature. It's an increase in FAR in a non-conforming

structure, but by approximately 15 percent.

That there is no neighborhood opposition now that the one neighbor has withdrawn her comments.

And that generally, again, this is an attempt to improve the quality of the housing stock in the city of Cambridge, which is one of the intents of our zoning ordinance.

The variance would be granted on the condition that the work proceed in accordance with -- and these are the plans, you can't change them. The plans prepared by Community Builders Cooperative. They have various dates but they're numbered A1, A2, A3, A4, A5, five pages. The first page of which has been initialed by the Chair.

All those in favor of granting the variance on the basis so proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Firouzbakht.)

CONSTANTINE ALEXANDER: Any opposed?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Mr. Heuer is opposed but the petition has been granted.

(Whereupon, a discussion was held off the record.)

(7:40 p.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair is going to call two cases. They're both for Four Forest Street because they

basically seek the same relief. Case No. 9775 and case No. 9802.

MAHMOOD FIROUZBAKHT: The are these not heard?

CONSTANTINE ALEXANDER: The first one is not heard, the second is heard. We need Tom.

SEAN O'GRADY: You're going to hear 9802 and then presumably withdraw --

CONSTANTINE ALEXANDER: That's exactly how we're going to end up.

Okay, this case has been before us several times as you well know. You need relief for a dormer and a deck. So the dormer issue I think got resolved relatively quickly and beneficially I think. But the deck has been an ongoing issue. The issue of the deck is simply its size. It was a very large deck, if I can characterize it as such, the first time. You have a large deck the second time, and still you couldn't get enough

support from this Board for that, quote, unquote, large deck. So now what's your proposal with regard to the deck.

DAVID KINSELLA: David Kinsella. I represent Kanan Makiya, the owner of Four Forest Street. What we did is yellow is existing deck, it's approximately 111 square. The new deck is 122 square feet. We're reducing it from 19 by 19 at our first application down to 6 by 14.7 and aligned and a code compliant egress stair with a minimal walkway of three feet out to the stair to provide the egress out of the --

CONSTANTINE ALEXANDER: I'm sorry, how wide is that? How wide is the walkway? How wide is that?

DAVID KINSELLA: Three feet.

CONSTANTINE ALEXANDER: Three feet?

DAVID KINSELLA: A little over three feet.

CONSTANTINE ALEXANDER: And then if you square off that walkway, how much is the rest of the deck?

DAVID KINSELLA: It's six here (indicating).

CONSTANTINE ALEXANDER: Right.

DAVID KINSELLA: 14.78 here (indicating).

CONSTANTINE ALEXANDER: Right.

DAVID KINSELLA: We made it enough so that if the door's open and someone's out there, they don't get clobbered. You know, we took the Board's concerns into consideration. This is -- and I was talking to Mr. Makiya prior to coming. This is a more costly proposition because we had to introduce a beam in there. We need the egress. And try to keep it as is there.

CONSTANTINE ALEXANDER: Are there windows and sliders? You going to have sliders or French doors?

DAVID KINSELLA: Yes, French doors and glass on the end. The Board has seen the last two times. The dormers and all of that are staying identical to what was agreed to. You know, put the overhang in. We dropped the roof line. We add the windows match the existing windows. It's kind of in the feel of the Victorian home. We're going to put a flat roof in here (indicating), because right now you have to step up to come out. So we're going to drop the roof down level to hopefully level to this, even a little below would be ideal, so the door is right at the floor level rather than stepping out and climbing over. So that's it. That's what we're proposing tonight and hopefully you're in favor of both.

CONSTANTINE ALEXANDER: Questions from members of the Board? Tom?

I want to make sure I have the right plans.

DAVID KINSELLA: Do you have copies?

CONSTANTINE ALEXANDER: They're dated 10/1/09.

DAVID KINSELLA: Yes.

CONSTANTINE ALEXANDER: A1.0, A2, A2.1, three pages.

DAVID KINSELLA: That's correct.

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

(No response.)

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

I don't think recall unless something has come in the last day or so. There's nothing in the file. New correspondence in the file? Comments from the members of the Board or are we ready for a vote? Ready for a vote?

The Chair moves to -- by the way, these plans that we just identified, they also have the dormers that we've been

shown.

DAVID KINSELLA: Yes, we just altered the original drawings to reflect the deck.

CONSTANTINE ALEXANDER: The deck, right.

The Chair moves to grant the petitioner a variance to proceed with the dormer and deck proposal set forth in the application on the basis of the following findings:

That the Board finds that a substantial hardship would result to the petitioner if relief were not granted. Hardship is due to the non-conforming nature of the structure and the shape of the lot -- I'm sorry, the hardship is a result from the fact that the need for additional living space at the upper floor dwelling unit needs a little bit of a deck for additional light and additional living space.

That the special conditions relate to the shape of the lot, the non-conforming nature of the structure, and that relief can be granted without substantial detriment to the public good.

That the Chair would note that there is no opposition from neighbors for this project.

That the project generally improves the appearance of the structure.

That the impact upon privacy to the neighbors that would result from a deck of this sort has been minimized. The petitioner has twice now reduced the size of the proposed deck. And now the deck does not accommodate a lot of people being on the deck and therefore disturbing the privacy of abutters. It's a deck that's much more in scale with the building itself.

And that this variance would be granted on the condition that the work

proceed in accordance with plans prepared by the Backyard Collaborative dated October 1, 2009. They're numbered A1.0, A2.0 and A2.1, three pages. All which have been initialed by the Chair.

All those in favor of granting relief so proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Just given the fact that we've granted you the relief in this case, I trust that you want to withdraw your other petition since it's sort of moot. The petition in case 9775?

DAVID KINSELLA: (Nods head.)

CONSTANTINE ALEXANDER: You're nodding your head. She --

DAVID KINSELLA: Yes, sorry.

CONSTANTINE ALEXANDER: Petitioner

has requested that the petition No. 9775  
be withdrawn.

All those in favor of withdrawing  
this petition, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in  
favor. The case has been withdrawn.

DAVID KINSELLA: Thank you very  
much.

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

(Whereupon, a discussion was  
held off the record.)

(7:50 p.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case -- we're on the regular agenda. The Chair will call case No. 9840, 10 Hingham Street.

Anyone here on that matter? Please come forward. For the record, you have to give your name and address so the stenographer can record it.

ALVARO LUCENA: Hello, my name is Lavaró Lucena, 37 Jackson Street.

CONSTANTINE ALEXANDER: Would you spell it for her, please, or if you have business card.

ALVARO LUCENA: A-l-v-a-r-o  
L-u-c-e-n-a.

MARY DOLBEAR: Mary Dolbear, 10 Hingham Street. D-o-l-b-e-a-r.

GABRIELA GONZENBACH: Gabriela Gonzenbach, 10 Hingham Street. G-a-b-r-i-e-l-a G-o-n-z-e-n-b-a-c-h.

CONSTANTINE ALEXANDER: Okay. The floor is yours.

ALVARO LUCENA: Basically we're proposing some existing small house and do they have to do the work for the drainage of the basement. And the basement doesn't meet right now the enough height for a living space. They have to get the money to do that that would solve the problem they have. And so at the same time they're going to invest in that point they looking to have also or increase the living space of the basement. They don't have any way to pump out of the house. They are already in violation with the FAR, okay? And they know already they're going to be (inaudible) -- and that is

basically what they are looking for to do.

CONSTANTINE ALEXANDER: While you're turning the pages, let me point out for the record and for the benefit of the other Board members if they're not aware. The petitioners sought a variance several years ago from our Board to build an -- additional living space through an addition. And that was opposed by neighbors and certain city boards and the variance request was denied. So you're looking to go -- since you couldn't go up, you're looking to go down.

ALVARO LUCENA: Exactly. And in this case we propose obviously, or we show in this plan what's existing already in the basement, it's completely empty.

CONSTANTINE ALEXANDER: How high is the basement now?

ALVARO LUCENA: Six, eight. Actually six, eight.

CONSTANTINE ALEXANDER: And the

height of the basement floor will be what if we granted you approval?

ALVARO LUCENA: It's going to be six -- seven -- six and a half, seven, seven something like that.

CONSTANTINE ALEXANDER: Six and a half?

ALVARO LUCENA: No, seven foot, six inches or seven foot, eight inches after we finish the whole work. I mean, after they have to do it and all around the whole drainage system.

CONSTANTINE ALEXANDER: Now, you're comfortable that if that -- with this work the drainage is not going to continue to be a problem? Where now you have a drainage problem in your basement, are you going to have a drainage problem in your living space if we grant you relief?

ALVARO LUCENA: No, not at all. We have to put the right drainage system

inside of the foundation walls also. By the way, they have a stone foundation wall and we will get approved existing condition of the foundation wall creating a nice -- we're not going to dig on it obviously, but we're going to bring forward the existing foundation wall to -- how I say it? To improve the conditions. Because basically the whole manner for her is the water issues. And the whole idea is coming from that.

MAHMOOD FIROUZBAKHT: What's the source of the drainage problem?

ALVARO LUCENA: Well, one of the problem they have is if I -- if I'm not wrong, a couple years ago that they start to work at the end of the Hingham Street is apartment buildings crossing.

GABRIELA GONZENBACH: Harvard dorms.

ALVARO LUCENA: Harvard dorms just right there with the, what's the name of

the --

MARY DOLBEAR: Memorial Drive.

ALVARO LUCENA: The Memorial Drive. It's just right at the corner a new building there for apartments. So when they start that job, they start to come with a little bit of problem and the water issue there. We're not coming to complain about that. They just coming with idea to resolve the problem.

