

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
February 12, 2009 6:45 P.M.

in

Ackerman Room
2nd Floor, City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts

Brendan Sullivan, Chair

Constantine Alexander, Vice Chair

Tim Hughes, Member

Christopher Chan, Member

Thomas Scott, Member

Tad Heuer, Member

Mahmood Firouzbakht, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(6:45 P.M.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tim Hughes, Thomas Scott.)

BRENDAN SULLIVAN: As Chair, I call to order the Board of Zoning Appeal for February 12, 2009.

The first order of business will be the election of the Chairperson of the Board and the Vice Chairperson of the Board for the ensuing year. Those in attendance is Constantine Alexander, Tim Hughes, Brendan Sullivan and Tom Scott. A simple majority vote for Chair and Vice Chair will constitute election.

I will now open it up for nomination for Chairperson for the ensuing year. I will offer the name of Constantine Alexander to be Chairperson for the next year.

Are there any other nominations?

(No response).

BRENDAN SULLIVAN: I see none.
All those in favor of Constantine
Alexander for Chair of the Zoning Board
for the ensuing year, please say, "Aye."

(Show of hands.)

BRENDAN SULLIVAN: Please note
three affirmative votes for Constantine
Alexander for the ensuing year.

(Sullivan, Hughes, Scott in favor.
Alexander abstain.)

BRENDAN SULLIVAN: We open it up
for nominations for Vice Chair of the
ensuing year.

CONSTANTINE ALEXANDER: I nominate
Tim Hughes.

BRENDAN SULLIVAN: Any other
nominations?

(No Response.)

BRENDAN SULLIVAN: I see none.
All those in favor of Tim Hughes for Vice
Chair of the Zoning Board for the ensuing

year, please say, "Aye.

(Show of hands.)

BRENDAN SULLIVAN: Four
affirmative votes for Tim Hughes as Vice
Chair.

(Sullivan, Alexander, Scott,
Hughes.)

BRENDAN SULLIVAN: So it be noted,
then, that for the ensuing year
Constantine Alexander to be Chair of the
Board of Zoning Appeal and Tim Hughes to
be Vice Chair.

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

* * * * *

(7:00 P.M.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Mahmood Firouzbakht, Tad Heuer.)

BRENDAN SULLIVAN: We call case No. 9747. It is Mahmood, Tom, Gus, Brendan and Tad sitting on this particular case. Case No. 9747, 211/321 Alewife Brook Parkway.

ATTORNEY BRUCE EMBRY: Just to reintroduce, I'm Bruce Embry, Clark, Hunt and Embry, 55 Cambridge Parkway representing Chipolte. I'm here with Brad Toothman. We were here last time, and we are continued as best I recall, the single reason to put us off to today was for us to review with the landlord the specific designation of six parking spaces in the marked parking lot. Mr. Toothman has done

that. The landlord has agreed to have specific marked spaces. And I've got copies of the parking plan that shows where those spaces will be.

BRENDAN SULLIVAN: Quite far removed from the premise.

CONSTANTINE ALEXANDER: Where's your restaurant?

BRENDAN SULLIVAN: Right here on the corner (indicating).

CONSTANTINE ALEXANDER: That corner (indicating). Is that right?

BRAD TOOTHMAN: It's the second one in. It's actually right here (indicating). I'm sorry, yeah, right there.

ATTORNEY BRUCE EMBRY: So it's basically you walk up this -- well, you walk up this parking lot, or this parking lot, and the entrance is approximately here (indicating).

CONSTANTINE ALEXANDER: Why did he

give you those spaces and nothing closer to your front door?

ATTORNEY BRUCE EMBRY: Well, I'll let Brad talk about that because he discussed it with the landlord.

BRAD TOOTHMAN: Yeah, one of the challenges that the landlord has right now is -- it's not a challenge, it's just a -- he has a -- under the leases he doesn't have any dedicated parking spaces for one type of tenant. It's a requirement on some of his leases that he has executed. So what the thought process was to make sure that when the front flows, starts to flow up during lunch and dinner, that we had the six dedicated spaces so that people can come off and start to lead off Wheeler Street, and that was one of the reasons why they did it. We didn't want to -- he didn't want to have any affect with CVS. Plus he said that for our employees to be parking back there, and

they have a designated area, that we may actually even have to have employee parking off site on some other land. So, it was more of a use issue and it was more of a requirement that he has in his leases.

CONSTANTINE ALEXANDER: Someone drives down Alewife Brook Parkway and decides -- sees the Chipolte sign and says I want to have a burrito, how is he going to know there's a parking space dedicated to him because it's way away from your restaurant?

ATTORNEY BRUCE EMBRY: Well, it's --

BRAD TOOTHMAN: You're already forced into the left of the parking lot because you see the break where -- the median break is?

CONSTANTINE ALEXANDER: Yes, I see that.

BRAD TOOTHMAN: You're forcing

there -- so that is a quick shot as if you look up from where you're driving into the parking lanes.

ATTORNEY BRUCE EMBRY: And I know -- talking with Brad, I know one of the other things that the landlord was concerned about, is because of the restaurant's hours of operation, if he had designated parking right up against the building, you'd have a lot of dead parking during hours where the other businesses were actually quite active. And there would, you know -- you know how people get about shovelling out their parking spaces. So I think the landlord was concerned is what it would do is cause a certain amount of angst amongst customers and users of the other rental stores, spaces.

BRENDAN SULLIVAN: You know, it's not like we haven't had a request in the past. And they're parking down the end of the block. This is not useful to the

establishment at all. I would totally reject this. And I don't think it's a -- it almost smacks at -- well, I'll leave it at that. I won't get into characterizations, but that would not be -- the intent of the ordinance is to have parking nearby the establishment. Your hours of operation are?

BRAD TOOTHMAN: Eleven a.m. to ten p.m.

CONSTANTINE ALEXANDER: Your point again about the landlord's concern because of your hours and the parking. I didn't really follow.

BRAD TOOTHMAN: Yeah, because we're really -- in the morning is more of a concern because you have a cell phone dealership which is T-Mobile on the corner. You also have a bank that opens up early, and then you have a mattress, a mattress going in the middle. So their business is actually in the morning,

especially on a Saturday morning or even during the week.

CONSTANTINE ALEXANDER: I see what you're saying.

BRAD TOOTHMAN: Also, during our off hours is actually in between lunch and dinner, which our business slows down after one o'clock to about five o'clock. And that -- and our experience right now is that those are when the other customers or tenants are busy. So, he wanted to make sure that everybody has the right to park. And so when we asked him that, one of the requirements was the parking spaces, he said, you know, I understand there's some concern, but we need to make sure that during the week and during the day when you're off, that everybody has a shot for the other tenants.

TAD HEUER: I mean, my thought on this, and I'm thinking back to a case that we had in Porter Square, the concern that

we had there and what we want to avoid here, at least this is my recollection, is that as tenants in a multi-tenant building, particularly commercial multi-tenant building, come and go and bring with them or take with them different parking requirements depending on their use. The concern we had is that several years down the road, we could end up in a situation where we had permitted a number of -- we had allocated a number of parking spaces to a set number of uses for this facility. Over time the interoperability of the leases and people coming and going would have created a situation where those permitted uses exceeded the amount of parking available. Through no fault of anyone except for the last person in.

So, although I understand the concerns of some members of the Board that the parking spaces aren't necessarily

right next to the building, my main concern with the petition as presented last time was that we would end up in a situation where ten years down the road a number of different tenants would come in and we would be out of allocable parking on this site. So the fact that six spaces are dedicated to this use and can't be used somewhere else, essentially to me indicates that the next time someone came in for a Special Permit for a use here, we would look at the parking and say dedicate more spaces to them. And then we would have an accountable method of figuring out how much parking was there. And if someone did come in, everyone would be on notice that the parking was not available for that last tenant and the landlord would have to make accommodations or come to us to explain why he or she had done such a poor job in allocating parking.

So, although I understand the desire

to have the parking spaces in physical proximity to the vicinity more so than they are now, I think the greater issue for me is to have a method of banking these parking spaces and tracking them over the course of the life of this multi-tenant building.

BRENDAN SULLIVAN: I think the purpose is probably correct. I'm sort of leaning towards functionality and, you know, how well it will function. Yes, it's an accounting that we can keep two columns, you know, what is required and what is allocated. It's a way of charting obviously.

THOMAS SCOTT: The other thing is how would you ever police this? Even if you designated the spaces in front of their restaurant as parking specifically for Chipolte, you know, people using the rest of the center are going to think that's an empty space, they're going to

park there and who is going to police it?
The police?

BRENDAN SULLIVAN: Well, that's,
you know, that's human nature.

THOMAS SCOTT: I know. I guess
we're imposing something that maybe can't
really be policed unless they're going to
hire a security guard or somebody to
police the parking lot.

BRENDAN SULLIVAN: This existing
where the CVS is now, and that's obviously
going to shift over, and the liquor store
is going out and a Trader Joe's is going
in there?

BRAD TOOTHMAN: Uh-huh.

BRENDAN SULLIVAN: Obviously the
Trader Joe's people can park in the
designated spot. You can have a sign up
there and it says Chipolte parking only.
I know if I'm going to the Chili's and
there's a whole bunch of parking for
Chili's only and whatever it may be, and

yet, if we're going into the bookstore --

THOMAS SCOTT: You just walk through Chili's. And you've made an attempt.

BRENDAN SULLIVAN: You know, parking is such a premium there. What are they going to do? Nobody is going to come out and say you can't park there.

TAD HEUER: I think we do have a situation where the tracking of the parking -- we have to presume that -- sorry. Strike.

We have to presume that the ordinance, in dedicating X amount of parking per type of use and amount of space is correct. So that if the ordinance says Chipolte needs six spaces based on its seating, we presume that that's accurate, that City Council has made a correct determination. I think the issue is really following around the other buildings. And so when somebody else

moves in, if they say they need ten, we say you get ten. And if it comes down to someone who moves in and says we need six, and we say how many are available? And they say we've X'd off most of this chart and we only have two left and we'd say no, sorry, you can't do that. So I think operating under the presumption that the ordinance is correct in allocating the amount of parking to the amount of space and the type of use, I think our purpose is really to police the size of the lot and the use of the lot in general to make sure the lot isn't overused rather than necessarily allocating spaces within the lot particularly given Tom's concern that it would be very difficult to police that practice.

CONSTANTINE ALEXANDER: Can I ask a question to you, Sean?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: CVS or the

Mobile tenant --

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: -- there's no requirement that there be so many parking spaces for whatever -- it's just that you're in a building that has -- provides so many parking spaces. So there can be an overlap between CVS and T-Mobile, right?

SEAN O'GRADY: Well, the way that -- the way that it all comes apart is this: Somebody will come in and they'll say that they want to move into a spot. So there's two things I'm going to look at. One, I'm going to look at Article 4. Oh, the use is allowed, great. And I'm going to look at Article 6 and go is there sufficient parking? And when you have multi-tenanted buildings, it gets really crazy because if the use is more intense than the last user, then the parking requirement goes up. And I have to tell

people the same thing which is give me an accounting of all the uses in your building and all the parking requirements for it and show me that you have those parking requirements. And if you have two extra, then you can put yours in. And it's from those failures that you see all your parking Special Permit cases where people are coming in and asking for relief not to supply sufficient parking.

CONSTANTINE ALEXANDER: All right.

I don't recall since I've been on the Board seeing, other than that one case that Tad referred to, that I didn't sit on, any cases where we had Special Permits for parking. I mean, a restaurant's special because restaurants have, by the Zoning law, you need to have so many parking spaces per number of seats in the restaurant. But for a CVS or --

SEAN O'GRADY: Oh, no, there's -- every parking has a standard. Sometimes

it's seats. More often it's square footage. So you'll say I'm a certain type of office. I'm a lawyer. And I say you need one parking for every 900 square feet. The next guy comes in and says, I'm a real estate broker. And I say well, you need one for every 600 square feet. You have a more intense use. And so to follow that lawyer, you need to show me that you have X number of parking spaces.

CONSTANTINE ALEXANDER: Maybe if I can pursue it. So there's 17,000 square feet. Therefore, that building has got to provide a certain number of parking spaces. Forget about the restaurant.

SEAN O'GRADY: You'd think. And indeed when they're built, they -- they make a guess on what the tenancy is going to be.

CONSTANTINE ALEXANDER: To get the building permit they've got to show enough parking spaces that will satisfy a 17,000

square foot building.

SEAN O'GRADY: Yes. But the link between those two is use. Because if they come in and they say I'm going to use this building for a low parking intensive use, then they can get a building -- then they can pass Zoning. Where if they said we're going to use this for a higher parking intense use, we'd say well, you don't have enough. So the same exact building here and the same exact building here may require different size parking --

CONSTANTINE ALEXANDER: Who makes the judgment what's an intense use or not?

SEAN O'GRADY: The ordinance. There's a big table and it lists all the different uses and how many parking --

BRENDAN SULLIVAN: They could put up a 17,000 square foot building, but they should -- the tenancy change and vary so that it goes from a low requirement to a high requirement of parking spaces. They

run the risk of somebody being squeezed out somewhere at the end.

SEAN O'GRADY: Exactly.

BRENDAN SULLIVAN: Or not obtain the certificate of occupancy or not get permission for somebody. The last guy in could very well be the squeezed out.

SEAN O'GRADY: Right.

BRENDAN SULLIVAN: It's not at the beginning, where a lot of times they'll put up a building and not know who the tenant is.

SEAN O'GRADY: Most of the time.