MAHMOOD FIROUZBAKHT: So you're thinking that it's a groundwater issue? That the groundwater raises to the point where it floods the basement?

ALVARO LUCENA: Yeah. I mean the house is -- yeah.

TIM HUGHES: The house is maybe what 120 yards from the Charles River.

ALVARO LUCENA: That's correct.

TIM HUGHES: So the water table is really high there. And if new construction displaced some it, then I can

see where the problem comes in.

ALVARO LUCENA: That would be the explanation for it.

CONSTANTINE ALEXANDER: Now, of course solving the drainage problem is not the basis for granting the variance. You can solve the drainage problem, and still have the basement. You're here for a variance because of the fact that you need additional living space?

GABRIELA GONZENBACH: Additional living space.

ALVARO LUCENA: So basically with the basement about -- they do or create a new drainage system, also they're going to use the same time, and that's why we are here to create a new master bedroom area with a closet and the bathroom so you exactly can see on the plan. You don't have it, do you, guys?

CONSTANTINE ALEXANDER: Yes, right here.

ALVARO LUCENA: Okay. And I know the space is going to be for the little girl.

MARY DOLBEAR: Play room.

ALVARO LUCENA: Excuse me, also a play room, and also for a utility room right in the front. We don't changing too much. We don't changing elevations. We don't changing the windows. We only creating the -- meeting the requirements for the bedroom.

CONSTANTINE ALEXANDER: You are creating basement living space.

ALVARO LUCENA: Yes.

CONSTANTINE ALEXANDER: Which is not necessarily the most desirable, at least to some people, in terms of living space. And living space, basement living space where you have drainage problems before. It's your dollar I guess and your project. But it sounds like you have a lot of problems to deal with.

ALVARO LUCENA: Yeah, and actually the homeowners they are people that are going to live there, so they are feeling very comfortable.

CONSTANTINE ALEXANDER: For the record, by the way, there is substantial zoning being sought. The whole FAR, right now the district as a max of .75. The structure, even though it's a small structure, because it's a very, very small lot is at 1.19, so 50 percent more than the allowable today. And if we were to grant relief, it's going to go to 1.69 which is more than twice the permissible FAR for the district. I note that for the record.

ALVARO LUCENA: That's correct.

BRENDAN SULLIVAN: You're not expanding upon the envelope of the building at all?

ALVARO LUCENA: No, not at all.

BRENDAN SULLIVAN: I mean, you're

going to have a basement exit onto maybe a patio outside the back, or a deck, right?

ALVARO LUCENA: No, no.

BRENDAN SULLIVAN: Other than that the envelope of the building is not really being expanded?

MARY DOLBEAR: No.

MAHMOOD FIROUZBAKHT: This is something I should know, what is the standard for counting in basement space and FAR?

SEAN O'GRADY: Seven feet.

MAHMOOD FIROUZBAKHT: Seven feet?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Less than seven feet it doesn't count. Seven feet or more it counts.

MAHMOOD FIROUZBAKHT: But if it's seven feet and it's a utility space, would you count it that point still?

SEAN O'GRADY: If it's exempt under mechanical rules and those are very

specific. Now even if it has seven feet, it wouldn't count and that's actually true throughout the building.

MAHMOOD FIROUZBAKHT: So the current height being six, eight you're looking for an additional four to five inches.

ALVARO LUCENA: Yes. With the expiration there, and we find out we can dig 16 inches around that. So it's enough room to create a drainage system. And also with some room to create a nice -- a regular standard of six or seven inches.

MAHMOOD FIROUZBAKHT: Just my own just to play this out. If this ceiling height there was seven feet or seven feet, two inches, you know, just as an existing condition, they could by right go down and finish that basement space and make it into the living space that they're proposing?

SEAN O'GRADY: Yes. I guess I

should probably point out a couple things. Were they at seven feet, they could go as deep from a zoning point of view as deep as they wished to finish. We now have a disconnect between the new building code and the zoning ordinance. So that even though they're below, they could still finish at six, eight. It's just that it doesn't make a very desirable area.

CONSTANTINE ALEXANDER: So at six, eight they could have -- they meet the state building code requirements for habitable space?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: But they don't meet the zoning requirement -- for FAR purposes that 6.8 space below is inhabitable for state building code purposes doesn't count toward FAR.

MAHMOOD FIROUZBAKHT: So they could technically go pull a building permit today and build that space out at

six, eight and get a building permit if they wanted to have that as their height in the basement space?

SEAN O'GRADY: Yes.

MAHMOOD FIROUZBAKHT: Because the building code would allow it.

THOMAS SCOTT: And it wouldn't count towards their FAR.

MARY DOLBEAR: Right. Which I don't want to do.

MAHMOOD FIROUZBAKHT: But just as a context in trying to make a decision.

MARY DOLBEAR: Right. It's important. Every inch counts.

CONSTANTINE ALEXANDER: Other questions for members of the Board?

Anyone here wishing to be heard on this matter? Please just give your name and address for the record.

F. TURNER DOLBEAR, JR.: This is my name and address. F. Turner Dolbear, Jr. I'm Mary's father. I have a letter.

CONSTANTINE ALEXANDER: Is that a letter?

F. TURNER DOLBEAR, JR.: It's a letter. Do you want me to read it or do you want to read it?

CONSTANTINE ALEXANDER: I can read it or you can read it. What's your pleasure?

F. TURNER DOLBEAR, JR.: You can read it.

CONSTANTINE ALEXANDER: Did you want to make any comments in addition to that?

F. TURNER DOLBEAR, JR.: If you have a question for me, I'll be glad to answer it, but that's what I want to say.

CONSTANTINE ALEXANDER: A letter from F. Turner Dolbear at 200 Fuller Street, West Newton, Massachusetts, addressed to this Board, dated October 6th. "I write to support the petition of Gabriela Gonzenbach and Mary Dolbear for a

variance to lower the basement floor to create additional living space at 10 Hingham Street. With my son I manage and own a property across the street at 19 Hingham where Mary Dolbear lived for six years in the early 1990s. My son originally purchased 10 Hingham about 20 years ago where he lived with his wife and child, so we have been part of the neighborhood for sometime. As a result, we are familiar with the 10 Hingham basement as well as the rest of the structure. It's clear to us that lowering the basement floor to create additional living space would constitute a family friendly addition, and we think an improvement for the neighborhood which has had a large infusion of rental occupants with the construction of the Harvard properties on the old Mahoney site. In addition, this project will address a plumbing issue. The ancient cast iron

drain pipes in the basement floor are tired and would be replaced. Finally, 10 Hingham is built on a 100 year old fieldstone foundation. An important part of the project will be to secure the foundation reducing risks not only to the structure itself but also to the neighboring structures. In summary, the project makes sense for 10 Hingham and its only affects on the neighbors are positive. The foundation has made more secure and the neighborhood will have one additional family friendly property."

That's your letter. Thank you.  
Anyone else wish to be hear?

SUNDRY DESCHAUX: I'm a neighbor. I live at 7 Hingham, Sundry Deschaux across the building. And I am very happy that they are here for the house simply. And I think we are good word here. It is a rental and it's very good for the neighborhood to have family around.

CONSTANTINE ALEXANDER: And Miss Deschaux has handed us a letter which I'll read into the record.

"We, Peter Coley and Sundry Deschaux, owners of unit No. 1 reside at 7-13 Hingham Street in Cambridge across the street from 10 Hingham Street, are writing to support the petition of our neighbors Gabriela Gonzenbach and Mary Dolbear to seek the variance to lower the basement floor to add living space to their home.

SUNDRY DESCHAUX: Very good.  
Thank you very much.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard.

MARY DOLBEAR: I have two more neighbors who are not here tonight.

CONSTANTINE ALEXANDER: We also have another letter in the file which I'll read as well. We do this to make this part of the public record, not because I

like to read.

MARY DOLBEAR: I know. One you may have already, I'm not sure.

CONSTANTINE ALEXANDER: Yes, we have the letter already from America Andrade, A-n-d-r-a-d-e, which I'll read. "I'm writing in support of the petitioners Gabriela Gonzenbach and Mary Dolbear who seek a variance to lower the floor level in order to propose a living space. I am the owner of the abutting property on No. 8 Hingham Street."

The Chair would note by the way that Mr. Andrade was a person in opposition to the variance that was sought according to the record that I read, that was sought several years ago unsuccessful. So, now he supports this project.

And the other letter -- can you tell me who signed these letter?

GABRIELA GONZENBACH: The same person on the top.

CONSTANTINE ALEXANDER: There's no -- it's in the letter, I'm sorry. "We Angus Beasely and Kirstie Alourie, owners of unit No. 2 reside at 713 Hingham Street, across the street of 10 Hingham Street, are writing to support the petition of Gabriela Gonzenbach and Mary Dolbear to seek the variance to lower the basement floor to create living space."

That's the sum and substance of the letters in the file.

BRENDAN SULLIVAN: Currently you live on the first floor?

GABRIELA GONZENBACH: On the second floor. We have bedroom on the first floor.

BRENDAN SULLIVAN: So it's a split. So you live on the second. There's a bedroom on the first floor which you will then create a stairs to the basement?

MARY DOLBEAR: That's correct.

BRENDAN SULLIVAN: And how many in the family?

GABRIELA GONZENBACH: It's a two-family room.

MARY DOLBEAR: In our family? Three people.

BRENDAN SULLIVAN: So there's three. The unit that you have now is just too small. There's a child.

MARY DOLBEAR: Yes.

BRENDAN SULLIVAN: Yes. So as she gets bigger and she would want her own space and so that's -- okay. Who am I to stand in the way?

CONSTANTINE ALEXANDER: You've stood in the way before.

BRENDAN SULLIVAN: Not on this one. I think it's important to encourage the families to stay in that neighborhood because it is becoming less families.

CONSTANTINE ALEXANDER: These plans are the plans -- you know, if we

granted your relief, we're going to tie them to the plans. These are the plans. You can't change them without coming back before this Board. I want to make sure. I'm reading you your rights. This is your last chance. Ready for a vote?

The Chair moves to grant the petitioner a variance to lower the existing basement on the grounds that -- the variance to lower the basement on the basis of the following findings:

That a literal enforcement of the zoning ordinance would involve a substantial hardship to the petitioner. The hardship being, and this is a very small house. It doesn't provide sufficient living space for the occupants.

That the hardship is owing to special circumstances. This is a very tiny lot of only 1,900 square feet. Any attempt to create a living space requires a variance.

That an attempt to seek a variance to move the structure higher was denied by this Board based on I think in part neighborhood opposition. While this one -- well, I'll get to that next.

And the following finding would make that we can grant relief without detriment to the public good or without nullifying or substantially derogating from the intent or purpose of the ordinance.

In fact, what is being proposed has the support of the neighbors unlike the prior project. That the project will allow families to have additional living space in a home, in a neighborhood that needs additional, I think, family occupancy given the fact that institutional buildings and the other rental properties in the neighborhood.

And that this project will also help solve an existing drainage problem. And will also improve the safety by improving

the foundation, the work on the foundation which benefits both the owners of this structure and neighboring structures.

The variance will be granted on the basis that the work proceed in accordance with plans submitted by the petitioner, prepared by -- they are drawn by A.L. They are numbered A-A, A-1, A-2, that's it, three pages. All of the pages have been initialed by the Chair.

All those in favor of granting the variance on the basis so proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

(Whereupon, a discussion was held off the record.)

(8:10 p.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9841, Seven Foster Place.

Is there anyone here wishing to be heard? Good evening. Again, as you probably heard, for the record, give your name and address for the stenographer.

MARIE-ANNICK SCHRAM: Marie-Annick Schram.

STUART SCHRAM: And Stuart Schram.

MARIE-ANNICK SCHRAM: We live at Seven Foster Place.

RORY O'CONNOR: I'm sorry, I'm

Rory O'Connor. I'm the immediate abutters at Nine Foster Place.

CONSTANTINE ALEXANDER: You also have an interest because you're seeking --

RORY O'CONNOR: I do.

CONSTANTINE ALEXANDER: You're not here on an impartial basis.

RORY O'CONNOR: No, hardly.

CONSTANTINE ALEXANDER: You're here to seek a relief to create one parking space alongside your house? And in fact talk about creating it you in fact have it already.

MARIE-ANNICK SCHRAM: Yes, right.

CONSTANTINE ALEXANDER: It's really to validate or legalize an existing parking space.

MARIE-ANNICK SCHRAM: Right, yes.

CONSTANTINE ALEXANDER: And the issue -- the reason you're before us is the parking space is in your front yard?

MARIE-ANNICK SCHRAM: No, the

parking space now is along on the side of the house.

CONSTANTINE ALEXANDER: But it extends into the front yard from a zoning points of view.

MARIE-ANNICK SCHRAM: You mean in the front? Very little.

CONSTANTINE ALEXANDER: Okay. I think were it not for that you wouldn't need relief at all?

SEAN O'GRADY: A lay person thinks of that as a side yard. From a zoning point of view it's a front yard violation, that is it's too close to the street and that's what the -- that's what he's saying. But that's the only violation.

MARIE-ANNICK SCHRAM: Oh, okay. Okay. Yes, we like to have the parking now there. I don't know if you know Foster Place. It's a very special place. Very narrow. We have been there for a long time. And it's a cul-de-sac. So

when you arrive, you have to back up all the way. And then to exit to Foster Street, it's extremely difficult backing up when you have cars on there. It's pretty dangerous. And as well, we -- my car before was on the street, and for people who have been living there, they know how to back up and go. But unfortunately there are many people who don't know. And I must say that I've had two cars which have been damaged. And now I have a new car which already has been damaged, and it's -- and as well, I think which is important is aesthetically it's much more beautiful because it's a very special place and so you don't see as many cars because the car is hidden behind our house when in fact there was a very --

CONSTANTINE ALEXANDER: Just for the record and for benefit of those members of the Board who haven't visited the site, Foster Place is a very -- it's a

private way. It's very narrow, 16 feet wide. It has no sidewalks, no curb cuts. And to the extent that there's parking on the street, it makes the street all but impassable. It's also a cul-de-sac as she pointed out, a dead end. One of the issues that we often have with front yard parking, which technically what your issue is, that it takes, it requires a curb cut and the curb cut takes away from the supply of parking from the neighborhood in general. It appropriates if you will a space and that would not be the case.

MARIE-ANNICK SCHRAM: No, it's not.

TIM HUGHES: Even when they park on the street, it's like being in the front yard.

CONSTANTINE ALEXANDER: Exactly. You put it very well.

Any questions from members of the Board?

Anyone wishing to be heard? Sir, come forward.

JOHN GREENUP: Hi. I'm John Greenup. I'm from 45 Foster Street, which is right on one of the lots. I wanted to say that I'm in support of all of these people here for getting the parking, because I think it would relieve the congestion on the little cul-de-sac Foster Place. My one comment would be, is there a way that we can have the parking, you know, from a visually aesthetic perspective be behind the front walls of the house? Is there enough room in that? Because I think it just looks better rather than seeing all sorts of little cars poking out. I think also the Half Crown Marsh District, their certificate of non-appropriatability here indicates that it's supposed to be behind the front wall of the house. So I think that's consistent with their requirements as

well.

CONSTANTINE ALEXANDER: I've been handed, and I'll put into the record, there is a certificate of -- it looks like is that May 1 of '09? May 1 of '09, addressed to the Seven Foster Place. And it says: Parking space needs approval. It's a certificate of non-applicability. And what the gentleman has said is parking -- one parking space -- parking space for one car beyond front wall plane of house.

Is it possible that you could -- you understand the point?

MARIE-ANNICK SCHRAM: Yes. In fact as you sit like that, I'm -- my car doesn't show out of the house. It's just --

CONSTANTINE ALEXANDER: You're saying it is behind the plane of the house?

STUART SCHRAM: Yes, it is.

MARIE-ANNICK SCHRAM: Yeah, when we park, it's beyond again part of it.

CONSTANTINE ALEXANDER: You wish to be heard?

MARY LOUISE KENT: I'm Mary Louise Kent. I live on Foster Place, on the other side of Foster Place, one lot down. I cannot see if Marie-Annick is home or not. In other words whether the car is there or not from my upstairs window. I have to go outside. If I want to see if she's home, I go outside and look if she's there or not. So it's not sticking out and it's not spoiling the aesthetic -- quite the other side, it's helping to get that car off our very narrow little alley because there's a big light post which belonged to the city. There's also a tree which belongs to the city which is where she used to have to park. Which meant her car was out in the alley more than the other cars. So it really is the advantage

of all of us that she is able to park on her own property.

CONSTANTINE ALEXANDER: Thank you.

JOHN GREENUP: I'd just like to say I agree. I think that having parking on the property is a good thing. And just for the aesthetic issue, I'll let you deal with that however you see fit.

BRENDAN SULLIVAN: I think the point is probably to encourage that the driveway should be of sufficient length so that a car could be pulled up so that it lines up with the front part of the house so that the driveway doesn't come up short.

CONSTANTINE ALEXANDER: And not only the driveway be long enough.

BRENDAN SULLIVAN: The behavior and habits or whatever, people are just going to pull in and get out. But at least that the driveway be of sufficient depth to allow the car to be pulled as

much forward as possible.

CONSTANTINE ALEXANDER: Is that the case now? Is the driveway such length?

MARIE-ANNICK SCHRAM: Yes, with my car, yes.

CONSTANTINE ALEXANDER: You can go -- if you drive to the end of the parking space, you will be beyond the plane of the house?

MARIE-ANNICK SCHRAM: Yes.

BRENDAN SULLIVAN: Okay. So that's the thing -- that's the -- we will encourage that. That's the attempt.

CONSTANTINE ALEXANDER: Any questions, other questions from members of the Board?

Anyone else wishing to be heard on this matter?

(No response.)

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

The Chair is in possession of petitions signed by multitude of individuals all in support of the project. More than 25 persons have signed this petition. They all live on Mercer Circle, Foster Street, Foster Place, Brown Street and Brattle Street and one person on Spark Street. But they're all in support. I don't purport to read all of their names, but as part of the record contained.

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

The Chair moves to grant the petitioner a variance to create one parking space alongside of the house on the basis of the following findings:

That a literal enforcement of the provision of the ordinance would involve a substantial hardship to the petitioner. Such hardship being that there would be no place to park automobiles on the property or on the lot itself. And given the

nature of the street effectively there's no place to park effectively on the street because it creates traffic problems.

That the hardship is owing to special circumstances. Special circumstances are the fact that you're on a private lot, a private way. That the lots are very small. The housing dates back to the 1800s I believe.

MARIE-ANNICK SCHRAM: 1840.