CONSTANTINE ALEXANDER: Most of those tenants that are going to get into that building don't need a Zoning relief to get in. They don't need a Special Permit.

ATTORNEY BRUCE EMBRY: Right.

CONSTANTINE ALEXANDER: So you never get before a board.

ATTORNEY BRUCE EMBRY: And if

Chipolte were a jewelry store, we wouldn't be here. And the reason that we're here, and we're happy to allocate the parking spaces, and it's a requirement, we understand that, and for you to be able to look at the parking plan and see that there is a more intense use that has a -- has the correct number of parking spaces literally allocated is, you know, there's certainly no argument about that.

MAHMOOD FIROUZBAKHT: The other current uses at the building other than Chipolte, they don't need additional relief, right?

ATTORNEY BRUCE EMBRY: I can't speak for them. I mean, Brad, I think has the idea what they are. We are simply the tenant and the landlord.

BRENDAN SULLIVAN: They are the first guy up.

MAHMOOD FIROUZBAKHT: If Sleepy's is going in --

BRAD TOOTHMAN: Yeah, actually, it's T-Mobile. It is us. It's Sleepy's.

ATTORNEY BRUCE EMBRY: There's a bank branch.

BRAD TOOTHMAN: I believe it's TD Banknorth. And the landlord still has about 3500 square feet left in the development to be able to lease. He has looked at other food uses there and understands, he's also looked at dry goods.

CONSTANTINE ALEXANDER: You don't have any silly provision in the lease that prohibits him from leasing to other restaurants in your building?

BRAD TOOTHMAN: We actually do on a requirement of what he can do. He can't violate our exclusive use.

CONSTANTINE ALEXANDER: So you have the exclusive right to sell food --

BRAD TOOTHMAN: A certain food. Like if it's tacos, burritos, if it's

salads, it does prevent --

CONSTANTINE ALEXANDER: A pizza joint for example could go in?

BRAD TOOTHMAN: Huh?

CONSTANTINE ALEXANDER: A pizza joint could go in?

BRAD TOOTHMAN: It could, it could. But under most leases landlords require to make sure that his development is zoned correctly and he's responsible for it. So then it puts a burden back to him making sure that he doesn't put too much food on there to prevent our use.

BRENDAN SULLIVAN: Right. He doesn't want a conflict.

MAHMOOD FIROUZBAKHT: And I guess the reason I asked about the other uses, if the other tenants -- sounds like those uses would be allowed under the code.

SEAN O'GRADY: Yes.

MAHMOOD FIROUZBAKHT: Unless they're planning on doing something

extraordinary with signage or something like that, they're not going to appear before this Board.

CONSTANTINE ALEXANDER: And that's my point.

MAHMOOD FIROUZBAKHT: And I guess, therefore, if we have some say into where the parking for this particular use should go, I would think we want to lean towards staying within the intent of the code which is that the parking spaces should be closer in to the actual use. And given that we may not have any review of the other tenants and where those parking spaces could go, and then the landlord will have complete sort of, you know, oversight over those spaces, they can locate those spaces over here and sort of address the concerns that you're bringing up in terms of the hours of usage and, you know, traffic mitigation and that kind of thing. So that's sort of my perspective

on this.

CONSTANTINE ALEXANDER: I agree.

ATTORNEY BRUCE EMBRY: Well, let me say that it's not that we're utterly indifferent to where our parking spaces are. Obviously --

BRAD TOOTHMAN: Yeah.

CONSTANTINE ALEXANDER: I know.

ATTORNEY BRUCE EMBRY: To tell you the truth it would be nicer for us if they were closer to the shop, too. The landlord has a bite of this apple. And if the Board is, shall we say, lukewarm to the idea of having the spaces a walk away, if you have -- if you want to box in some areas where you would like to see the spaces, we'd be happy to go back to the landlord and come back and satisfy you in that way. It's just that with the landlord not sitting here, it's hard for us to speak on his behalf or their behalf.

BRENDAN SULLIVAN: I was hoping it

was going to be on this first -- you know, these rows here, in close proximity to this building. And it's closer to the existing building than it is the new building. That's all. And like I said, it almost smacks at well, here, we'll stick them way over here.

THOMAS SCOTT: Could we impose the verbiage on the sign? Let's say if there were these spaces, could the sign say that during the hours of operation these spaces are reserved for Chipolte customers? And that way during the hours you're not open or, you know, you're not open for business, anyone can use them. Can we impose that?

BRENDAN SULLIVAN: Yes, you know, you can put little signs for the use of Chipolte's customers.

TAD HEUER: Can they be mobile spaces? I mean, most of these things are marked by a concrete block with a street

sign type thing stuck in it. Yes, can we say during your peak hours we want those concrete blocks to be stuck here, here, and here to markup these six spaces near your store? And then after your peak hours you can move those concrete blocks out to mark these six spaces out on Wheeler Street?

BRENDAN SULLIVAN: No one is going to do that.

TAD HEUER: Well, I think the difference between them getting a restaurant or not is them moving around concrete blocks as owners, my guess is they might do it.

BRENDAN SULLIVAN: That will happen the first two days. And it ain't gonna happen after that. I mean....

THOMAS SCOTT: Signage would solve the problem.

ATTORNEY BRUCE EMBRY: We're going to have to put signage up anyway if you're

going to make this an exclusive parking area. The sign is going to have to say something about who the use is for. And if, you know, we wanted some sort of dual subscript with hours of....

THOMAS SCOTT: Yeah.

CONSTANTINE ALEXANDER: I like Tom's suggestion. It's got to be close to the restaurant, but it doesn't have to be dedicated during hours that the restaurant's not open.

BRENDAN SULLIVAN: I don't want to get into a dual use. How do we get off this dead center? I guess what I -- I was hoping to see it closer to the building. Right now it's closer to the existing building than it is to this and I think it smacks at not being --

ATTORNEY BRUCE EMBRY: So if we showed them in any of these aisles --

BRENDAN SULLIVAN: Correct.

ATTORNEY BRUCE EMBRY: -- would

you be okay?

BRENDAN SULLIVAN: Yes. Closer to the building. It smacks at not being genuine for me.

ATTORNEY BRUCE EMBRY: Even this over here?

MAHMOOD FIROUZBAKHT: I'm throwing this idea out there, do we think it's possible to grant a conditional approval based on the parking spaces moving to these aisles with the then ISD having final review or the Chair having final review of the plans to confirm that the spaces have been moved to those aisles? So the applicant wouldn't have to appear before us again.

BRENDAN SULLIVAN: I guess my preference would be that they go back to the landlord and come back again.

ATTORNEY BRUCE EMBRY: We'll come back with a plan.

CONSTANTINE ALEXANDER: I think

it's better to. It's a delegation issue.

ATTORNEY BRUCE EMBRY: That would be better.

BRENDAN SULLIVAN: And that narrows it down a little bit closer, that's all. So, anyhow, you can go back and tell him we have --

CONSTANTINE ALEXANDER: Tell them those SOB's back at the Zoning Board --

BRENDAN SULLIVAN: Well, just tell him we rejected those spots because we want them in close proximity to the venue and not there, and not to just push them off to the side. I mean, if nothing else gets their attention that we're going to start looking at them very, very closely.

So I guess you have requested to continue this matter?

ATTORNEY BRUCE EMBRY: Yes, sir.

BRENDAN SULLIVAN: And in order to further consultations with the property owner about the relocation of some of the

proposed parking spots. And the next earliest -- they could come back on the 26th, could they not?

SEAN O'GRADY: They could.

CONSTANTINE ALEXANDER: Would that give you enough time?

ATTORNEY BRUCE EMBRY: Oh, yes.

BRAD TOOTHMAN: Yes.

BRENDAN SULLIVAN: Can we all make it on the 26th?

MAHMOOD FIROUZBAKHT: That should make it.

BRENDAN SULLIVAN: So, it's Mahmood, it's Tom and Tad, it's me. So we can all make it on the 26th.

So a motion to continue this matter until February 26th at seven p.m.

All those in favor.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

ATTORNEY BRUCE EMBRY: Appreciate
your guidance. Thank you.

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

(7:30 P.M.)

(Sitting members: Brendan Sullivan,
Constantine Alexander, Tad Heuer, Thomas

Scott, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: The Board is going to hear Landsdowne Street.

SEAN O'GRADY: You wanted Landsdowne?

BRENDAN SULLIVAN: Yes. The Board will hear case No. 9745, 40 Landsdowne Street.

WILLIAM HARRIS: Good evening. I'm Bill Harris from Signer Harris Architects on behalf of the applicant. And I'm joined by Sean Goodman.

SEAN GOODMAN: From Millennium Takeda Oncology Company.

WILLIAM HARRIS: And this is a continuance of a prior hearing. And the primary issues, as I understand them, were relating to the size and area of the sign as it may have been implemented by the amount of information that wanted to be included on the sign. The amount of information stems from the question about

the name of the company. And what we have submitted, I believe, I guess we sent it in to the office through Sean.

CONSTANTINE ALEXANDER: DBA.

WILLIAM HARRIS: With the DBA, right. So we did want to clarify at least --

CONSTANTINE ALEXANDER: The problem is the DBA is different than the sign you're showing.

WILLIAM HARRIS: In what respect?

CONSTANTINE ALEXANDER: I don't see the DBA saying Takeda Millennium Takeda Oncology Company.

WILLIAM HARRIS: At the top of the DBA here it says that the company will be doing business as Millennium, the Takeda Oncology Company.

CONSTANTINE ALEXANDER: Yes, yes. I see the sign says Takeda Millennium, the Takeda Oncology Company.

WILLIAM HARRIS: Well, the Takeda

at the top is like the "and" symbol for the Millennium.

So, in any case, my understanding last time was with respect to the extended language at the bottom and not so much the top. So I did want to clarify that in terms of a name and just make sure that it was clear that it wasn't arbitrary in terms of why it was presented that way. Nonetheless, in that that does make the sign potentially larger than it would otherwise be, we're suggesting that we reduce the square footage, the size of the sign, of each sign by about 15 percent, 15 percent for the lower and 12 percent for the upper one. And -- but inasmuch as the company would like to be known as Millennium Takeda Oncology Company it is important to them from a corporate identity perspective. And they feel rather strongly about keeping the full name.

BRENDAN SULLIVAN: If you can just walk me through -- the original sign that was proposed. There are two here dated '09 February, sheet 1 of 2 and sheet 2 of 2.

WILLIAM HARRIS: Uh-huh.

BRENDAN SULLIVAN: So the sheet 1, is that over the front entryway?

WILLIAM HARRIS: Correct.

BRENDAN SULLIVAN: And what was it proposed for?

WILLIAM HARRIS: Sheet 1, it was proposed at 47.97 square feet. And it's now --

BRENDAN SULLIVAN: So the height I guess -- So, we're going from 55 and a quarter inches to 45?

WILLIAM HARRIS: Yes, that's about right.

BRENDAN SULLIVAN: So you've reduced it by 10 inches?

WILLIAM HARRIS: Yeah.

BRENDAN SULLIVAN: So the proposal is for 45 and a half inches. And the code says it shall --

WILLIAM HARRIS: The code is 13 square feet.

BRENDAN SULLIVAN: Okay. And so the --

CONSTANTINE ALEXANDER: And the sign is now going to be 41 square feet.

WILLIAM HARRIS: Correct.

And part of the reason that we felt quite comfortable on this one had to do with what we understood from our presentation to the Planning Board, that one of the members of the Planning Board spoke up and had been apparently part of the authorship of the original 13 square foot requirement, and noted that that was intended for signs that were blade or perpendicular or storefront signs on buildings that were right along the sidewalk. And that he felt very

comfortable that this being set back from the road really didn't apply to that criteria. And in fact thought that the -- he would be in favor of rewriting the ordinance to address that kind of thing. So, he was comfortable from the sort of origin of the 13 square foot limitation. There's no equivalent, of course, for a tall -- the sign at the top because that requires a variance regardless.

BRENDAN SULLIVAN: Anything over 20 feet.

WILLIAM HARRIS: Correct.

TAD HEUER: Or illuminated.

WILLIAM HARRIS: Or illuminated. Internally illuminated.

BRENDAN SULLIVAN: So the wordage, the Takeda Oncology Company is still being proposed? That's on the plan.

WILLIAM HARRIS: Correct.

CONSTANTINE ALEXANDER: Have you submitted revised drawings and photo

simulations to show the new sign?

WILLIAM HARRIS: No, I have not.

CONSTANTINE ALEXANDER: Well, if we were to grant relief, we always grant relief subject to you going ahead in accordance with the plans submitted to this Board. You don't have plans. I don't see how I can consider the case.

WILLIAM HARRIS: Well, the plan is very much documented by this relative to the signs.

CONSTANTINE ALEXANDER: I don't have a visual impact of where this -- this 15 percent reduced sign on top of the building what it's going to look like against the side of the building. You showed it to us last time correctly so.

WILLIAM HARRIS: Correct.

CONSTANTINE ALEXANDER: I would have thought you would have come back to us showing with what you now want to do with the same kind of detail.

WILLIAM HARRIS: I see. No, I did not bring that. I did bring a straight-forward head-on elevation which was actually not part of the last submission.

BRENDAN SULLIVAN: I'll hear from the Board here.

THOMAS SCOTT: I'd like to see the photo simulation.

WILLIAM HARRIS: For both signs?

THOMAS SCOTT: Yes, both signs.

WILLIAM HARRIS: I see.

MAHMOOD FIROUZBAKHT: That makes sense to have the both signs and photo simulations.