CONSTANTINE ALEXANDER: And we're also talking about a dead end. So parking is a very difficult issue on this very narrow 16 foot private way.

And there would be no substantial detriment to the public good, and that relief may be granted without nullifying or substantially derogating from the intent or purpose of the ordinance. In fact, it would be facilitating parking in this part of Cambridge by taking parking off street which causes congestion given

the narrow nature of Foster Place.

That the aesthetics are approved because we don't have cars lined side by side on the street.

That there is not, as often the case with front yard setbacks, there's no loss of on-street parking due to curb cuts. This is a private way that has no sidewalks, no curb cuts. And that the parking space -- I didn't notice -- there's a letter from the Planning Board. I'm sorry, let me just interrupt that motion for a second, just put that on hold. I do want to read into the record -- we do have a letter from the Planning Board. I wasn't aware of this. It came in just recently. Dated October 7. It addresses this petition as well as two other petitions we're going to hear subsequently involving Foster Place seeking similar relief.

It says: "The Planning Board

reviewed the applications for the parking spaces and the setback requirements, and while the Board usually objects to these request, they are able to see the unusual situations presented on this narrow dead end street. If this proposed solution does present a safer means of access to and from these residences, removing the need to back up along a narrow street. The Planning Board also acknowledges that the solution be a trade-off between open space and the parking spaces in this community."

Back to the motion. We would grant the variance with the request that the driveway themselves be sufficiently deep so you can park a car and should park the car beyond the plane of the house.

BRENDAN SULLIVAN: Gus, again, you can either enter -- make this part of the motion or not, but my thought is that the creation of this particular parking space

aids greatly in the removal of snow and ice on the private way which will enhance public safety and will make it far more accessible for emergency vehicles to the residences, which would enhance public safety.

CONSTANTINE ALEXANDER: Please add that to the findings. Very good point.

All those in favor of granting the variance on the basis so proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The variance is granted. Congratulations.

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

(8:20 p.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Scott, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9842, 10 Foster Place, Bonnie Kahn.

RORY O'CONNOR: Bonnie can't be here, she's traveling.

CONSTANTINE ALEXANDER: This is a separate case?

RORY O'CONNOR: Rory O'Connor. And I live at Nine Foster Place and I'm representing Bonnie Kahn at 10 Foster Place.

PETER SCHWARTZ: I'm Peter Schwartz. I'm a designer. Rory was my client recently when he was redoing his house, and the house for Bonnie as well

that was designed by us as well so I'm here in support for both of those residences.

CONSTANTINE ALEXANDER: Well, again because this is a separate case we have to go through and create a separate record.

RORY O'CONNOR: Well, the parking space at No. 10 Foster was created for exactly the same reason as the others. I -- too many cars on the street. Parking up is very difficult. Backing up is very difficult. Delivery trucks have actually struck some of the cars coming up and down the street. And the danger of backing out onto Foster Street or reversing out onto Foster Street, it's acute I'd say. So for the same reasons as No. 7 Foster Place Bonnie is seeking relief -- her car can indeed be pulled up so it is beyond, behind the plane of the house if that's the right language. The -- her parking

spot is brick, and it's permeable. I think it's attractive, and I think it's a great thing for the neighborhood and for Foster Street that there's one less car out on Foster Street.

CONSTANTINE ALEXANDER: Again for the record, Foster Place is a very narrow private way, very narrow, only 16 feet wide. Parking is an issue, and parking has to be on the street. It's a private way that has no sidewalks, no curb cuts as a result. It is a dead end, and that parking -- on-street parking causes serious issues of ingress and egress including for safety purposes of emergency vehicles, have to go to one of the homes or one of the structures on the street.

RORY O'CONNOR: Right.

CONSTANTINE ALEXANDER: Anyone here wishing to be heard on this motion?

JOHN GREENUP: John Greenup 45 Foster Street. I'm diagonally -- well,

I'm at the other end of the court from the plaintiff. And I would like to say that I completely support the proposal to add parking here at 10 Foster Place. Again, my comment as in the last case would be that from an aesthetic and visual perspective that the car be behind the or at least at the front row of the front plane of the house just to improve the aesthetics of the neighborhood. But I think it's a wonderful proposal. It will enhance the neighborhood.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: Want to speak in favor?

FEMALE AUDIENCE MEMBER: Yes.

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

RORY O'CONNOR: I'm sorry, one other thing. The 25 or 30 signatures also

applies to Bonnie's.

CONSTANTINE ALEXANDER: I'm going to get to that.

RORY O'CONNOR: Oh, okay. Sorry.

CONSTANTINE ALEXANDER: It's been made clear that Mr. O'Grady has pointed out. We have what's been submitted to us a petition signed by approximately 25 plus individuals residing on Sparks Street, Brattle Street, Brown Street, Foster Place, Foster Street and Mercer Circle. All of which are in support of the relief being sought.

We also have a letter from the Planning Board, which I have to read again, regarding this case as well as others. "The Planning Board reviewed the applications for the parking spaces in the setback requirements, and while the Board usually objects to these requests, they're able to see the unusual situations presented on this narrow dead end street.

It's proposed solution does present a safer means of access to and from these residences, removing the need to backup along a narrow street. The Planning Board also acknowledges that this solution would be a trade off between an open space and the parking spaces in this community."

Ready for a vote?

The Chair moves to grant the petitioner a variance to create one parking space alongside the house on the basis of the following findings:

That a literal enforcement of the provisions of our zoning ordinance would involve a substantial hardship to the petitioner. The hardship would be with regard to parking.

That if the petitioner were not allowed to park alongside the house, she would have to park on the street and that street is inadequate to have on-street parking and would create safety issues for

both the petitioner and other people who live on Foster Place.

That the hardship is owing to the circumstances -- this is a private way. It is populated. The private way is bounded by structures built in the 1800s. The lots are small. And that parking is -- was never intended for cars, was never intended when these structures were built, and is an issue unless we allow some parking on the lot itself. And that relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purposes of the ordinance. In fact, what this relief that we're granting would do is to improve the parking situation in this section of Cambridge.

It would not detract from the parking stock since there are no curb cuts involved. There is really effectively no

on-street parking feasible there.

That granting relief will in fact further the safety of the occupants of Foster Place, one of the goals of our zoning ordinance because it makes it easier for emergency vehicles to go to and from structures on that property.

And further, on the basis that there is substantial support and unanimous support for this project from neighboring property owners.

On this basis I move the variance be granted to allow this one parking space alongside the house. All those in favor, say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Granted.

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

(Whereupon, a discussion was held off the record.)

(8:30 p.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9843, Nine Foster Place.

You're here, Mr. O'Connor, for this. And to keep us awake, tell a slightly different case than the other two.

RORY O'CONNOR: My name is Rory

O'Connor. I live at Nine Foster Place and we're seeking relief on three counts, so it's not quite a déjà vu all over again.

Parking, and our issue -- it's -- our issue is identical to Nos. 9 -- to No. 7 and No. 10. Identical. The car can indeed be pulled back so it's not in front of the front line of the house, plane of the house. And again the surface is the same, it's brick, it's permeable. We've done the best we can to respect the neighborhood and the tone of the neighborhood. And all the issues that you discussed before apply to this particular parking space also.

The second relief we're looking for is to -- we would like to replace the front steps which presently come out perpendicularly from the front door of the house and stick in to the way in which is 16 feet wide by about five and a half feet because you've got steps up and then you

have a landing and then you go into the house. And it's a real problem. None of the other houses I think on the street have steps going into them. They're almost on grade. And for some reason our house is elevated so you have to step up I think three steps. And this just makes the -- anyway, it's corroded. It's rotted. It needs to be replaced. And we'd like to flip it around. So instead of going perpendicular into the house, you approach it sideways from either left or right of the house. It's just symmetrically it's more attractive. It would be capped. The foundation of it would be the same brick foundation that the house is sitting on. It would be painted the same as the foundation of the house. It would look at peace with the foundation. And your -- the submission has some drawings on it.

CONSTANTINE ALEXANDER: Yes.

RORY O'CONNOR: Done by Ted's office. And we would -- that's the second thing we'd like to consider for us.

The third thing is a very small storage shed in back. It would be five feet wide and I think 92 inches I think tall. And we reduced the original house at the request of an abutter who said the peak was too high over her fence. So now it's almost exactly the height of her fence. Maybe a few inches taller. We'd like to store a snowblower and maybe some garden implements. These houses are tiny. There's no storage inside the house. And we would like permission to erect that little shed.

CONSTANTINE ALEXANDER: Is the shed in the backyard? I couldn't tell from the drawings there. It looked like the shed was going to be flush with the plane of the house.

RORY O'CONNOR: Oh, no, no, no.

It's against the back fence.

CONSTANTINE ALEXANDER: And the issues -- the zoning issues for that -- I know you have an FAR issue because the shed counts toward FAR, and you're already non-conforming.

RORY O'CONNOR: Oh, yeah. Yeah.

CONSTANTINE ALEXANDER: Let me look here. You're .78 in a .5 district. In other words, you're not supposed to be more than .5. You're now at .78, and with this 40 square feet shed roughly, you're going to .81. So from .78 to .81. Slight increase in your FAR.

RORY O'CONNOR: That's right.

CONSTANTINE ALEXANDER: Setback issues with the shed? Are you close to the lot line on the lot line? I couldn't tell.

RORY O'CONNOR: We're going to be one foot away from one lot line, and about six inches away from the other lot line.

CONSTANTINE ALEXANDER: And the neighbors whose lot line you're going to be six inches from are they like --

RORY O'CONNOR: Each of the abutters of the properties behind the shed came and looked at it and said it's fine and they signed the --

CONSTANTINE ALEXANDER: They're some of the people that signed this petition?

RORY O'CONNOR: Right, exactly.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Anyone here wishing to be heard on this matter?

JOHN GREENUP: Again. John Greenup, 45 Foster Street. Again, I'm diagonally across from Rory on the opposite end of the court. I support his proposal petition for parking, you know, with the basic concept we talked about before where the car is behind the front

plane of the building. I think his steps are a wonderful idea. I completely support that, and the building on -- the accessory building is good thing because there's very limited space to put utensils in these houses and on the lots and I support that as well.

CONSTANTINE ALEXANDER: Thank you.

The Chair will note for the record that we have a petition signed by 25 or so individuals or property owners residing on Spark Street, Brattle Street, Brown Street, Foster Place, Foster Street, and Mercer Circle, all of whom are in support of the proposal.

Further, that -- and we have a letter from the Planning Board. "The Planning Board reviewed the applications for the parking spaces and the setback requirement. And while the Board usually objects to these requests, they are able to see the unusual situations presented on

this narrow dead end street. This proposed solution does present a safer means of access to and from these residences, removing the need to back up along a narrow street. The Planning Board also acknowledges that this solution will be a trade off between open space and the parking spaces in this community."

That's the sum and substance. Are we ready for a motion?

TIM HUGHES: I am.

CONSTANTINE ALEXANDER: The Chair moves that we grant a variance to the petitioner to proceed with the -- to have a parking space for one car alongside the house, to replace existing front steps, and to construct a storage shed in the rear on the basis of the following findings:

That a literal enforcement of the provisions of this ordinance would involve a substantial hardship to the petitioner.

The hardship would be with regard to the parking is that without this parking space alongside the house, the petitioner would be required to park on the street. And in fact, the street is a very narrow private way, 16 foot wide dead end, and so parking on this street would be not only not very feasible but actually detrimental to the neighbors and to anybody in this neighborhood because of the impact on accessibility of emergency vehicles.

That the hardship is owing to the fact that we're talking about a non-conforming very old structure dating back to the 1800s. Small structure which does not have sufficient storage space for accessories like snowblowers and the like. And that also that this property is located on as I said before a very narrow dead ended private way.

That relief could be granted without substantial detriment to the public good

and without nullifying or substantially derogating from the intent or purpose of this ordinance.

In fact, we will be granting relief would be furthering the purpose of this ordinance. It would increase the safety of the occupants of this neighborhood by making abscess to emergency vehicles much more readily available. It would also improve parking situations for people who lived in that area. And in fact, it does not detract from the parking and improve egress and access on this private way.

And that in fact the impact to the parking inventory of the city would be nil because this is a private street with a dead end street with no curb cuts and no sidewalk. And, therefore, we would not be losing any public parking as a result of allowing parking on the side of the house.

With regard to the shed, we note that we have unanimous support from the

abutters and others in the neighborhood. And that the shed is very modest in terms of its impact on FAR, and it serves a worthwhile function that all residence or owners of structures in Cambridge -- residential structure desire, a place to store garden implements and the like.

And the variance would be granted on the basis that the work with regard to the front steps and the shed proceed in accordance with plans submitted by the petitioner. There are four pages of -- they're proposal AL, proposal-1, second page proposal-1, four pages all enumerated proposal-1, all of have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted.

(Alexander, Hughes, Sullivan,

Scott, Firouzbakht.)

(Whereupon, a discussion was  
held off the record.)

(8:40 p.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9844, 81 Washington Avenue.

Anyone here on this petition? You know the drill. Maybe not all of you. Introduce yourself for the stenographer.

SUSAN KOECHNER: I'm Susan Koechner, 83 Washington Avenue.

DIRK KOECHNER: My name is Dirk Koechner, 83 Washington Avenue.

NANCY DINGMAN: Nancy Dingman at 53 Dunster Street in Cambridge.

BLAKE ALLISON: Blake Allison. B-l-a-k-e. And the address is 159 Mount Auburn Street. We're the architects.

CONSTANTINE ALEXANDER: The floor is yours.

BLAKE ALLISON: In brief the

project is to put in two skylights in the second floor of an existing carriage house. And the issue is that the house -- the building is very close to the lot line. Both the site lot and the rear lot. And the -- actually, we're planning to put in three skylights, but two of them are located within the setback zones. One of them on the north side is located within the side yard setback zone, and one of them on the south side building is located on -- in the rear setback zone. I'll hold this up for a moment.

CONSTANTINE ALEXANDER: We should say for the record, this is a Special Permit case.

BLAKE ALLISON: Special Permit, yes.

This Google Earth image is probably the best. Washington Ave -- this is the main house in the front. A large three-story Victorian. The lot itself is

quite large, 20,000 square feet. And here in this northwest corner is the carriage house (indicating). And it's sort of seen in this image that it's right up against the northerly property line and only about three feet off the westerly property line. The purpose for the skylights, is kind of the obvious purpose, it's rather dark in this space. One of the skylights will be in the bathroom which has no natural light or ventilation at all. The other one, which is a non-conforming position, will be in the second floor bedroom. The one that is in a conforming position will be in kind of an upstairs sitting room. So the skylights are very important for natural light and ventilation, and also would improve the possibilities for emergency egress.

There are only three of the surrounding properties that you can see the skylights at all, and it's very minor

amount of visual contact. So -- in fact, the owners have been around through the neighborhood, met with all the neighbors and we're going to give you a document.

NANCY DINGMAN: Why don't you tell them about it.

CONSTANTINE ALEXANDER: We have a petition in the file.

DIRK KOECHNER: To all abutters and abutters to abutters, we sent a letter introducing ourselves, and mentioning also that we're adding gutters which is not on this petition, but just, you know, making improvements. And also including all the elevations.

BLAKE ALLISON: And then a few weeks ago we had the review the Avon Hill Conservation District Committee, and again they reviewed the same material plus other issues about exterior repairs. They gave us their blessing. And in fact, they --

CONSTANTINE ALEXANDER: You don't

seem to have a letter in the file from them.

NANCY DINGMAN: We have one here.

CONSTANTINE ALEXANDER: You have one here?

NANCY DINGMAN: Yes. We have a copy of it.

CONSTANTINE ALEXANDER: Do you have a copy I can put in the file?

NANCY DINGMAN: Well, this is our only copy, but I guess you can have it if you're really nice.

CONSTANTINE ALEXANDER: You can always get it back from Mr. O'Grady.

NANCY DINGMAN: Okay.

CONSTANTINE ALEXANDER: And the people who signed the petition, di they include the three persons -- yes. On this list, so the three people who can see into the skylight?

NANCY DINGMAN: Yes, every single abutter.

DIRK KOECHNER: And abutters of abutters.

NANCY DINGMAN: And abutters of abutters.

CONSTANTINE ALEXANDER: We did our homework.

DIRK KOECHNER: And the immediate abutters are the most important. And clearly the condo association is the most important. We even have a special letter just from our trustees.

BLAKE ALLISON: And that's basically it.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TIM HUGHES: None from me.

MAHMOOD FIROUZBAKHT: Will these skylights, are they, will you be able to open them?

DIRK KOECHNER: Yes, they'll be venting. They'll be very modern ventable skylights. Completely openable, yeah.

CONSTANTINE ALEXANDER: The Chair -- is there anyone here wishing to be heard? I'd say no.

SUSAN KOECHNER: He doesn't object.

CONSTANTINE ALEXANDER: He'd have to speak up for the record though.

The Chair will note that we've been handed a certificate of appropriateness with regard to this project from the Avon Hill Neighborhood Conservation District Commission. There seems nothing unusual about it. The certificate is dated September 23, 2009. And the plan -- they make -- the certificate of appropriateness refers to plans and elevations supplied by Dingman Allison Architects. Are those the same in the file?

BLAKE ALLISON: Yes.

CONSTANTINE ALEXANDER: And we also have in our file a petition signed by various abutters and abutters of abutters

of the petitioner. And the petition says: We have reviewed the plans for the renovations for the carriage house at 81 Washington Avenue prepared by Dingmam Allison Architects and dated August 20, 2009. We have no objections."

And the plans in the file, are those dated August 20, 2009 referencing the petition.

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

The Chair moves to grant the petitioners a Special Permit to install two new skylights located in rear -- in side and rear yard setbacks. The Special Permit would be granted on the basis of the following findings:

That you cannot meet the setback requirements of the ordinance given the fact that we have a non-conforming structure that sits too close to the lot lines.

That there will be no impact on traffic or patterns of access or egress causing congestion, hazard or substantial change in established neighborhood character. We're talking about here are two skylights that obviously -- should be obvious, have no impact on traffic or cause congestion, hazard or change in established neighborhood character.

That this project would have no impact on the development of adjacent uses. And adjacent uses would not be adversely affected by the nature of the skylights.

There would be no nuisance or hazard created to the detriment of the health, safety and welfare of the occupants. In fact, these skylights would improve the ventilation and lighting of the structure and even provide in emergency situations a means of access and egress.

That the proposed skylights would

not impair the integrity of the district or adjoining district. In fact, they have almost non-visible impact on the neighborhood. And that that's all there is.

And that the Special Permit would be granted on the condition that the work proceed in accordance with the plans prepared by Dingman Allison Architects dated August 20. They're numbered A1-1, A1-2, A1-3, A2-1, A-2, A2-3, the first page which has been initialed by the Chair.