TAD HEUER: I agree. I also still don't understand why we are -- I appreciate that you've gone from where you were before on sign B down 12 percent to 78 square feet, but there's still 18 square feet larger than as of right. And I'm still unconvinced that the amount of

stuff on this sign is -- I do not -- I don't yet see that the hardship has been demonstrated to my satisfaction to grant a variance for a sign over and above the ordinance for this particular use. So, apart from wanting to see the photo simulations, even if I saw them, I'm still -- maybe I'll be convinced when I see a photo simulation. But 12 percent off the photo simulation I saw the last time, my mental calculation of that and what I think that looks like visually still doesn't convince me that a hardship is present requiring the grant for the variance in this situation.

WILLIAM HARRIS: Are you thinking about that for both the --

TAD HEUER: No. I'm barely comfortable, again, not having seen the simulation. With A -- I was fairly comfortable with A. The last time, I understand the argument, that it's

recessed from the street. That it's over a larger entryway than many of the other entryways that this type of sign may have been considered for.

WILLIAM HARRIS: Correct.

TAD HEUER: So that one doesn't present to me as much of a concern as the height, the size and the illumination of sign B.

But again, I think having the simulations would be valuable for people just so we all know and we're all on the same page as to what we're approving in terms of size and bulk.

THOMAS SCOTT: I agree with Tad. I think the sign on the building, apart of being reduced in size with the same amount of information, is some of that information is going to be illegible. And what's the point of having it there if you can't, you know, perceive what it says. I mean, I think I have less of a problem

with the canopy sign, but I think the sign on the building is a little bit overdramatic for what it is you're trying to, you know, project.

WILLIAM HARRIS: You wanted to speak to that in terms of the corporate identity, correct?

SEAN GOODMAN: Right. I mean as far as you mean its appearances?

WILLIAM HARRIS: And the importance of including the language, the full name of Millennium, the Takeda Oncology Company.

SEAN GOODMAN: Right, I mean this is how -- we --

BRENDAN SULLIVAN: The nuts and bolts of it is this, this and that would be, I think, more than sufficient for me to consider. I don't see the purpose of this. It already exceeds what is allowed. And in my way of thinking I would want to minimize as much as possible the amount of

overages unless it was absolutely, positively necessary for the identity of the building. That may be a logo. This is obviously the name, Takeda Millennium. You know, that to me would be enough to consider. This I feel because it does exceed the limit, is more than I feel is necessary.

SEAN GOODMAN: Okay.

BRENDAN SULLIVAN: Is that --

TAD HEUER: I agree.

BRENDAN SULLIVAN: -- phrasing it in a delicate way?

TAD HEUER: Yes.

SEAN GOODMAN: Unfortunately we have to consider this a whole as a mark, this is the ID of the company. So we can't -- I just can't pull pieces out.

TAD HEUER: We also don't need to grant a huge sign.

SEAN GOODMAN: I'm just explaining.

BRENDAN SULLIVAN: I understand the position you're in.

SEAN GOODMAN: Right.

BRENDAN SULLIVAN: The position we're in, I just feel that it's excessive and not necessary. And it far exceeds the ordinance. And if what the powers to be are saying, it's either that or nothing, then I would come down in the nothing.

SEAN GOODMAN: Okay.

BRENDAN SULLIVAN: And so -- now, as far as the one over the entryway?

CONSTANTINE ALEXANDER: I'm quibbling I guess. I don't understand the Takeda Millennium. It's not part of your corporate DBA. You can make the Millennium part of the sign bigger. You're saying Takeda twice. I don't see the purpose of it. Your DBA is Millennium, a Takeda Oncology Company. And yet that's not the sign you're presenting on the building.

I don't understand.

WILLIAM HARRIS: We present it as the language and then there are the two symbols, one for each company.

CONSTANTINE ALEXANDER: But Takeda is not a symbol. It is part of the corporate name. And you have it in the -- below the word Millennium.

BRENDAN SULLIVAN: And, again, I think it's being redundant. It's being more sign than is necessary.

CONSTANTINE ALEXANDER: Yes. It makes it a busier sign and it makes it a bigger sign. And bigness is an issue.

BRENDAN SULLIVAN: And we've got an issue with the amount of signage in that entire area. And to exceed the ordinance is one thing, but to exceed it, it would have to be, I think under an extreme situation. And I think this is just adding bulk, an unnecessary bulk to a sign which exceeds the ordinance.

CONSTANTINE ALEXANDER: That's right.

BRENDAN SULLIVAN: So, maybe you will again think that there's a request to go back and see some visuals. And, again, to just go back to the powers to be and say it's a sense of the Board that, you know, you may want to submit a visual. You may have to do it to eliminate -- to address Mr. Alexander's concerns. You may have to do two or three different variations. And then also I think what you've heard is to address that concern.

CONSTANTINE ALEXANDER: We're not antagonistic to putting a sign identifying your building. We want you to have a sign on it. But we have to live with the Zoning ordinance. And you're -- what you're doing is departing considerably from what our sign -- from what our ordinance allows. We're trying to get you to a point where you're not going to

depart where you're trying to do. And we're trying to help you identify the things that will help us get there.

WILLIAM HARRIS: Yeah. Uhm --

MAHMOOD FIROUZBAKHT: For the information the applicant is -- if they were to come back and the Board is satisfied with sign A, but not perhaps with sign B, just to clarify, would we be in a position to grant approval on, you know, one sign and reject the other so that they can take that back to corporate headquarters and contemplate that result as well?

CONSTANTINE ALEXANDER: You see sign A as kind of being the alternative for each of the two signs?

TAD HEUER: Oh, no, sign A being the street level and sign B being --

CONSTANTINE ALEXANDER: Oh, okay.

MAHMOOD FIROUZBAKHT: Right, right. That's right, above the entrance.

So that -- would we be able to approve that and reject the other as part of this application being that it's being presented to us as one application?

BRENDAN SULLIVAN: In a word, yes.

CONSTANTINE ALEXANDER: Well, I'm not -- I may disagree. If we rejected sign B, then they got the problem about repetitive petition. They may not be able to come before us for two years. I think what we would do, if that would work, approve sign A and continue the case as to sign B. Again, if you want to come back with a different try. Otherwise I think if we turn them down, I don't think we can hear a revised sign proposal.

MAHMOOD FIROUZBAKHT: For sign B, right.

BRENDAN SULLIVAN: To answer your question, yes, we can. But there are consequences to that action.

CONSTANTINE ALEXANDER: You're

right, you're right.

MAHMOOD FIROUZBAKHT: My assumption would be that if they come back with alternatives for sign B. Let's say we don't like any of the alternatives, then we can approve sign A and turn down sign B and that would be an option to present to your folks.

SEAN O'GRADY: I just look at it the repetitive petition issues is a real issue. I think if we grant one part, I don't think you can -- I think you have to resolve the whole case at one point.

CONSTANTINE ALEXANDER: The thinking of the case it's got two parts to it.

SEAN O'GRADY: I'm not even sure procedurally how I would proceed with a case like that.

CONSTANTINE ALEXANDER: I mean -- that's a -- it's not a package deal. There are two signs. They happen to have

two signs, each of which don't comply with the Zoning By-Laws.

SEAN O'GRADY: I agree with that. If they had filed two cases, one for each sign, then I would agree with that. But one case, I'm not sure how to grant, you know, procedurally I don't know how to do it. But I think there's a legal problem underlying that, too.

MAHMOOD FIROUZBAKHT: Which the applicant would maybe have to contemplate and consider and that's the risk they run. That if they want us to look at this application as a whole, and we approve sign A and reject sign B, they can't come back to this Board for two years to present another alternative for sign B. And that's --

SEAN O'GRADY: That's probably true.

MAHMOOD FIROUZBAKHT: And more than likely if the alternatives are

anything close to what's being presented, it's probably not going to get approved anyway, within those two years unless if it's significantly different or if the Board is significantly different.

BRENDAN SULLIVAN: Yes, we can approve sign A, not approve sign B. And that is a decision. And then that is it. Then you could not come back for two years for another sign, sign B.

Or if you got the sense that sign A was going to be approved, sign B was not going to be approved, you could probably pull the rabbit out of the hat at the last second and say let me continue it again or something like that. But it either -- it doesn't give you the option to be approved for sign A and then leave sign B hanging out there.

Is that correct?

TAD HEUER: Is that really true? You can't bifurcate a petition?

SEAN O'GRADY: Well, let me put it this way. In my limited experience we've never done it. And I wouldn't even know how to write the decision. Right?

CONSTANTINE ALEXANDER: Someone from the audience wants to speak?

BRENDAN SULLIVAN: As a friend of the court, identify yourself please, sir.

CHRISTOPHER CHAN: A member of the audience. Chris Chan, C-h-a-n. I think the one to get the one passed is they have to eliminate B from the application and then the application is only sign A.

BRENDAN SULLIVAN: Correct.

CHRISTOPHER CHAN: You approve it.

SEAN O'GRADY: Yes, but that's a withdrawal and that's a repetitive petition and you're right back into it.

CHRISTOPHER CHAN: And Gus is right. So you can't split it and let them have one and let them go with the other.

CONSTANTINE ALEXANDER: I think

you can split it. I've said my piece.

BRENDAN SULLIVAN: You get the sense of where we're going.

WILLIAM HARRIS: Let me go back to another question because I, I don't want to waste the Board's time in heading down a path that if I don't understand really what the issues are. Because what I'm sensing is that when we discussed the -- when we discussed this first time, I got the sense from the Board that the top sign, that the tall sign was really the one that was the more objectionable, especially relative to, shall I say, the size and proportion as a result of the context? Is that a fair way of phrasing it?

BRENDAN SULLIVAN: Well, to me it was just too much content.

WILLIAM HARRIS: Too much content.

BRENDAN SULLIVAN: It was too much content on both signs, but we'll leave

that anyhow.

WILLIAM HARRIS: Correct.

However, my sense after the last meeting was that the sign that was at street level, however, could make a certain amount more sense perhaps because the full name Millennium, the Takeda Oncology Company was more visible, closer and more readable and so forth. What I'm hearing tonight, however, is that that's maybe not the current thinking. And that we would either have to bring the sign down to the 13 square feet, which we've already represented, and seems certainly to me undersized for the identification of the building, or again of just the content. And I'm not sure that, if I understand the goals of the company correctly, that I have the flexibility to do that.

SEAN GOODMAN: Unfortunately we don't.

BRENDAN SULLIVAN: To me it's the

content -- that's excessive content on the sign.

TAD HEUER: I think last time I -- and I'll reiterate just for your benefit. Personally my concern is with the bulk of the sign B, the sign on top of the building that would be illuminated. I don't have the same concerns with sign A, the sign over the doorway, because I think that it does provide a street level identification for someone who is looking for a specific location on the street. And if they're trying to match it up against what they have on a business card or a letter or something else, I'm very comfortable with having a bit more identification given the size of the entryway being larger than the traditional entryway that you would be signing under the variance -- under the ordinance. So my personal impression is that I would be happy to look at a sign, essentially the

one that was proposed this evening, which I saw elevations and placement schematics for -- of a size of the size of the one shown here for that doorway sign A. My concern is with size and bulk of sign B on top of the building.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Well, my concerns are pretty much what Tad's are. Except that I'm a little bit troubled about the excessive content on the sign over the doorway which I don't think Tad is.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: You've cluttered the size with excessive information. And the purpose of the sign is identification. You don't need the word Takeda twice to identify that Millennium's in the building. So as I said, I don't think it's nearly as significant as what Tad is raising. I

have the same issue about the sign higher up, sign B I guess it is. But I would -- I would, speaking only for myself, suggest you should reconsider the design of the sign. Not the size necessarily. The design and the wording on the sign of the canopy over the front door.

WILLIAM HARRIS: I can probably save a lot of time because I don't think I would come back with a different, with a different design for it.

CONSTANTINE ALEXANDER: Okay.

WILLIAM HARRIS: I think that relative to the issue of separating the two signs, we'd be willing at this point to accept the denial on sign B and acceptance on sign A if that was the sort of sense of the Board. But to -- and the -- but I don't think that I would be able to come back either with different language or that it would make sense to come back with something so tiny as 13

square feet. The difference between the sign that's originally proposed and the one that's somewhat less is relatively, is relatively marginal. One can -- I mean, I can imagine this because there's sort of benchmarks would be in the same spot. And you can see relative to the brackets supporting the canopy here where it is and relative to the new proposed elevation.

BRENDAN SULLIVAN: So what you're saying is that corporate headquarters is adamant about the amount of signage. We're not talking necessarily --

WILLIAM HARRIS: The design.

BRENDAN SULLIVAN: -- we're not talking necessarily about bulk but the wording.

SEAN GOODMAN: Right, this is the --

WILLIAM HARRIS: The content.

BRENDAN SULLIVAN: The content.

SEAN GOODMAN: This is on the

letterhead, business cards.

MAHMOOD FIROUZBAKHT: It's a corporate logo which they want to keep uniform along among --

SEAN GOODMAN: Consistency.

BRENDAN SULLIVAN: Okay. Your view?

THOMAS SCOTT: My sense is that I kind of agree with Tad's opinion and that the sign that's down on the canopy, because it's a more of a pedestrian plaza, it's an approach to the building. I can understand the additional language on the sign. Again, if somebody was trying to make the connection between the corporate image, you know, like you said, on a business card. So I'm more in favor of that than the reduced size that you're looking for tonight. But I would oppose the sign B on the building.

BRENDAN SULLIVAN: Does that reflect your view?

TAD HEUER: Yes, it does.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Yes.