All those in favor of granting the Special Permit on the basis so proposed, say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(Whereupon, a discussion was

held off the record.)

(8:50 p.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9845, 120 Vassar Street.

Is there anyone here on that matter?

ATTORNEY SCOTT LACY: Yes. My name is Scott Lacy with the law firm of Prince, Lobel, Glovsky & Tye, representing the applicant, Sprint Spectrum and their affiliate Nextel. This is actually an

application that's been before you before. It's an application to install eight antennas and the facade of the building at 120 Vassar Street.

CONSTANTINE ALEXANDER: This is exactly the --

ATTORNEY SCOTT LACY: The same one.

CONSTANTINE ALEXANDER: For the benefit of other members of the Board who were not here. We granted the Special Permit to a prior party, several merger partners earlier, to erect these antennas. And obviously you didn't proceed in timely because of the all the corporate shenanigans going on, so you're back before us for another one, same one as before.

ATTORNEY SCOTT LACY: It's the exact same one as before. The original application was granted in September of '06. It was granted an extension in

November of '08. Due to the merger between Sprint and Nextel, they didn't -- weren't able to relight the construction in this particular facility. That has been changed. And this facility is absolutely green lighted for construction. So, it is the exact same proposal as previously granted. There's no difference. Two sectors, four antennas on each, so a total of eight antennas. They will not exceed the roof height. They're mounted to the side of the roof. Painted to match. The equipment goes within the building. It's the exact same proposal that was previously here.

CONSTANTINE ALEXANDER: As Mr. Hughes, my colleague has astutely pointed out, you're in a residential district.

ATTORNEY SCOTT LACY: Correct.

CONSTANTINE ALEXANDER: To everyone's amazement. As a result, we have to make certain findings, special

findings, under our zoning law. And I want you to address those.

ATTORNEY SCOTT LACY: Sure.

CONSTANTINE ALEXANDER: That we have to deal with are there alternative functionally suitable sites in non-residential locations?

ATTORNEY SCOTT LACY: There really isn't. As shown by the RF Affidavit that a gapping coverage involves MIT and Mass. Ave. right in proximity to where this building is. And there aren't -- even though it's in a residential district, it's not surrounded by residential uses. All of the buildings surrounding this particular property are owned and operated by MIT and part of their institution. They're not residential dwellings or structures like that. So in that sense we propose that this particular site, as it did in 2006, meets that specific finding about it.

CONSTANTINE ALEXANDER: And we have to find that there's a demonstrated public need for the facility at this location. And the last time around there was testimony from people from MIT saying safety requirements for students.

ATTORNEY SCOTT LACY: There are representatives from MIT here.

CONSTANTINE ALEXANDER: My goodness.

ATTORNEY SCOTT LACY: In addition, a radio frequency Affidavit was submitted indicating radio frequency needs for Sprint and Nextel, we still have significant gaps of coverage in this area.

CONSTANTINE ALEXANDER: Let's see. I've got to make one other finding. I just want to cover that. We must make a finding that non-residential use is predominant in the vicinity of the proposed location.

ATTORNEY SCOTT LACY: And there

was, as part of the actual application materials that were submitted, there is a plot plan, the Z1 sheet that was submitted, that shows all of the building within 300 feet of this particular site. And all of those buildings are owned and operated by MIT as part of their institution. They're not residential dwellings.

CONSTANTINE ALEXANDER: The Chair would not and as other members have noted that definitely non-residential uses predominate in this neighborhood.

TIM HUGHES: To the point where one might ask why is this a residential zone?

ATTORNEY SCOTT LACY: I don't know.

CONSTANTINE ALEXANDER: And the photo simulations that were submitted in 2005 are still accurate?

ATTORNEY SCOTT LACY: Yes. It's

the exact same proposal. And those were included in the application.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TIM HUGHES: I'm good.

CONSTANTINE ALEXANDER: Anyone here from MIT wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: Anybody else wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: Let the record note that no one wishes to be heard.

In terms of what we have in the file. We have a letter from the Planning Board. "The Planning Board reviewed the Special Permit application proposed for the telecommunication antennas on the MIT building. If granted, the Planning Board suggests that the installation be placed

below the corneous line as well as the usual conditions that the cabling be minimal and neatly secured to the building. The antenna should be the same color as the installation facade. There was some concern that due to the blank facade wall, the antenna will become a feature of the wall on the wall." There was some concern that due to the blank facade wall, the antenna will become a feature on the wall."

Let's see, going back. Let's deal with their suggestion. That the installation being placed between the corneous line. Is it?

ATTORNEY SCOTT LACY: It's -- the top of -- if you look on the Z3 sheet, the top of the parapets at 58 feet, 3 inches. The top of the antenna's at 57 feet, three inches. So it is slightly below the top. I think as proposed, it complies with what the Planning Board is looking for.

CONSTANTINE ALEXANDER: Given the photo simulations, I'm not sure what the Planning Board is worked up about. It's unnoticeable as possible.

TIM HUGHES: I'm not sure what the corneous is on that building.

ATTORNEY SCOTT LACY: There's not a specific architectural feature.

TIM HUGHES: It doesn't fit any definitions of corneous.

CONSTANTINE ALEXANDER: No. Not that I know of.

Comments from members of the Board?

TIM HUGHES: I'm good.

MAHMOOD FIROUZBAKHT: The one comment would be, you look around the city and some of these antennas are installed and the effort to match the antennas to the existing structure and the color scheme works well and some do not, you know. They attempt to copy a brick color but the brick background may be more of a

brown brick color and the antennas are more pink and they stand out and they look ugly. So I guess, you know, I'd want to know what steps are going to be taken by the applicant to actually match the antennas to the existing brick facade.

ATTORNEY SCOTT LACY: Generally what takes place is if approved, the applicant would go out and take pictures of the literally the bricks on which it's going to be matched to. They bring them to a vendor and say, match the exterior of the antenna to this color. And that's generally how it's done in terms of trying to make sure that they match as close as possible, the exact color of the facade. We certainly understand if there's a condition that once they're up, if through the Planning Department, if you want to have someone just double check them and bring that back, we would certainly be acceptable to that.

CONSTANTINE ALEXANDER: We will make a condition if we grant relief that you minimize the visual impact of the antennas by matching the color of the antennas to the facade as closely as possible.

ATTORNEY SCOTT LACY: Which we certainly empower the various boards to enforce that. I mean, if it doesn't match, they can have us do it again. But that's the methodology.

CONSTANTINE ALEXANDER: How's your color sense these days, Sean?

SEAN O'GRADY: I'm color blind.

MAHMOOD FIROUZBAKHT: Maybe that's the problem.

(Whereupon, a discussion was held off the record.)

MAHMOOD FIROUZBAKHT: Has the Building Department played that role before with other applicants?

SEAN O'GRADY: No.

BRENDAN SULLIVAN: It's usually Historical chimes in on that.

CONSTANTINE ALEXANDER: Historical might be -- they would come to you if they had a problem?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: They have no enforcement on their own?

SEAN O'GRADY: No, they would have to come to me.

MAHMOOD FIROUZBAKHT: In terms of matching, I mean, I could see it could be a subjective sort of opinion in some ways, but you know, when you look at it, if it matches, it matches and if it doesn't, it doesn't. And there are a lot of examples where technically supposedly it matches but it just doesn't. So certainly, you know, with these applicants we give them -- these wireless companies more savvy and more experience, you know, with these installations. Certainly if I drive by

this property and I will, I'm going to look and if they don't match, I'm going to call Sean, and say, Sean, you may be color blind but this doesn't match and something has to be done. I just want to make sure that the applicants are, you know, aware that this is something that, you know, will make a difference to the Board and will be kind of regulated.

ATTORNEY SCOTT LACY: That's certainly understandable.

MAHMOOD FIROUZBAKHT: Because -- and the reason I'm sort of pressing this point is something in terms of what happens here, and I know with these kinds of applications, it's all well and good we can paper it, but then what actually happens on the field with the people that are actually doing the work, there's -- there it happens to be disconnect and miscommunication in particular with this industry. And so that's why I'm sort of

pressing the issue because there's too many examples of things going wrong.

CONSTANTINE ALEXANDER: It's a very valid point. The people come before us represent in good faith something, but then the people who actually implement it don't have a clue of what happened here and sometimes something slips between cup and lip.

ATTORNEY SCOTT LACY: I'll certainly stress that to my clients.

MAHMOOD FIROUZBAKHT: That would be good.

CONSTANTINE ALEXANDER: Other comments? Ready for a vote?

The Chair moves to grant the petitioner a Special Permit to install and maintain a wireless communication facility on the rooftop of the existing building at -- to install two sectors, four antenna panels per sector, to be mounted on the upper facade of the adjacent southerly

corner of Building W34 as well as the interior installation of an existing equipment shelter to be located in the mechanical level of the adjacent W35 building.

The Board finds that the petitioner is a licensed FCC carrier in good standing based upon materials submitted by the petitioner in connection with this application.

That the petitioner will take steps, and we will require to minimize the visual impact of what is being proposed.

That although this proposal is to be erected in a residential zoning district, there is a demonstrated public need for the facility. That such need has been testified to by MIT, the owner of the structure and owner of much of the surrounding property.

That the facility will facilitate the safety of the students and other

persons and employees of MIT.

That the petitioner has demonstrated to us that there are not alternatively functional suitable sites in non-residential locations.

The Board would further find that the prevailing uses in the area are such that this is not a residential area in fact, although it may be zoned residential. And that non-residential uses do predominate in the vicinity of the proposed facility.