SEAN O'GRADY: Let me just interject if I could. Is the violation for sign B, the sign that's high up, is height and also --

WILLIAM HARRIS: Illumination.

SEAN O'GRADY: -- illumination and it's also size.

WILLIAM HARRIS: Well, as I understand the ordinance, there's no allowance for a sign above 20 feet at all. So there's no size that we would be exceeding because anything up there --

BRENDAN SULLIVAN: It's just not allowed.

CONSTANTINE ALEXANDER: Because it's high. I think what Sean is referring to if you were putting that sign below 20 feet, there would be a size requirement.

SEAN O'GRADY: And if the sign

pre-existed, we would still use that in account.

The violation on A is size --

WILLIAM HARRIS: Size only.

SEAN O'GRADY: Size only.

WILLIAM HARRIS: Correct.

SEAN O'GRADY: And do you know if whether or not if you didn't have sign B whether sign A would be over the allowed size?

WILLIAM HARRIS: Correct, it would be.

SEAN O'GRADY: It still would be over.

WILLIAM HARRIS: 13 square feet.

SEAN O'GRADY: It's a total count.

WILLIAM HARRIS: Yeah. I wasn't aware that it was a total count. But 13 square feet is my understanding of what we're allowed as of right for sign A.

CONSTANTINE ALEXANDER: The sign on A is 41 square feet, that in and of

itself is too big of a sign. 41 square feet sign.

SEAN O'GRADY: That's why I was looking for --

WILLIAM HARRIS: I do have it in here somewhere I think.

SEAN O'GRADY: I just want to make sure that that sign in and of itself okay because then --

WILLIAM HARRIS: No, I'm pretty sure it's not. Because we presented each one individually.

BRENDAN SULLIVAN: Section 7.16 limits projected signs to 13 square feet.

SEAN O'GRADY: And A is a projected sign?

WILLIAM HARRIS: Yes.

SEAN O'GRADY: Okay. I appreciate that.

WILLIAM HARRIS: I'm sorry, I was distracted.

BRENDAN SULLIVAN: So, shall I

just make a motion and go forward with --

WILLIAM HARRIS: Well, I got distracted so what would the result of the motion be?

BRENDAN SULLIVAN: Well, I could make a motion to accept sign A and reject sign B. Or would you still want to see the photo simulations?

CONSTANTINE ALEXANDER: Photo simulations. What are we -- we got to tie the relief to a plan or a photo simulation. And we don't have that.

WILLIAM HARRIS: Well, we do have a head-on photo simulation. We do show in this the context of the canopy itself, the brackets and the dimensions. And the location would be exactly the same as on the one that's 12 percent.

CONSTANTINE ALEXANDER: What you're showing there is a bigger sign than what you're actually proposing because you're going to reduce it by 15 percent.

WILLIAM HARRIS: Correct. Now, how much of that is perceivable in a rendering that's created that way? Is marginal, but....

CONSTANTINE ALEXANDER: I don't know.

BRENDAN SULLIVAN: What is it you're comfortable with?

TAD HEUER: I'm happy to vote on sign A. I guess I would only ask the caveat are you willing to forego without asking those who will be paying for the sign, sign B?

SEAN GOODMAN: Yes.

BRENDAN SULLIVAN: Okay. So, shall we go forward with a motion or are you just --

CONSTANTINE ALEXANDER: Well, I'm puzzled how we're going to frame the motion. It's in accordance with that, but that doesn't show the plan, the size of

the plan -- the size of the sign that they're planning to build.

THOMAS SCOTT: The revised submittal has the size.

CONSTANTINE ALEXANDER: Oh, it does?

THOMAS SCOTT: It doesn't coordinate with the simulation.

CONSTANTINE ALEXANDER: It doesn't coordinate -- that's my problem. It's a technical problem.

THOMAS SCOTT: Yes.

CONSTANTINE ALEXANDER: I just don't know how Sean goes forward and makes sure it complies with the relief.

MAHMOOD FIROUZBAKHT: Well, if dimensionally that schematic is accurate, then can we use that as the plan that would be approved?

WILLIAM HARRIS: Presumably in either case for conformance it would be the dimension plan, it wouldn't be a photo

simulation.

MAHMOOD FIROUZBAKHT: It wouldn't be the view, it would be the dimensions.

WILLIAM HARRIS: Right.

CONSTANTINE ALEXANDER: We don't even have a dimensional with the new sign, do we?

TAD HEUER: Yes.

WILLIAM HARRIS: Yes. It's dated 9 February, sheet 1 of 2.

CONSTANTINE ALEXANDER: Oh, okay.

MAHMOOD FIROUZBAKHT: I would be comfortable approving sign A with what's being -- with what's been submitted with the caveat that a schematic be submitted to -- for the file for after the -- after this hearing for the Board's review, post.

CONSTANTINE ALEXANDER: I wouldn't even go that far. I didn't realize we had the schematic. I think we can do it subject to that. As long as they do the sign, use these dimensions, that's fine.

BRENDAN SULLIVAN: That locks them into again I think that the word to get here, photo simulation would be almost indistinguishable -- okay.

Let me then make a motion to grant the relief requested for the erection of a sign over the front entryway as denoted as 45 and a half inches high and 130 inches wide on a plan submitted proposed signage for 40 Landsdowne Street, sign A, dated 9 February, 2009 and initialed by the Chair.

The Board finds that a literal enforcement provisions of the ordinance would involve a substantial hardship to the petitioner because it would preclude petitioner adequate identification of the building. The front entry of the building is set back from the sidewalk such a distance that compliance with the sign ordinance would render any identification according to the ordinance as not being sufficient.

The Board finds that the hardship is owing to the fact that the entrance to the building is set back quite a distance from the public way, the sidewalk, and as such creates an inherent hardship for identification of the sign that would comply with the ordinance.

The Board finds that a desirable relief may be granted without substantial detriment to the public good and would not nullify or substantially derogate from the intent and purpose of the ordinance.

The Board notes in its finding a letter from the Planning Board where the Planning Board is in favor of the signage.

The Board finds that a -- the Planning Board found that a 13 square foot sign in this context is undersized and the proposal is much better at presenting a corporate identity in a way consistent with the objective of the sign ordinance generally.

The Board also notes a letter from the Cambridge Chamber of Commerce in support of the sign at this location.

Now, shall we have a vote? Now, the -- do a vote on that particular sign and then reject sign B or say that sign B is -- all those in favor of granting the installation of sign A.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: Regarding sign B. The Board finds that there would not be a substantial hardship with the literal enforcement of the provision.

The Board finds that the location of the sign and the extent of the proposed sign is excessive, and that the Board finds that no hardship exists for the size and location of that sign which greatly exceeds the ordinance.

The Board finds that desirable relief cannot be granted without substantial detriment to the public good and would derogate from the intent and purpose of the ordinance.

All of those who are in favor of granting the size and location of sign B.

(No response.)

BRENDAN SULLIVAN: There is nobody in favor.

Not receiving the necessary affirmative votes, the location and size of sign B is hereby rejected.

Does that sort of cover it? Okay.

WILLIAM HARRIS: Thank you very much.

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

(8:00 P.M.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Christopher Chan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9729, 12 Mount Vernon Street.

Is there anyone here on that petition?

CHRISTOPHER CHAN: Gus, you're chairing now?

CONSTANTINE ALEXANDER: I'm the Chair now, yes.

CHRISTOPHER CHAN: Just for today?

CONSTANTINE ALEXANDER: No, no. I was elected.

CHRISTOPHER CHAN: Congratulations to both of you.

CONSTANTINE ALEXANDER: We're making a transcript of this. Would you please state your name and spell it for the stenographer and give your address too, please. Whatever order you want to do it.

MARIA MING: I'll start with myself. I'm the owner Maria Ming, M-i-n-g. Is someone recording? I wasn't sure. 12 Mount Vernon Street, Cambridge, Massachusetts, 02147-2703. I guess.

BRUCE JOHNSON: Bruce Johnson. I'm owner of Lee Kimball. We're at Two

Lowell Avenue in Winchester,
Massachusetts, 01890.

EJ KRUPINSKY: EJ Krupinsky
K-r-u-p-i-n-s-k-y. Director of design Lee
Kimball, Two Lowell Avenue, Winchester.

CONSTANTINE ALEXANDER: Why are
you here and what are you seeking?

MARIA MING: What are we seeking?

EJ KRUPINSKY: We filed a petition
for relief for FAR for an additional floor
space, and the original petition was also
for a second kitchen or cooking area in
the townhouse. We started this petition a
few months back. It was granted a
continuance and we're here today. But as
the petition went through, we were asked
by the City to amend it, to remove the
secondary cooking facilities. So the
primary objective on the docket today is
the floor over, but I believe the owner
wants to also address the secondary
cooking facilities.

CONSTANTINE ALEXANDER: You're the owner I assume?

MARIA MING: I am the owner. I don't know what to address. I am simply putting a kitchen there for my parents who has religious practices. So I really never thought it was an issue to start with until it became an issue. Because I know neighbors in the area have two kitchens in their houses all over the place.

CONSTANTINE ALEXANDER: Well, first of all, we're not talking about the neighborhood. We're talking about your house.

MARIA MING: No, I realize that. I'm only using that as sort of -- I wouldn't bring it up otherwise. But you need to let me know what I need to do to make this happen. And if it doesn't happen, what kind of due process is that I'm entitled to.

TAD HEUER: So right now, if I can just clarify --

MARIA MING: Yes.

TAD HEUER: We are on the FAR issue only; is that correct? All that is before us is the FAR for the floor over to create additional space on the second floor?

EJ KRUPINSKY: As this petition went through, the secondary kitchen, we were asked by the City to take that off of it. So right now it is the additional floor space.

TAD HEUER: And you elected to do so? So, the kitchen is not before us --

EJ KRUPINSKY: We would still like to do the additional floor space approximately 125 square feet.

TAD HEUER: But the kitchen issue is not before us tonight, correct? I just need to know what I'm voting on.

BRUCE JOHNSON: You're right. But

the homeowner does have a question as to why this was asked to be removed.

EJ KRUPINSKY: To be taken off.

BRUCE JOHNSON: We didn't elect to take it off.

TAD HEUER: But you did.

BRUCE JOHNSON: But she was asked to take it off.

TAD HEUER: So, before we get to the rest of the case, you can obviously apply for whatever you wish and you will hear whatever you wish. I'm a bit -- and you can elect to put on or take off your application wherever you so choose. And then it's up to the Board to determine whether or not the variance should be granted in those situations.

What I see before us is a petition solely for FAR. So, from my perspective there is no timely issue related to the inclusion of a second kitchen. So that we believe that doesn't factor into anything

that I see in the application.

BRUCE JOHNSON: Okay. I guess then the question is why we -- why were we asked to take the kitchen off?

MARIA MING: I'm confused as to the process. If you can enlighten me. The last person I spoke with was a gentleman by the name of Sean O'Grady.

CONSTANTINE ALEXANDER: Right. That's the gentleman right there.

MARIA MING: Where is he?

SEAN O'GRADY: Right here.

MARIA MING: I thought --

SEAN O'GRADY: You have to make a distinction now between -- this is the Board of Zoning Appeal. And while I'm here assisting them, when I was speaking to you, I'm a member of the Building Department. And we, the Building Department --

MARIA MING: Yes.

SEAN O'GRADY: -- made a

determination that your plan as drawn constituted a second unit. They never made that determination. It's not able to get to them until you either appeal our determination, or in fact ask for a second unit.

MARIA MING: So I need to officially ask for a --

SEAN O'GRADY: You either have to appeal our determination saying that we're wrong, it's not a second unit, or you've got to ask for a second unit.

TAD HEUER: Ask us.

MARIA MING: Who am I asking?

TAD HEUER: The Board.

SEAN O'GRADY: Yes, you've got to file --

MARIA MING: Am I asking you or am I asking the Board?

CONSTANTINE ALEXANDER: Let me try.

MARIA MING: Please.

CONSTANTINE ALEXANDER: They have made a determination that the plans that have been brought before them show that you got -- you're creating a second -- by putting the kitchen in that you're seeking to do, and the other work you're doing --

MARIA MING: Okay.

CONSTANTINE ALEXANDER: -- you're effectively creating a second unit in that apartment. That is not permitted --

MARIA MING: Stop right there. Whose determination is that?

SEAN O'GRADY: Ours.

TAD HEUER: The building inspector.

MARIA MING: All right. Based on what?

CONSTANTINE ALEXANDER: Their review of the plans.

MARIA MING: Okay. So, the mechanic of that is based on some plan that he looked at, I as an owner, which

have no intention, whether you like to know it or not at this point, to create a second unit. So he made a unilateral decision that I'm going to create this so-called multi-unit, right?

CONSTANTINE ALEXANDER: Right.

MARIA MING: Am I right?

CONSTANTINE ALEXANDER: Yes.

MARIA MING: So should I be hearing from his office that I am -- I'm in --

CONSTANTINE ALEXANDER: No, he's made a determination. What you do now -- let me repeat what Mr. O'Grady just said.

MARIA MING: Okay.

CONSTANTINE ALEXANDER: So now he's made a determination -- a unilateral determination as you put it. You have two choices at this point.

MARIA MING: Okay.

CONSTANTINE ALEXANDER: You can say, Mr. O'Grady, you're wrong. I'm going

to take an appeal to the Zoning Board of Appeals, the five of us, and argue before the Board that Mr. O'Grady was wrong and that you're not creating a second unit.

MARIA MING: Okay.

CONSTANTINE ALEXANDER: That's one way.

The second one is to say that even if Mr. O'Grady is right and we have two units, I want a variance to allow us to have two units in the property.

MARIA MING: Okay.

CONSTANTINE ALEXANDER: Either way. Neither of those is before us tonight.

MARIA MING: Neither of those is before you. What does it take for me as an owner to move that into your court?

BRUCE JOHNSON: You have to appeal.

CONSTANTINE ALEXANDER: You can do two things.

You have to file a letter of application and an advertisement. You can go one of two routes. You can take an appeal of his decision, or you can seek a variance from us, which is what you're seeking with regard to -- which is what you're trying to do tonight.

MARIA MING: I appreciate that. But I don't seem to follow your timeline or notice. I never received a notice from your office, unless I missed it somehow, that I needed to appeal. Or should I have?

SEAN O'GRADY: We had a very lengthy discussion at the counter.

MARIA MING: Yeah.

SEAN O'GRADY: Surely you remember that.

MARIA MING: No, no, I do remember that. That's why. So, do I need something in writing from your office? That's what I need to know.

SEAN O'GRADY: No. You've been informed. So you can come down and you can get an application.

MARIA MING: So, I've been verbally informed by you.

SEAN O'GRADY: Yes.

MARIA MING: In person.

SEAN O'GRADY: Yes.

MARIA MING: Therefore, I can use that as a basis for me to appeal.

TAD HEUER: Yes.

MARIA MING: Okay, that's good.

TAD HEUER: Or as the basis for seeking a variance --

CHRISTOPHER CHAN: But you really ought to decide whether you want to do an appeal or seek a variance. They're very different things.

MARIA MING: One or the other, right?

BRUCE JOHNSON: It's confusing because we did seek the variance --

MARIA MING: Right.

BRUCE JOHNSON: -- in the beginning.

MARIA MING: That's right. That's why I'm confused.

BRUCE JOHNSON: And then we applied for that. And then when we went back, we were asked to take that off. So, that's where we're --

SEAN O'GRADY: Hold on.

CONSTANTINE ALEXANDER: And I think the problem was is that when you went for the variance, you didn't advertise it as a variance to create a second unit. You asked for a variance to put a kitchen in. And so the -- what's publicly advertised is different from the relief you were actually seeking after Mr. O'Grady's determination. And that's why we can't consider the --

CHRISTOPHER CHAN: If you had asked in your original variance

application for a second unit as part of an additional kitchen, then we probably could have heard that all tonight. But since it was advertised in a different way --

BRUCE JOHNSON: Your intent is not for a second unit, it's for a second --

MARIA MING: I think because I'm confusing you --

BRUCE JOHNSON: I understand what you're saying.

CHRISTOPHER CHAN: I think the only way you can actually get a kitchen in there is if you have it as a second unit that's what is probably the case.

MARIA MING: So I guess in your vocabulary what does it mean by advertising? Do I have to take out an ad in the paper, is that what you meant?

CHRISTOPHER CHAN: No.

MARIA MING: No.

CHRISTOPHER CHAN: They advertise

the case when they post it for a variance so all your neighbors can know what's happening.

MARIA MING: Oh, okay.

CONSTANTINE ALEXANDER: You file the application. The city advertises in the paper, the legal notice. The city notifies abutters and abutters of abutters.

MARIA MING: Okay.

TAD HEUER: And they'll give you a sign to physically put on your property.

MARIA MING: No, I realize that. Okay.

TAD HEUER: That's part of the advertising.

MARIA MING: But I just didn't know the process. Obviously I'm new to this particular process. It's not to take up more of your time of the evening. I really need to know what's going on here because the place has not been not

liveable for a year and a half and it's not funny paying the bills. That's all.

So where are we? And what should I do?

CONSTANTINE ALEXANDER: Well, I would suggest what you should do is we continue this case tonight because it's not been properly advertised. You've got to file the appropriate application with the -- either for an appeal of the building department decision about the second unit or seeking a variance. And then we'll hear the case as a variance, or depending which way you go, and an appeal case or a variance case. It will be properly noticed. The neighbors and the City at large will know exactly what the case is about, which I don't know now from the improper advertising. And it will continue -- will consider the case on the merits.

TAD HEUER: The FAR is properly

before us if we choose to proceed,
correct?

CONSTANTINE ALEXANDER: Yes, the
FAR is properly before us.

MARIA MING: Okay. That's the
issue. Just to button this up a little
bit in my mind. The fact that a second
kitchen is being put in the townhouse
creates the fact by the virtue that I want
to put that second kitchen which means
that I -- it's being interpreted as doing
a second unit. Is that what it is?

CONSTANTINE ALEXANDER: That's our
Zoning By-Laws.

BRUCE JOHNSON: You've got two
choices about how to go about that now.
You can appeal or you can apply for the
second unit.

MARIA MING: I didn't understand
as sort of a single unit owner to ask for
a second kitchen creates that kind of an
interpretation, No. 1. And No. 2, never

intended to do that in the first place really puts me in a position not understanding it. So, it's neither here or there at this point I guess. So if you can take care of the FAR issue, and then I can move on this issue based on what you guys told me tonight.

CHRISTOPHER CHAN: So we want to hear the FAR petition tonight?

CONSTANTINE ALEXANDER: It's up to her.

MARIA MING: Oh, okay.

CONSTANTINE ALEXANDER: Since you seem to be new to this process, let me explain what you need to do to get the relief you're seeking the FAR so you can address it in your remarks.

To grant a variance, by law, state law and the city of Cambridge's Zoning Ordinance, you've got to prove three things to us.

MARIA MING: All right.

CONSTANTINE ALEXANDER: You've got to show a literal enforcement of the provisions of the Zoning Ordinance.

MARIA MING: Which means what?

CONSTANTINE ALEXANDER: Enforcing it. In other words, enforcing the FAR which you want to exceed.

MARIA MING: Okay.

CONSTANTINE ALEXANDER: A literal enforcement would involve a substantial hardship, financial or otherwise, to you. So, the first is that if we -- if we -- if the city enforce the FAR requirements and not allows you to do what you want to do, that one, creates a substantial hardship to you. That's No. 1. You have to satisfy all three.

No. 2, the hardship that you're suffering is owing to circumstances relating to the soil conditions, shape or topography of the land or structures. And especially affecting such land or

structure, but not affecting generally the zoning district in which your property is located.

MARI MING: Now, not having any academic credential in this area, what you talking about, is that the inside of the building or the outside of the building?

CONSTANTINE ALEXANDER: We're talking about the inside. You want relief on the inside of the building.

MARIA MING: Right. But somehow you have soil --

CONSTANTINE ALEXANDER: That's what the statute requires. If you can't satisfy that, you're not going to get the relief.

MARIA MING: I see. Okay. All right. Well --

CONSTANTINE ALEXANDER: And you have one more test you've got to satisfy, too.

MARIA MING: Okay. Go ahead.

CONSTANTINE ALEXANDER: Granting the relief you're seeking will not create a substantial detriment to the public good.

MARIA MING: Okay.

CONSTANTINE ALEXANDER: Or nullify or substantially derogate from the intent or purpose of the Zoning Ordinance.

That's the state law, that's -- and it's been adopted by Cambridge in its Zoning Ordinance. That's a high burden you have to satisfy. Any petitioner, not just you.

MARIA MING: Okay.

CONSTANTINE ALEXANDER: Anyone seeking a variance has got a hard burden to satisfy. If you can't satisfy that test --

MARIA MING: It cannot be done.

CONSTANTINE ALEXANDER: -- we cannot give you relief.

MARIA MING: I guess it was my

understanding that that was already satisfied through whatever, the Zoning Department or verbal. You know, maybe not.

CONSTANTINE ALEXANDER: Only we can grant a variance.

MARIA MING: Oh, okay. Sure. Absolutely. That's why we have a Board I guess, right? So, I guess, you know, EJ who is the architect who has the expertise hopefully in this area that will satisfy some of the question you may have.

TAD HEUER: Excellent.

EJ KRUPINSKY: So the question to Maria, we can choose not to go ahead with this right now and view it later if we're not -- if we don't feel good enough that we can satisfy these three things.

CONSTANTINE ALEXANDER: That's correct.

MARIA MING: I don't know. What do you think?

My understanding is this meeting only wanted the mathematical calculation. So obviously it's not quite there.

CONSTANTINE ALEXANDER: If you go forward with the FAR, it is the first plush a mathematical computation. You want to go mathematically more than what our Zoning By-Law allows. But for us to allow you to do that, you've got to satisfy the --

MARIA MING: All the items that you cited. So I don't know.

CONSTANTINE ALEXANDER: I suggest that if you're not prepared to really address those, and it doesn't sound like you are because I don't think you have a full understanding of what you have to do. I would suggest you continue. It's a voluntary suggestion to you. And re-advertise and come back with an integrated petition where we consider everything at one time. The kitchen unit,

properly advertised as well as the FAR. I for one would like to consider this as a package and not as a single piece. That's one person speaking. It's your call.

MAHMOOD FIROUZBAKHT: I would agree with the Chair. It's a much more efficient way to look at this project and the plans as a whole and not -- and the FAR separate from the kitchen. Because really if you incorporate the kitchen, it changes the overall concept of what you're proposing with FAR and that would be my sense of it as well.

BRUCE JOHNSON: But we'd reapply for a second unit not a second kitchen is what you're saying?

CONSTANTINE ALEXANDER: Well, the determination that the building department has made is that second kitchen creates a second unit, and two units are not permitted in the zoning district.

BRUCE JOHNSON: If we were going

to appeal that, would we take that up first?

MAHMOOD FIROUZBAKHT: Yes. But you still have to obviously address the FAR issue and you still need a variance on the FAR. So, even if the determination comes on your appeal of the Building Department's determination, you win, and it's incorrect, that it's not a second unit, you still would have to come back to this Board and get a variance on the FAR. You're ending up here anyway.

BRUCE JOHNSON: If we take that route, the appeals to the Building Department and it ends there one way or the other?

CHRISTOPHER CHAN: We hear the appeals.

TAD HEUER: The appeal comes here. That's what we're saying.

BRUCE JOHNSON: We could package that. We could package it that way as

well.

CHRISTOPHER CHAN: That would be two separate things.

TAD HEUER: But we would hear them sequential -- I presume it will be the sense of the Board that we hear them at the same time.

BRUCE JOHNSON: That would work for the Board as well.

CONSTANTINE ALEXANDER: Or you could seek a variance on the kitchen second unit, in which case we'd have one variance case with two pieces. And better advertised as well. And again that's your call not mine.

TAD HEUER: We'd be happy to hear everything packaged together. Normally they would be two different cases, but we would hear it at the same time.

MARIA MING: Okay. I see.

BRUCE JOHNSON: Do you want to do that?

MARIA MING: Yeah, well, that doesn't leave me a lot of options.

EJ KRUPINSKY: Well, knowing also that the owner wants these packaged together, I mean, this home is to be put back in a certain way with additional floor space and this kitchen. So, right now if we go for this other FAR, I think in the owner's mind right now it's watering the main idea of this living home being a single-family and being -- I think there has been -- the process I mean, I didn't know that we could have -- the revised application has a date on it of December 1st, but at that time we were not informed that we could immediately petition that ruling. We get to this point -- it's been a long process. This house has been under construction for a long time. It seems like it's a communications issue.

That said, Maria, I would probably

suggest not going for the FAR at this point because of the whole home as a complete entity that you're looking for.

MARIA MING: Uh-huh. Well, we have to.

BRUCE JOHNSON: How soon can we turn this around if we were -- to be --

CONSTANTINE ALEXANDER: This is a case not heard, right?

MARIA MING: Can you give me sort of a timeline or something in the ballpark so I know what I'm working with?

SEAN O'GRADY: Well, continuing this case isn't the problem. It's marrying this case up with the --

CONSTANTINE ALEXANDER: That's right.

SEAN O'GRADY: -- with the other case. Which requires the decision -- the tactical decision on their part about how they're going to proceed and then new applications. And I don't -- so, you

know, so we have to be cognizant with that.. With all that said, I mean this could be continued to -- let's see, we're -- if, you know, if all the new applications came in tomorrow, we could do this on April 16th. But, you know, I think that's an onerous.

MARIA MING: That's only if everything came in tomorrow, right?

SEAN O'GRADY: Yes. That's an onerous kind of thing here.

MARIA MING: Okay.

SEAN O'GRADY: So, I guess the question is how much time do you think you need to put together to make your decision on how you would like to proceed and given the --

MARIA MING: Well, given what I just heard, it's completely put me in a funk. I'm totally distraught with the process. So, I'm going to have to make a very painful decision. Irregardless of

all the money that's already been spent, but I don't know.

CONSTANTINE ALEXANDER: If we're going to continue the case, we have to pick a date. We can push it farther out if you need more time.

MARIA MING: I can't even afford any more time. I have another piece of property here. You know what, we pay taxes in the city. This is ridiculous.

CONSTANTINE ALEXANDER: Well, I'm sorry, I'm going to have to address that. The case started when you didn't -- that site has been vacant for months.

MARIA MING: No, no.

CONSTANTINE ALEXANDER: Wait, wait. The sign -- the first time the case was coming before us, you didn't even post the sign.

MARIA MING: Say that again.

CONSTANTINE ALEXANDER: The first time we were to supposed to hear this case

there was no sign posting and we had to continue the case because you didn't --

MARIA MING: Wait, wait, wait.
What kind of sign?

CONSTANTINE ALEXANDER: You didn't post a sign. If you come before our Board, the Zoning Ordinance requires that you put a sign, for a certain amount of days, on the property in front of --

MARIA MING: Oh, I should put a sign there?