The Special Permit would be further based on the findings that the requirements of the ordinance cannot be met without the granting of Special Permit.

That the antenna would not cause any congestion, hazard or substantial change in neighborhood character.

That the antennas would have no adverse effect on adjacent properties.

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

The Special Permit would be granted on the conditions that the work proceed in accordance with plans submitted by the petitioner, prepared by Dewberry Goodkind, Inc. They are dated 8/30/05 -- '06. And they are numbered T-1, Z-1, Z-2, Z-3 and the first page which has been initialed by the Chair. And also in accordance with photo simulations submitted by the petitioner prepared by Dewberry as well, dated July 27, 2005, and also initialed by the Chair.

On the further condition that the work proceed on the basis that the visual impact of this equipment will be minimized to the maximum extent possible conforming the color of the antenna to the color of the facade of the building.

And on the further condition that if the telecommunication facility is abandoned or not used for a period of six consecutive months, that the petitioner will promptly remove all of the antenna and restore the facade to its condition as nearly as possible as it was prior to the installation of the antenna. Anything else?

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

ATTORNEY SCOTT LACY: Thank you very much.

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

(Whereupon, a discussion was held off the record.)

(9:05 p.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9846, 575 Memorial Drive.

Is there anyone here in regard to that petition?

VINNIE CHIARAVALLOTI: That's me.

CONSTANTINE ALEXANDER: Please come forward and give your name and address to the stenographer, please.

VINNIE CHIARAVALLOTI: Vinnie Chiaravalloti for High Cambridge, 575 Memorial Drive.

THE STENOGRAPHER: Your name again, please.

VINNIE CHIARAVALLOTI: Vinnie,  
V-i-n-n-i-e Chiaravalloti  
C-h-i-a-r-a-v-a-l-l-o-t-i.

CONSTANTINE ALEXANDER: Before you go any further I would point out, and maybe you're not aware of, we have a letter from -- addressed to our Board from Francis D. Parisi, Esquire, P-a-r-i-s-i. And it says the petitioner T-Mobile Northeast, LLC respectfully requests a continuance of the Board of Zoning Appeal hearing on the above referenced matter until the next available meaning to the

Board of Zoning Appeal. We're not going to hear the case tonight unless -- I don't know if you're aware of this or you want to address this.

VINNIE CHIARAVALLOTTI: I wasn't aware of that.

CONSTANTINE ALEXANDER: Sorry.

VINNIE CHIARAVALLOTTI: That's okay. What is the next step?

CONSTANTINE ALEXANDER: What's going to happen is we'll hear the case -- let me explain. The notice, the proper notice that's required by the zoning ordinance was not posted by the petitioner. And because they didn't post the notice, we can't hear the case tonight. So we're going to continue the case to another night, and provided that on that -- by that time the petitioner correct the notice situation. They're supposed to put up a sign.

VINNIE CHIARAVALLOTTI: Right, I

put them up myself.

CONSTANTINE ALEXANDER: You didn't put them where you were supposed to put them apparently.

SEAN O'GRADY: Vinnie's from the Hyatt. And the lawyer didn't inform him how to go about doing it.

CONSTANTINE ALEXANDER: Oh, I see.

SEAN O'GRADY: So he did his best job.

CONSTANTINE ALEXANDER: I'm not suggesting that to you.

VINNIE CHIARAVALLOTI: They told me to put it in a public area. And I put it in the main entrance of the hotel on the side where all the guests enter into the lobby. I thought that would be a good place for it.

CONSTANTINE ALEXANDER: Where did you see the sign when you went there?

SEAN O'GRADY: I never saw the sign.

CONSTANTINE ALEXANDER: I never saw a sign either, and I went by. Well, I suggest this, that you did your best. Talk to Sean as to when -- we have to decide when the case is going to be -- as to where he would like the sign to be posted.

VINNIE CHIARAVALLOTI: Okay.

CONSTANTINE ALEXANDER: And the requirements are the 14 days -- for the 14 day period prior to the date we're going to hear the case, that sign has got to be in that location.

VINNIE CHIARAVALLOTI: I see.  
Okay.

CONSTANTINE ALEXANDER: And when that's done, we can hear the case.

VINNIE CHIARAVALLOTI: Oh, okay.

CONSTANTINE ALEXANDER: I'm sorry we brought you down here for this.

VINNIE CHIARAVALLOTI: That's not a big deal.

CONSTANTINE ALEXANDER: What's the date we can continue the case? It's a case not heard by the way.

SEAN O'GRADY: November 19th.  
Yes. November 19th.

CONSTANTINE ALEXANDER: Well, we don't have to ask if anybody is available. I won't be here for that.

The Chair moves that this case be continued until seven p.m. on November 19th on the condition the petitioner has -- the Chair would note that the petitioner has signed a waiver of notice, and so it continues to be on the condition that with regard to the sign that you have or should have, you take the date which is today's date for the hearing, cross it out with a magic marker and put November 19th on it.

VINNIE CHIARAVALLOTI: Okay.

CONSTANTINE ALEXANDER: And that sign has got to be up for the 14 days,

saying starting November 5th through the 19th.

VINNIE CHIARAVALLOTI: Okay.

CONSTANTINE ALEXANDER: Okay?

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

VINNIE CHIARAVALLOTI: Okay.

Thank you.

CONSTANTINE ALEXANDER: And Sean can be help to you as to exactly where to put the sign.

VINNIE CHIARAVALLOTI: Okay.

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

(Whereupon, a discussion was held off the record.)

(9:15 a.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9847, 77 Mass. Ave, Building 16.

Is anyone here wishing to be heard on this matter?

ATTORNEY ARTHUR KREIGER: Yes, we do.

Good evening, Mr. Chairman, members of the Board. My name is Art Kreiger from Anderson and Kreiger. This is Ms. Jones here from MIT. And I understand you want to address the notice issue first.

CONSTANTINE ALEXANDER: Yes. And let me for the record say that I -- I think this is a property that I think Mr. O'Grady and perhaps others, to my -- based upon my inspection I don't believe that the posting complied with the

requirements of our zoning law. Specifically Section 10.42.1. That section requires that the panels, notice should be securely mounted on the subject lot at the street line within the property, but in any case not more than 20 feet from the street line. The street line is 77 Mass. Ave. And that the panels must be visible, easily identifiable and legible to persons passing by on the public street without the necessity of trespass onto private property. It was my observation if you're walking ago long Mass. Ave, there is no sign to be seen. And, therefore, for those reasons, in my view, subject to your comments and the decision of the Board, that we don't have compliance with our notice requirements.

ATTORNEY ARTHUR KREIGER: Well, I appreciate you articulating that position. I understand that the issue is 77 Mass. Ave. Let me first tell you where the

facility would be. And I know you don't want to get into the plans yet, but you need to know where it is to understand the notice issue. Let me, I can work off a better map than that. For this purpose, and I have multiple copies, in the middle of those photo simulations -- why don't I pass out copies.

CONSTANTINE ALEXANDER: Okay.

That's where that red dot is is where the building -- where the antenna is going to be on?

ATTORNEY ARTHUR KREIGER: That's the proposed facility. And all those photo sim locations point to that.

CONSTANTINE ALEXANDER: But the address of the property is 77 Mass. Ave?

ATTORNEY ARTHUR KREIGER: That's right. I would point to the fact that the facility is actually in the middle, smack in the middle of that entire campus. Not only is it in the middle of that portion

of the campus which is bounded by Ames, Vassar and Mass. Ave, all around, even across those streets is MIT facilities. There are no residence anywhere nearby let alone commercial or industrial tenants. So your question is -- the question from our point of view, I understand the language we can deal with, where can effective notice be given?

CONSTANTINE ALEXANDER: Right on 77 Mass Ave. You climb the steps -- there's the address, No. 77, there are doors, there are glass panels on either side of the doors. All you do is need do is tape the notice on those -- inside the glass on side on the entrance side.

BRENDAN SULLIVAN: Was an attempt to place the signage somewhere?

ATTORNEY ARTHUR KREIGER: Yes. Let me explain where the three signs were.

First off, there's no issue about the signs themselves, the legibility, the

size, it was the prescribed signs. The question was where they were posted. They were securely fastened. That's not an issue either. So, one of them was on the building, the building entrance. Because it was thought that anyone going into the building, if anyone who would want to know -- if anybody wants to know it's people who use the building to know it's up on the roof. So there's no issue. And we have photos, and it was posted on the north side of the building.

Second one was posted out here on Vassar Street, at 30 Vassar Street within 20 feet of the street line. And Ms. Cyr can explain why these locations were chosen. But that's, as you'll hear, that's the direction of foot traffic toward the building.

The third one was out here on Ames Street which was not only again, directly the main direction of foot traffic because

here's the T stop. So it's at the other end of the building and passed the next building within 20 feet the street.

That's the third one. Not only is that direction of foot traffic from the T stop, that is in fact the emergency access, the emergency services, fire department coming to Building 16 is given the address of 21 Ames which is the entrance right there.

So that's where that one was posted. You want me to explain just the direction of foot traffic and how that was determined?

JOAN CYR: Yeah, basically we just looked at distances in a different number of buildings that you have to get to to get to Building 16 which is really in the center of campus. So in terms of like where foot traffic is coming from the public way, Ames Street has two buildings to go through to get to 16. Vassar Street has literally an outside portion aside to the Stata Building to get to Building 16.