CONSTANTINE ALEXANDER: Yes, you should put a sign there.

MARIA MING: I didn't know that.

CONSTANTINE ALEXANDER: Well, if you're going to seek relief before our Board you have an obligation to --

MARIA MING: I don't mean to be flip, but I wasn't told by the Board or anybody from the Building Department to put a sign. I've been talking to everybody in the Building Department. So,

you know --

BRUCE JOHNSON: They were communicating that with us.

MARIA MING: Oh, okay. Okay. Let me take myself out of the picture.

BRENDAN SULLIVAN: Somebody picked up a sign --

MARIA MING: There's a sign there now.

BRENDAN SULLIVAN: -- on 10/23.

MARIA MING: Okay.

BRENDAN SULLIVAN: That sign never got posted.

MARIA MING: Oh, I see. Is it coming to me?

EJ KRUPINSKY: No, we posted it.

CONSTANTINE ALEXANDER: You or your representatives.

MARIA MING: Oh, okay. Fine.

CONSTANTINE ALEXANDER: So let's pick a date.

MARIA MING: Okay.

CONSTANTINE ALEXANDER: When would you think you'll want to hear or come back before us?

EJ KRUPINSKY: I would suggest the earliest next date.

SEAN O'GRADY: When do you think you can have your packages in is the real question?

CHRISTOPHER CHAN: Continuance is not an option.

EJ KRUPINSKY: Is this a specialty item that we can actually have the Board hear it? Which we would greatly appreciate.

SEAN O'GRADY: Okay. You've decided to put off the FAR so you can bundle it with the kitchen?

EJ KRUPINSKY: Right.

SEAN O'GRADY: So now the FAR is ready to roll but the kitchen issue isn't ready to roll. So, you have to make a whole new filing. First of all, you have

to decide whether you want to appeal or not. And then you've got to decide whether or not you want a variance or not. And then you've got to get those packages to us.

And there's things to think about in there. It's not just a no-brainer because you're trying to meld two packets together. Then once you get that package to us, then you're going to get on the next available date. And that's a rolling date so we don't know for sure. So --

BRUCE JOHNSON: So we can't set a date now.

SEAN O'GRADY: We're going to have to set a date now. But the thing is is it all depends on -- if you say to me I can have that package to you by next Friday, I can say one thing. And if you say can you give us a month to pull it all together, and our arguments and our legal arguments, and we'll give you another date. But we

have to be realistic and it all depends on you guys when you can get the --

MARIA MING: And the earliest date that you just mentioned is in April, right? Is that what you said?

SEAN O'GRADY: If you had a package to me tomorrow, then I believe I can put you on April 16th.

MARIA MING: So nothing would happen before April 15th no matter what?

SEAN O'GRADY: No, there's no available date before then.

MARIA MING: All right. Fine.

CHRISTOPHER CHAN: It's not availability. It has to do with the posting schedule. It's different. It's not just because there's not --

MARIA MING: No, no.

CHRISTOPHER CHAN: The sign has to go up. It has to be advertised in the paper.

MARIA MING: So, the sign is

critical in terms of --

CHRISTOPHER CHAN: There are legal things that have to happen.

BRENDAN SULLIVAN: It's public notice.

MARIA MING: Okay, it's public notice. Well, I personally was not aware of that until you just alerted me.

CONSTANTINE ALEXANDER: What I suggest to you is April 16th is -- if you make a decision tomorrow and got your papers in tomorrow, probably not going to happen. Why don't we pick -- the next meeting is two weeks later. Why don't we pick that day which is the first one in May.

SEAN O'GRADY: April 30th.

CONSTANTINE ALEXANDER: April 30th. Why don't we pick April 30th?

MARIA MING: Okay.

CONSTANTINE ALEXANDER: That gives you a little bit more time.

MARIA MING: That's fine. And we can move that date and see what happens. Okay.

CONSTANTINE ALEXANDER: Are we ready for a motion to continue the case?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: The Chair moves that case No. 9729 be continued until seven p.m. on April 30th. We have a waiver of notice, so we don't need a new waiver of notice. On the condition that, the sign that's up on your building right now, take a magic marker and whatever date it shows for the hearing, today's date, you scratch it out --

MARIA MING: I should do that?

CONSTANTINE ALEXANDER: You do that.

MARIA MING: I should do that?

CONSTANTINE ALEXANDER: One of the three of you sitting on this side of the table.

EJ KRUPINSKY: We've done it already two times on the sign.

MARIA MING: I didn't know. Okay, for me to do it, you know what I'm saying?

CONSTANTINE ALEXANDER: Put April 30th on the sign.

MARIA MING: Okay.

CONSTANTINE ALEXANDER: All those in favor of granting continuance --

MAHMOOD FIROUZBAKHT: As a case not heard.

CHRISTOPHER CHAN: A case not heard.

CONSTANTINE ALEXANDER: A case not heard by definition.

All those in favor of granting a continuance.

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Chan, Heuer, Firouzbakht.)

MARIA MING: Thank you.

CONSTANTINE ALEXANDER: Thank you.

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

(8:30 P.M.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Christopher Chan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9753, 160-162 Hancock Street.

Is there anyone here on that petition? For the record, please give your name, address and spell your name, please, for the record, sir.

MARK BOYES-WATSON: Mark Boyes-Watson, Boyes-Watson Architects, 30 Bow Street, Somerville. B-o-y-e-s - W-a-t-s-o-n.

SAMUEL BROOKS: And my name is Samuel S. Brooks, 11 Hampshire Road, Wayland, Mass.

CONSTANTINE ALEXANDER: Are you the contractor?

SAMUEL BROOKS: I am the owner. I

am the owner of the house. I'm a contractor, too, but not that kind of a contractor.

CONSTANTINE ALEXANDER: Okay. Sorry.

SAMUEL BROOKS: And this is a house I've owned for 40 years. And it's been a rental and --

CONSTANTINE ALEXANDER: Before we get to the merits, are you going to speak?

SYLVIA SUNE: My name Sylvia Sune, with Boyes-Watson Architects.

CONSTANTINE ALEXANDER: The floor is yours or yours. Why are you here and what relief are you seeking?

MARK BOYES-WATSON: We're here because we have a house here at the corner of -- it's 160-162 Hancock Street. And it's on the corner of Hancock Street and Hancock Park. And we've been through to the mid-Cambridge Historical and we've done a lot of work with them. And

basically it's a four-family house, and it's going to remain a four-family house and it's getting turned into a condominium and there are some improvements being made mostly to the inside of the house in terms of reconfiguration. But because of its corner position actually -- so it's sort of a, it's one of those symmetrical about it central-access house, and so it takes advantage of the corner of Hancock Park and Hancock Street. Aware, of course, you're allowed to make any changes you like on the front facade. So on the left-hand side we've made those changes, not a problem with Zoning. And mid-Cambridge is very happy with this renovation. But on the right-hand side, the side yard setback is non-conforming. So for zoning, if we were to make the same changes that we're making on Hancock Park, we would need relief from the Board and that's what we're here for today, is to

ask for relief to make the facade on this, the side yard setback side, the same as on the Hancock Park side.

And Sam has met with the neighbors, and obviously in the mid-Cambridge process we've been meeting the neighbors anyway, to make sure that those -- and I'll go through exactly what we're doing.

We're basically adding windows and relocating some windows on that one elevation. And so that's the relief. And Sam's been working with the neighbors to make sure that they're happy with everything. Which they -- I am hoping that they sent you some correspondence.

CONSTANTINE ALEXANDER: There wasn't anything in the file a day or so ago. I don't think there's anything in the file.

SAMUEL BROOKS: Oh, he's going to hear from me. This is the neighbor on this particular side, the side that we're

talking about.

CONSTANTINE ALEXANDER: Right.

SAMUEL BROOKS: He and his wife -- she teaches at Harvard, but she's out at Stanford teaching now and their house is empty and they're away, and I've been talking to them -- we went over what we're doing here. I said, look, I -- does this meet -- is this okay with you? And he asked me, you know, are you gonna do this, are you gonna do that? And I said, yeah, there's nothing here that's complicated. And so he said well -- and I said I'd like you to send a letter to the ZBA, not that you don't have a problem with it, but that you endorse it. He wants me to leave -- there's a little cherry tree there or something, or there's two trees that they like. And he said, I'll even -- I will even maintain those trees if you leave them there. I said, we don't have any problem leaving them there. So, he said

he was gonna send you a -- I said -- I asked him for an endorsement. And he said he would. But....

MARK BOYES-WATSON: So I think that's very good. So I'll jut point out to you exactly what those are, those changes.

CONSTANTINE ALEXANDER: Is this the same?

MARK BOYES-WATSON: It's exactly the same as that one, which is the same as what was approved. Just so I can see it.

So here at the top you have what it is now (indicating). And here at the bottom you see what it's going to be (indicating). And you can see that there are more windows.

CONSTANTINE ALEXANDER: Right.

MARK BOYES-WATSON: And that -- you see that there's a -- actually, there always was sort of a rear entrance here (indicating), which actually we're moving

so that it comes out this door. And that's all to do with the internal planning.

And that the -- and we're adding -- where there was one window, there will be two windows. Where there's just this window, we're putting two windows. Because what's basically happening here is this is the living rooms. This is the living room. And up here there's a bedroom for this unit.

And then over here we are basically replacing this door with a window. So basically opening it ever so slightly. Up here, these windows, the small windows, will be reconfigured so they come over a little bit. So actually there's one window added here. So I think that any change, any increase or movement of openings is under the jurisdiction of the Board.

CONSTANTINE ALEXANDER: Just

because it's non-conforming --

MARK BOYES-WATSON: Because it's non-conforming --

CONSTANTINE ALEXANDER: -- and a Special Permit case, not a variance case?

MARK BOYES-WATSON: Certainly. It's not super close, and I'm -- I'm sorry, do you remember what the distance is? It's not super close to that property line, but in red C1 it's a formula calculation that's a fairly substantial facade. So it is -- although it's not like right next to the neighbor, it's -- at the bay it's eight and at the regular facade it's 11 foot 4. Typical for the neighborhood. But it is non-conforming.

CONSTANTINE ALEXANDER: Why are you adding windows to the basement?

MARK BOYES-WATSON: There is -- the way that this works is that the units are configured first in basement and second, then attic.

CONSTANTINE ALEXANDER: So the basement is being used for living space?

MARK BOYES-WATSON: Yes, it is.

TAD HEUER: And the bedrooms are the basement and the third main floor?

MARK BOYES-WATSON: We have a master bedroom behind these windows on the first floor. For the unit that's down here, there's this and basement. We have -- behind here is a master bedroom. And then the subsidiary basements are in the basement. There's three subsidiary rooms in the basement.

So these -- see those dotted lines -- and I should have pointed those out -- those are windows. They don't show because they're below.

TAD HEUER: Okay.

MARK BOYES-WATSON: And this is using all of the existing square footage in the building, so we're not here for an FAR variance, it's simply adding a --

BRENDAN SULLIVAN: So it's a need to add much -- well, it's a desire to add much needed (inaudible) --

MARK BOYES-WATSON: Exactly.

BRENDAN SULLIVAN: There's inadequate lighting right now.

MARK BOYES-WATSON: And it lights the rooms. And because some of the room uses have changed, the needs of those rooms behind it have changed.

CONSTANTINE ALEXANDER: My question was it was not being used for living purposes now, the basement --

MARK BOYES-WATSON: No.

CONSTANTINE ALEXANDER: -- and you were planning to do that that's why you wanted additional windows.

MARK BOYES-WATSON: It was a -- it's a very, very lovely deep basement now.

TAD HEUER: Just a quick question on the rear, I noticed it said, there

seems to be a porch?

MARK BOYES-WATSON EFT: This canopy?

TAD HEUER: Yes. Is that being moved down?

MARK BOYES-WATSON: No.

TAD HEUER: All right. So there's no --

MARK BOYES-WATSON: Well, you're looking at those two things. I'm not sure -- yes, actually it was --

TAD HEUER: If there was a door being moved there?

MARK BOYES-WATSON: There is actually a door that -- see all these decks? They're not there anymore in this scheme. These don't require relief. But actually we did drop that down so it's a half landing so that the units on the second and third can get a basement storage space.

TAD HEUER: Okay.

MARK BOYES-WATSON: So they can come in and put their bikes there and their skis and those kinds of things.

TAD HEUER: Okay.

MARK BOYES-WATSON: It actually isn't on the facade that's requiring relief but that's what's going on there.

TAD HEUER: I understand. Okay.

CONSTANTINE ALEXANDER: You had a question, Chris?

CHRISTOPHER CHAN: The neighbor on that side, how far inside their property is the house on that side?

MARK BOYES-WATSON: They are -- I don't have a scientific -- I have a little assessor's map here. Do you know --

SAMUEL BROOKS: What was the question again?

MARK BOYES-WATSON: How far away is that neighbor's house?

CHRISTOPHER CHAN: It was eight feet to the bay and 11 feet to your house.

And how far is the neighbor's house? How far are you from the neighbor's basically?

MARK BOYES-WATSON: From our property line to them would you say?

SAMUEL BROOKS: Oh, 20 feet. I mean, his driveway is eight.

CHRISTOPHER CHAN: You better look at that plan.

MARK BOYES-WATSON: Careful about angling that tape.

CONSTANTINE ALEXANDER: Is there a driveway between your side of the house that you're making the changes to?

MARK BOYES-WATSON: Right here.

SAMUEL BROOKS: Our driveways are both together.

MARK BOYES-WATSON: So we have this corner. And we --

CHRISTOPHER CHAN: So maybe another five or six feet it looks like.