Coming from 77 Mass. Ave, you're going through three, four, five, six, seven different buildings to get to Building 16. It's not your normal path of traffic to get to Building 16 if you're coming from 77 from the public way. It's coming from either Vassar Street or Ames Street.

CONSTANTINE ALEXANDER: I accept that. My point is this: The purpose as I read it and understand it, the purpose of the signage is to inform the community, the residents of Cambridge as to that something that's going to go on from the zoning point of view and there's going to be a public hearing. That may -- for the most foot traffic goes along Massachusetts Avenue. That's where the building is. The buildings's address is 77 Mass. Ave. The zoning I think notice requirements are tied to the building entrance on 77 Mass. Ave. I have no doubt there was good faith, and no one's -- I'm not suggesting

anyway that there was anything but that. But I'm afraid you have to start with the fact that you have a building on 77 Mass. Ave, that's the legal address, that's where you post the notice. And that would allow people -- hold on. That would allow people again to -- there's a lot of foot traffic that goes up and down Mass. Ave, to know that there's going to be a hearing on this matter that's before us now.

Mr. O'Grady wanted to comment.

SEAN O'GRADY: Yes. I just, for the record, went to the site saw the sign on Ames, saw the sign on Vassar from the -- and I don't know where the lot line is, because I don't have a plot plan, but from the edge of the public sidewalk, one sign was 45 feet and the other sign was 75 feet. And neither of them were within 20 feet. And in both cases it was building faces within 20 feet of that sidewalk right there. They weren't placed on the

front face. They were placed back on planes farther away, 45 and 75 feet.

ATTORNEY ARTHUR KREIGER: I don't know the distances -- you're saying from the curb or what might be the inside?

SEAN O'GRADY: From the public sidewalk.

ATTORNEY ARTHUR KREIGER: Which side? The curb side or the inner side?

SEAN O'GRADY: No. From the inside of the public sidewalk, one was 45 feet, one was 75 feet, and in both cases there was building within 20 feet.

ATTORNEY ARTHUR KREIGER: The -- I can speak to the one on Ames because we actually moved that the other night because --

SEAN O'GRADY: Well --

ATTORNEY ARTHUR KREIGER: Well, let me just address that. It was Ames -- the building jogs. What's out at the closest to the sidewalk is not where the

entrance is. The entrance is recessed a bit. So we posted a sign next to the door. Now it is posted out on the sign closest to the sidewalk because apparently there's an issue. But it was posted in a place where people going into campus or using the building are going to see it.

If I can just -- I understand the ordinance. I understand the importance of public notice. There's no quarrel with that. But I think for this facility you have the discretion or the leeway under this language to decide that this is -- was effective notice. And I also think you have the authority certainly under the Telecomm Act, the Federal Telecommunications Act to waive any -- if you see any lack of strict compliance, I think you have the authority to waive that.

The ordinance first, is that it has to be securely mounted on the lot at the

street line. The fact that the building may be known as 77 Mass. Ave. what's the lot here? I mean, this is not a simple determination that the 77 Mass. Ave. is the place that the ordinance directs you. It's not -- it's just not clear, because we don't have a relevant lot here. So I think not just that MIT made a good faith -- I mean MIT made a good faith effort to put them in the right places. I think actually it doesn't violate the ordinance where we put them. I think you can square that with the ordinance. Because the relevant lot -- well, I mean, what is it? Is it the campus? Is it the building? Is it technically the historic property line? Nobody would argue that I don't think. Although 77 Mass. Ave. would be an essential place, and that is where the third one is now. We moved it from the building out to there. I think you don't have to find that it violated the

ordinance. I think you can find compliance.

As far as the Telecomm Act goes, of course we have you have the ability to waive anything under the ordinance that we're enforcing it with -- we're going to follow the prohibitions on the limitations of service. And I'm not suggesting that hearing to a notice requirement does that.

CONSTANTINE ALEXANDER: I would hope that.

ATTORNEY ARTHUR KREIGER:  
Certainly. Okay. Sorry to interrupt. But the point is, the Telecomm Act gives you the authority to be a little more flexible -- let me just finish the thought if I may. And that is I know you don't want to get into the plans, so I'm not trying to sneak that in, but you have to understand from our view this is a no-brainer of an applications that's been blessed by the Planning Board unlike the

Harvard one I was here on a couple weeks ago that you're going to hear again. The Planning Board has said affirmatively, and I believe you have that memorandum?

CONSTANTINE ALEXANDER: I haven't looked at the file.

ATTORNEY ARTHUR KREIGER: Okay, that's fine. You do have that, and I was told that that was sent over.

This is on the roof of a -- a flat roof building. In fact, there is no one -- regardless of where the notice is, there's no one who lives there to object to this.

CONSTANTINE ALEXANDER: I don't want to be difficult. I don't want to argue. Whether it's a no-brainer or not, as to on the merits, it's not relevant to me, it's whether there should be -- we have procedural requirements that we impose on petitioners including telecomm petitioners. In fact, we've had a number

of cases before us where the telecomm providers, and not certainly your client, where they haven't posted the notice. And we said to them you have to be in compliance with our zoning code. And we said to them we have to continue the case until you do post the notice correctly. From your perspective, unless there's some grave emergency, why not continue the case and get -- eliminate a procedural problem and a potential for someone challenging the relief we may grant you on the grounds that there was insufficient notice. We have no right to waive the notice requirements of our zoning ordinance. They are what they are. And you haven't complied with them.

ATTORNEY ARTHUR KREIGER: Well, again I think you could find that we have complied with them because of this term lot.

CONSTANTINE ALEXANDER: But you're

more than -- every sign is more than 20 feet from the lot line.

ATTORNEY ARTHUR KREIGER: If Mr. O'Grady's measurements are correct, and I won't challenge those here, then we are more than 20 feet from the lot line. But again it's in places that are intended to provide effective notice, not just formalistic notice, but notice for somebody who's actually using the campus and using the property and using that access. And when I say it's -- when I said it's a no-brainer, again, I'm not asking you to waive notice because it's a no-brainer. What I meant was there's no visual impact as you would see if we got to the merits. And then so it's highly unlikely there's anyone who cares about this. And so from our perspective, MIT's perspective we're willing to risk procedural challenge. If somebody wants to appeal on the grounds of no notice,

that's fine.

So, we would ask the Board to hear this because we think it can be heard quickly. And we if there's -- somebody wants to challenge that, God bless them. But we're willing to run that risk. Because we believe it has no impact.

CONSTANTINE ALEXANDER: Other members want to be heard on this?

BRENDAN SULLIVAN: Well, I think that you're correct. We take that section very seriously. We have been very hard fast with other petitioners on -- just as a meritorious a case as this one. And I think that the in fairness to the other petitioners past and future, that we should adhere to that issue on public notice.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard? We'll put it to a vote. No? Okay.

I'll make a motion to continue this

case and see how the vote goes. What's the next available date?

SEAN O'GRADY: Same, November 19th.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on November 19th on the basis that the posting of notice to date has not complied with the zoning -- the requirements of our zoning ordinance, particularly Section 10.42.1.

The continuance would be granted on the condition that the petitioner sign a waiver of notice at the time of reaching the decision. And on the further condition that the sign that is posted be posted at 77 Mass. Ave, and such other sites that you think is appropriate, but at least at 77 Mass. Ave. on the front door. And that the sign be modified to show that the hearing date will now be November 19th.

All those in favor of continuing the case on the basis of that motion, say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case will be continued.

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

CONSTANTINE ALEXANDER: We ask that you sign a waiver of notice for a time of decision until November 19th.

ATTORNEY ARTHUR KREIGER: May I ask a question about that?

CONSTANTINE ALEXANDER: By all means.

ATTORNEY ARTHUR KREIGER:  
Mr. O'Grady and I discussed this last time after the hearing. The waiver of notice, the language of your form is open ended. It doesn't say until November 19th. It just says: I hereby waive the statutory deadlines.

CONSTANTINE ALEXANDER: We do that just simply because cases have to be continued for whatever reason so we don't have to reproduce the paperwork.

ATTORNEY ARTHUR KREIGER: Sure.

CONSTANTINE ALEXANDER: But if you want to have it limited to November 19th.

ATTORNEY ARTHUR KREIGER: Or whatever date after that. I'm not trying to hamper the Board obviously.

CONSTANTINE ALEXANDER: I'm telling you why we do it.

ATTORNEY ARTHUR KREIGER: I'm content. I now understand on the record that it's not indefinite. It's just to accommodate this continuance. I'm content with that.

JOAN CYR: Can I ask a clarifying question on the location of the sign at 77 Mass. Ave?

CONSTANTINE ALEXANDER: Yes.

JOAN CYR: You mentioned pasting

it on a window or a door, on the front door. I think that's more than 20 feet away from the street line. What if we put it on two sticks on a grass line that's near the 77 Mass. Ave. entrance?

CONSTANTINE ALEXANDER: That's even better.

JOAN CYR: Is that okay?

CONSTANTINE ALEXANDER: Just from time to time check to make sure nobody has torn it down. If they have, put another one up. You can't be there 24/7. But just make an effort to make sure that the sign stays there for the 14 days.

(Whereupon, at 9:30 p.m., the meeting was 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 20th day of October 2009.

---

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

My Commission Expires:  
April 23, 2015

**THE FOREGOING CERTIFICATION OF THIS  
TRANSCRIPT DOES NOT APPLY TO ANY  
REPRODUCTION OF THE SAME BY ANY MEANS**

**UNLESS UNDER THE DIRECT CONTROL AND/OR  
DIRECTION OF THE CERTIFYING REPORTER.**