MARK BOYES-WATSON EFT: No, I think eight.

SAMUEL BROOKS: No, it's got to be wider. He parks two cars there. That's not --

MARK BOYES-WATSON EFT: Down here, yeah. So basically, basically, this one is ours and he actually has a driveway right here as well.

SAMUEL BROOKS: And it's wide.

MARK BOYES-WATSON: And in fact, it's part of this as it is now. There is no fence or anything on this land because there really wouldn't be room for the two cars. So, it's really kind of -- almost like a shed driveway situation there so that he can open his doors. But that's it. But it's actually a very nice open space behind these houses, so generally it's pretty nice.

CHRISTOPHER CHAN: So it's probably --

MARK BOYES-WATSON: The thing is he's on the south, those are his north

windows.

CHRISTOPHER CHAN: Okay.

TAD HEUER: And the Cambridge Historical had list of conditions that are -- I mean, I'm sure that the Chair will read them -- that are listed as non-binding. Are you willing to have those conditions be made binding as a condition of our grant?

MARK BOYES-WATSON: Well, we'd rather not.

CONSTANTINE ALEXANDER: You may not have a choice.

MARK BOYES-WATSON: Actually, you're going to bind -- what would be nice would be to bind only this elevation, not the entire thing if you would.

TAD HEUER: Okay. Yes, yes.

SAMUEL BROOKS: Originally we would --

MARK BOYES-WATSON: But to make it so that everything about -- what would be

better for us because you know how that gets. And it makes it easier I think for Sean, if -- that we make sure that nothing that we move or alter is anything different than this facade.

TAD HEUER: And this all complies with the conditions --

MARK BOYES-WATSON: And this is already in compliance, exactly.

TAD HEUER: Okay.

MARK BOYES-WATSON: The elements of this are already in compliance with that. It's the same drawings. That would be better than just globalizing the thing.

TAD HEUER: I understand.

SAMUEL BROOKS: Globalizing becomes a new -- a new word for it.

MARK BOYES-WATSON: If that's all right. But we -- and because we have no intention, of course, of not doing anything in their non-binding -- we actually did -- went through a process and

we treated it, for the record, exactly as if it was binding with them anyway. We behaved no differently than if it was binding. And so I don't want the commission to feel that we're sort of doing a bait and switch on this. It is actually non-binding, but we worked with them actually -- we could, actually speaking with them, ignore what they're doing. But it would be better with us if we only bind this facade.

CONSTANTINE ALEXANDER: Questions, Mahmood?

MAHMOOD FIROUZBAKHT: No questions.

CONSTANTINE ALEXANDER: Brendan?

BRENDAN SULLIVAN: All set.

CONSTANTINE ALEXANDER: Tad?
Chris?

I can testify for the record that there is no one in the audience who wishes to be heard on this case. There is no

correspondence in the file, and there is a certificate of appropriateness from the mid-Cambridge Neighborhood Conservation District Commission.

Comments? Or ready for a vote?

BRENDAN SULLIVAN: All set.

CONSTANTINE ALEXANDER: Okay. I'm ready to make a motion.

The Chair moves that a Special Permit be granted to the petitioner for the relief being sought on the grounds that it's not going to create any traffic generation or cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation of adjacent uses will not be adversely affected by what you're proposing to do. That what you're proposing to do will not create nuisance or hazard to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the

citizens of the city. And that granting your relief would not impair the integrity of the district or adjoining district or otherwise derogate the intent or purpose of this ordinance.

The Board reaches its conclusion on the basis that the proposal is modest in nature. It is in the nature of a Special Permit. That what's happening is basically relocation of a door and windows.

There's no neighborhood opposition, particularly the neighbor most affected. At least that person has not expressed any opposition here before our Board. And it has been represented to us that the neighbor is generally in favor of what's being proposed.

A Special Permit would be granted on the condition that the work be done in accordance with plans submitted by Boyes-Watson Architects. They're dated

December 17, '08. They are numbered 0001, front and back; 02 I suppose, it's not marked; 03, 04, 05, 06 and 07. And initialed by the Chair.

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

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Chan, Heuer, Firouzbakht.)

MARK BOYES-WATSON: Thank you very much. Have a great evening.

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

(8:45 P.M.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Christopher Chan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9754, 72 Grozier Road, G-r-o-z-i-e-r.

Is there anyone here in connection with that matter?

ELLEN KURZ: I own the house my mother and father --

CONSTANTINE ALEXANDER: Give your name, spell it --

ELLEN KURZ: Oh.

CONSTANTINE ALEXANDER: -- and address so our stenographer can take it down.

ELLEN KURZ: Ellen Kurz K-u-r-z.

MAGGIE BOOZ: And I'm Maggie Booz B-o-o-z. I'm the architect for the project.

We're seeking relief from both FAR and setback of this property. We are requesting permission to build an addition on the side of the house. It's approximately four feet by nine feet, and it is in order to expand an existing bathroom. It's a full bathroom now, but it's in order to make the bathroom handicapped accessible.

CONSTANTINE ALEXANDER: And the relief you're seeking, the zoning problems you have are two fold in nature as I recall.

MAGGIE BOOZ: Yeah. We have an existing non-conforming house in terms of the floor area ratio and we're violating a setback.

CONSTANTINE ALEXANDER: And the

increase in the FAR, because it's only about 35 square feet, is you're going to go from .78 to .785 in a district that's bifurcated .5/.35 --

MAGGIE BOOZ: .35.

CONSTANTINE ALEXANDER: --
district. So it's very, very slight increase in FAR.

MAGGIE BOOZ: It's very slight.

CONSTANTINE ALEXANDER: And the setback, you're required is 7.5 according to what you have in your dimensional form. You're now at eight feet. And if we grant you the relief, you're going to be 3.2 feet from the side yard.

MAGGIE BOOZ: That's right.

CONSTANTINE ALEXANDER: The neighbor who's most affected by that (inaudible). Have you spoken to that neighbor?

ELLEN KURZ: My husband spoke to him briefly. He's more concerned that I

get rid of my air conditioner which is noisy.

CONSTANTINE ALEXANDER: That can happen from doing this relief?

ELLEN KURZ: I'm just joking, but yeah, he knows, yeah.

CONSTANTINE ALEXANDER: So that person has no objection to the --

ELLEN KURZ: Well, if he does, he didn't tell me.

CONSTANTINE ALEXANDER: Okay. That's fair enough.

TAD HEUER: I have one --

MAGGIE BOOZ: Nor did he -- yeah. Sorry.

TAD HEUER: Just one minor question. It's building into the side where there's a driveway; is that right?

MAGGIE BOOZ: No. Actually, the driveway is on the opposite side of the house.

TAD HEUER: Oh, this is a rear

elevation. Okay. My only --

MAGGIE BOOZ: There is -- the neighbor's driveway is on that side of the house.

TAD HEUER: Yes. Creating this doesn't affect their parking or any kind of situation with that driveway?

MAGGIE BOOZ: No, no. No, it's not. This is all obviously totally on Ellen and Tom's property.

CONSTANTINE ALEXANDER: One of the issues, of course, one of the reasons you have setback requirements is privacy to the abutter, because you're getting too close to the lot line. And privacy can get mostly invaded in which you've got windows in which you're proposing to do that looks out onto your neighbor's property. As I recall from the plans, there are no windows in the addition?

MAGGIE BOOZ: There's a window but it faces the street.

CONSTANTINE ALEXANDER: Not facing the neighboring lot, it faces the street.

MAGGIE BOOZ: For that exact reason, yeah.

CHRISTOPHER CHAN: And is the driveway adjacent on the driveway side?

MAGGIE BOOZ: The driveway is on the neighbor's side, on that side.

CONSTANTINE ALEXANDER: Questions from members of the Board?

BRENDAN SULLIVAN: It is the only practical realistic place to put the bathroom.

MAGGIE BOOZ: It is. I mean --

BRENDAN SULLIVAN: There's one there now. And it's totally impractical and unreasonable to shift it to another location.

MAGGIE BOOZ: It is. I mean, we did look at that. We looked at various options for trying to push the bathroom into the house. You know, the thing is, I

mean as you know, accessible bathrooms are fairly large. We're trying to keep it -- you know, it's not actually accessible in terms of public bathroom. You know, it wouldn't be considered completely accessible. But Ellen's father can manage it we think. He's very, he's a very tall man.

BRENDAN SULLIVAN: And he's chair bound, is he?

MAGGIE BOOZ: He walks.

ELLEN KURZ: He can walk from his wheelchair to his walker. But like he's not independent. He can't just walk around.

BRENDAN SULLIVAN: Right.

ELLEN KURZ: And it could get worse. You know, he's in a wheelchair.

BRENDAN SULLIVAN: So he requires assistance?

MAGGIE BOOZ: He can't shower alone.

ELLEN KURZ: Right, exactly.

TAD HEUER: But this is designed to allow -- a wheelchair could -- could a wheelchair navigate the bathroom?

MAGGIE BOOZ: I think a wheelchair could navigate the bathroom.

ELLEN KURZ: It could. I mean, she knows that because I don't know those numbers. But I do know that I mapped out the bathroom and the way he uses his bathroom now, he could use this bathroom. He can't visit us and he can't live here unless he has a place to go to the bathroom..

TAD HEUER: Right. I guess my only question is whether you had considered possibly moving -- having more space on the --

ELLEN KURZ: We did.

TAD HEUER: -- you know, whether more space not on towards the lot line but

further out along parallel to the house in order to provide any space that was necessary --

MAGGIE BOOZ: Oh, in a linear direction?

TAD HEUER: Yes.

MAGGIE BOOZ: And that's the problem. The accessible bathroom doesn't really allow you to move in that direction.

TAD HEUER: Okay.

MAGGIE BOOZ: I mean, the trouble is it almost creates a square every time you try to make one, because you have to have this five foot circle in the middle of it.

TAD HEUER: I was going to say, you know, you think the problem is going to get worse. Is it easier for us to give you marginally more square footage now so you don't have to go through this again to add more square feet a year from now?

ELLEN KURZ: Yes.

MAGGIE BOOZ: I think this will be sufficient --

ELLEN KURZ: But why not?

MAGGIE BOOZ: -- if he's completely wheelchair bound.

ELLEN KURZ: But what are you saying? Why not?

MAGGIE BOOZ: Because what it would do -- all we would be able to do is move in this direction. And we can't really --

ELLEN KURZ: But why not just take it? Why not just take --

CHRISTOPHER CHAN: Because it's not drawn.

MAGGIE BOOZ: It's not drawn. And it actually -- I'm not sure it will really help you.

ELLEN KURZ: Got it.

MAGGIE BOOZ: You'd have to also dismantle the kitchen.

ELLEN KURZ: Oh, okay.

MAGGIE BOOZ: So that's part of the problem.

ELLEN KURZ: I understand.

CONSTANTINE ALEXANDER: And these plans are in the file, these are the plans that you're --

MAGGIE BOOZ: They are.

CONSTANTINE ALEXANDER: You haven't changed them at all?

MAGGIE BOOZ: Not at all.

CONSTANTINE ALEXANDER: Any comments? Ready for a vote?

Are you here on this petition, sir?

MALE AUDIENCE MEMBER: I'm a neighbor, I'm listening.

ELLEN KURZ: He's my neighbor.

CONSTANTINE ALEXANDER: Do you wish to speak?

MALE AUDIENCE MEMBER: No.

CONSTANTINE ALEXANDER: Let the record show there was a neighbor here but

did not wish to speak.

I think we're ready for a vote. I should point out there seems to be no letters in the file one way or another on this matter.

The Chair moves that a variance be granted to the petitioner to allow work to proceed as proposed on the grounds that a literal enforcement of the Zoning By-Law would involve a substantial hardship. The hardship being that you would not be able to construct or have in the structure basically a handicapped accessible bathroom as necessary for the occupants of the structure.

That the hardship is owing to the circumstance related to the shape of the building. The shape being such that it is a non-conforming structure. And, therefore, any relief requires zoning relief.

That the nature of the relief being

sought is very minor in nature. It's only approximately 36 square feet.

That there is no neighborhood opposition to this. That it allows better liveability for the structure with the bathroom of this sort. And by the way, it's also a bathroom that cannot be located apparently anywhere else on the structure, at least in a desirable a way as this one.

And that granting relief will not derogate from the intent or purposes of the Zoning By-Laws.

Again, we're talking about a modest addition in a neighborhood that is not incompatible with the structures in the neighborhood in terms of size or location on the lot.

This variance is granted on the grounds that work proceed in conformance with plans submitted to the Board by Lord Architecture, dated October 24, 2008. And

they're numbered A-3.0, A-7.0 and A-70.1 and initialed by the Chair.

All those in favor of granting the relief on the basis proposed?

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Heuer, Chan, Firouzbakht.)

MAGGIE BOOZ: Thank you.

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

(8:55 P.M.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Christopher Chan, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9755, 195 Binney Street, also known as 265 Third Street.

Is there anyone here on that petition?

RICHARD McKINNON: Yes, sir.

ATTORNEY DEBBIE HOROWITZ: We are.

CONSTANTINE ALEXANDER: We keep a transcript. So, please spell your name -- give your name, spell it and your address for the benefit of the stenographer.

RICHARD McKINNON: My name is Richard McKinnon and I live at One Layton Street at North Point in Cambridge. That's M-c-K-i-n-n-o-n. And this is --

ATTORNEY DEBBIE HOROWITZ: I'm

Debbie Horowitz H-o-r-o-w-i-t-z. I'm with Goulston and Stores in Boston representing the applicants.

CONSTANTINE ALEXANDER: The Board is yours.

RICHARD McKINNON: We could do a very quick presentation. Would you like me to use the boards? I'm going to try to keep it under three minutes.

TAD HEUER: Excellent.

RICHARD McKINNON: Okay? Nobody ever wants the long version, Mr. Chairman.

About a year ago Archstone was asked me to represent them in a land exchange that they were going deal with Alexandria Real Estate. This is sort of the wide view of where we are.

Our building is over here (indicating). The Archstone Kendall Square apartment building. It has a parking lot across the street on the other side of Third Street.

Alexandria, as you know, is doing a very large zoning down there, it was just adopted Monday night. They proposed this large area as a 2.2 acre park. And people in East Cambridge thought it would be nicer if this were right field or left field instead of our parking lot. So, they asked me to negotiate an exchange and we agreed to go ahead and do that, try to get out of that proposed park.

The exchange that we wound up getting to is we have -- our own parking lot is going to come over here (indicating). The large stone parking lot we have right now, those two are going to flip. This is going to be the new parcel of land that we will park on. The proposed conditions then become like this.

Here is our existing parking -- our existing apartment building (indicating). This then becomes our new parking lot instead of being across the street. For

us it's a better piece of land,
Mr. Chairman. It puts us on the same side
of the street as our apartment building.

CONSTANTINE ALEXANDER: You're
closer, too.

RICHARD McKINNON: It's closer.
That's 86 people that don't have to cross
the street back and forth everyday. And
it gets us out of -- Jim, it says the New
Alexandria parking lot. I'm going to
erase the i-n-g l-o-t. I think it's going
to be the new Alexandria Park. It's going
to be their parking lot for the time
being.

So that is what the plan is, and
it's a large petition that they're doing,
it's a very ambitious. But for us it
really comes down to, we need obviously a
place to park our cars. We got a good
place, but we can't do that without the
Board's permission. And that's why we're
here tonight.

BRENDAN SULLIVAN: What's the net gain in square footage for the new lot, do you know, from the old?

RICHARD McKINNON: It is. It's by about 3,000 square feet. But that's only so that we can accommodate all of the same parking spaces precisely according to your code. That is what I wanted to negotiate. That the parking lot, take the same number of spaces, but it be conforming to the City's parking code.

CONSTANTINE ALEXANDER: So you're going to swap 78 spaces on one parcel for 78 spaces on a different parcel -- a closer parcel?

RICHARD McKINNON: On a closer parcel, that's right.

ATTORNEY DEBBIE HOROWITZ: On a closer parcel, right. And one that conforms.

RICHARD McKINNON: And one that's legal that actually has the spaces, the

spaces that are appropriate.

Debbie is going to explain just briefly the legal Special Permit that we're asking for.

CONSTANTINE ALEXANDER: Let me ask you a question, though. That parcel, the new parking lot, it's owned by the people who own Archstone Kendall, yourself, I guess it is.

ATTORNEY DEBBIE HOROWITZ: This?

CONSTANTINE ALEXANDER: Yes.

RICHARD McKINNON: It's owned by Alexandria.

ATTORNEY DEBBIE HOROWITZ: It will be, yes.

CONSTANTINE ALEXANDER: Okay. How do we protect ourselves, and we grant you relief so the people in the apartment house can park in that parking lot, and down the road, maybe after you sell the property to somebody else, the owner of that property, what's called parcel 2

decides to build on that.

ATTORNEY DEBBIE HOROWITZ: Then this would be non-conforming.

CONSTANTINE ALEXANDER: I know. But the person who owns parcel 2 doesn't -- how do they know that basically that property is dedicated to parking for the apartment house?

ATTORNEY DEBBIE HOROWITZ: This will be owned by the same people.

CONSTANTINE ALEXANDER: You could always separate them.

ATTORNEY DEBBIE HOROWITZ: You can always separate them. You can make it a condition of the permit and that will be recorded in the record.

CONSTANTINE ALEXANDER: That's what I'm moving toward.

ATTORNEY DEBBIE HOROWITZ: Yes.

CONSTANTINE ALEXANDER: You would have no problem if we did that?

ATTORNEY DEBBIE HOROWITZ: Right.

You want me to do the 30 seconds --

CONSTANTINE ALEXANDER: 30 seconds would be fine.

RICHARD McKINNON: Mr. Chairman, I went three minutes and 15 seconds by that last question.

ATTORNEY DEBBIE HOROWITZ: Both parcels, the existing lot and the new parking lot are in the A -- Industrial A-1 District. So the use -- the multi-family use is permitted.

The standards, you guys know the standards better than I do. So, I'll lump them together quickly just because the first standard is you guys obviously have to make a determination that what we're proposing won't be a detriment to the public interest.

The first standard is that we can otherwise make the requirements of the ordinance. We just talked about that. The new parking lot will meet the

requirements of the ordinance.

BRENDAN SULLIVAN: 6.22. In other words, you're complying with that.

CONSTANTINE ALEXANDER: You're asking a Special Permit. You're not seeking --

ATTORNEY DEBBIE HOROWITZ: We're seeking a Special Permit to be able to park across the street, to be able to park across Rogers Street under 6.22.2.

CONSTANTINE ALEXANDER: And 6.22.2 just for the record, says that you -- it says, the Board of Zoning Appeal may grant a Special Permit for the off-site accessory parking lot not allowed. Not on another section.

ATTORNEY DEBBIE HOROWITZ: Right.

CONSTANTINE ALEXANDER: Provided that can be in a safe access on the parking facility to the use being served if provided in accordance with the following conditions:

A, no off-site accessory parking facility may be located on a lot which is a more restrictive building classification than the lot in which the use is being served is located. And you pointed out the same.

ATTORNEY DEBBIE HOROWITZ: Right.

CONSTANTINE ALEXANDER: That doesn't apply.

B, off-site accessory parking facility shall be located within 400 feet of the lot being served for residential purposes --

ATTORNEY DEBBIE HOROWITZ: And we got --

CONSTANTINE ALEXANDER: -- or within 1,000 feet of the lot for the purpose. So you serve that.

ATTORNEY DEBBIE HOROWITZ: 45 feet.

So not only do we comply with that -- the requirements for under Section

6.22.2, but the lot, the parking lot resulting will also comply with the other requirements of the Zoning Ordinance.

CONSTANTINE ALEXANDER: When we grant relief, we do it in accordance with plans and the like. I see this three-page plans --

ATTORNEY DEBBIE HOROWITZ: Yes.

CONSTANTINE ALEXANDER: -- that's the plan that you're working with?

ATTORNEY DEBBIE HOROWITZ: Yes, sir.

CONSTANTINE ALEXANDER: That's consistent with what you showed us?

RICHARD McKINNON: That's right.

ATTORNEY DEBBIE HOROWITZ: He just wanted to do pretty pictures with colors. Then he could take three minutes and 15 seconds.

RICHARD McKINNON: I'm going to keep my mouth shut, Mr. Chairman.

ATTORNEY DEBBIE HOROWITZ: So,

just to quickly run through the -- the next three conditions are really the same answer. The traffic generated. Access and egress won't cause congestion, hazard or substantial change in the neighborhood character. The continued operation of the -- and/or development of adjacent uses won't be adversely impacted. And we won't be creating a nuisance or hazard. This is obviously an existing use. We're not creating any new parking spaces in number, any new units. Same number of cars, same number of people serving an existing use consistent with the existing neighborhood because it's already there by definition.

And then the last test is that for other reasons the proposed use won't impair the integrity of the district or the adjoining neighborhood, or otherwise derogate the intent for the purpose of the ordinance. Same kind of answers, you know, we're consistent with the Zoning

Ordinance. Multi-family use is permitted. That's what we're doing, that's what we're going to continue to do. And in fact some of what we're doing is lessening congestion because we are not having people cross Third Street back and forth, and we're also enabling a new park to be built that will provide a new open -- you know, helping others to provide new open space for the city.

BRENDAN SULLIVAN: So what's generating this whole thing is actually a public benefit?

ATTORNEY DEBBIE HOROWITZ: Correct. That was a much nicer way to put it. I could have done that in 30 seconds.

BRENDAN SULLIVAN: Ten words or less.

ATTORNEY DEBBIE HOROWITZ: Okay.

CONSTANTINE ALEXANDER: Any questions before I take to public comment? Questions?

Tad, questions?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Is there anyone here who wishes to be heard on this petition?

Your name, sir.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman. My name is James Rafferty, and along with William O'Reilly we represent Alexandria Real Estate Equities.

And Alexandria is appreciative of the cooperation that Mr. McKinnon and Archstone and Ms. Horowitz have exhibited here.

So what we've been able to achieve is the existing development has the benefit of a Special Permit by your predecessors to actually allow this parking to be further away than this parking. So, in granting this Special Permit the parking will become more

compliant than is the current case, both in terms of its proximity to the principle use as well as the landscaping requirements that are associated. There's no relief sought from there.

When the Chair mentioned this issue about well conditions and in the future and all that, my only caution is that additional conditions could have unintended consequences. The City or the owner of that parcel some day may conclude that there's too much parking there. That they could avail themselves of a Special Permit that would say reduce the required amount of parking, because there is parking in the base of the building currently. But a current lot doesn't have any such condition associated with it. And I would ask the Board to think carefully about whether they feel it necessary to place any type of a condition on this lot that's different than the

condition on the other lot. That, that parking to the extent it's needed, and I don't know the numbers, that parking is necessary to satisfy the parking requirements associated with the principle use. The ordinance around those requirements could change some day or the owner of the principle use may choose to seek a waiver to reduce it. Because the City as you know has a strong interest in actually reducing parking supplies, I would think the Board wouldn't want to add any condition that might prevent that from happening.

CONSTANTINE ALEXANDER: If we did and I'm not saying we should, but if we did, someone could come back before our Board and get away with it this time. It's not like it would be cast in concrete and it will never get changed.

ATTORNEY JAMES RAFFERTY: No, but I would say that would then add a -- it

could add an impediment or allow someone to do something in the future. To be candid as this -- we've gone through a very long exercise, planning exercise with the City. And as you might expect, surface parking lots are not particularly a favored use. And there was talk about some day someone might envision another use there and that parking could get relocated beneath ground or yet again somewhere else. And I would just offer for the Board's consideration that a condition that doesn't appear to be necessary may provide a complication in the future that couldn't be contemplated tonight.

Thank you.

TAD HEUER: I just have one question.. If we were to impose a condition that said this lot is to be parking to the extent that it is required to meet the conditions of the ordinance

for the existing residential facility, would that provide more flexibility? So to the extent that they need 78 spaces, those 78 spaces shall be dedicated to that unit to the extent that sometime later the City decides in its wisdom that it should be reduced to 50 spaces?

ATTORNEY JAMES RAFFERTY: Well, I suppose in theory, no. But it strikes me that there's a Special Permit in existence today that permits the parking to be in a further location, and that this Special Permit seeks to park it closer to the principle use. I kind of come from the approach if that does it, why wouldn't --

CONSTANTINE ALEXANDER: I think their only response to that would be perhaps the Board, the prior Board didn't think this through sufficiently and that wasn't a concern about the parking. We're a little bit more concerned that the parking, to the extent required by the

Zoning By-Law, should be maintained. And that this is one way of policing it. That would be the response. I mean, it may not be the complete response, but that's the reason why I wouldn't necessarily say because the Board didn't do it the last time, we shouldn't do it this time.

ATTORNEY JAMES RAFFERTY: That isn't my rationale, but I agree with you. My only point being is that obviously the Board will make its own judgment, but in this case it's clear under the ordinance that there's a principle use of residential and there's an accessory use of parking. A portion of that requirement is being satisfied in the building. The balance is on a lot further away. They're merely looking to relocate and to be able to do it closer proximity. If the Board feels additional conditions are required, obviously -- I frankly just -- you read these things ten years later and things

prop up and you wonder oh, gosh, we got to go back to do this. And it might be seen as an added impediment if a day ever came around that something else might happen there that might be favored and then someone had to -- frankly, when we looked at this whole land swap, frankly, we said uh-oh, we have an issue here. We'd love to do this land swap, but the Special Permit identified a particular lot. And so now, despite the fact that everyone -- there was wide level of support across the community, even for people who didn't like certain aspects of the rezoning addition, there was enthusiasm for the park, and it was always well, we'll do this, but we have a trip here to the BZA. And there are some people out there, I'm not one of them, that that sends a chill down their spine. And you say oh, you have to -- so some day there could be people not as warm --

BRENDAN SULLIVAN: It's a low hurdle not a high hurdle.

ATTORNEY JAMES RAFFERTY: Some people, not as warm and intelligent as yourself, may be sitting here some day and someone will go, oh, that's really going to complicate our life. I just offer that by way of perspective.

CONSTANTINE ALEXANDER: Thank you. Before we move forward. Is there anyone else who wishes to be heard on this petition?

(No response.)

CONSTANTINE ALEXANDER: No one else wishes to be heard.

Sir.

RICHARD McKINNON: If I just might, Mr. Chairman. I think Jim is right. It's an improved position, they would take it with the lot. Just the fact -- if you think about the reason why we're here, it's really been public benefit that

we moved. And it may be a public benefit that we have some flexibility in the future, and obviously we'd have to return to the Board.

Lastly, I'd point out that we're going to have a brand new neighbor behind us. The City of Cambridge was deeded the Foundry Building immediately behind this. And it may be just wise for us to have some flexibility or the City had some flexibility. It's kind of hard to think those two lots may not be looked at in the same breath. So less restrictions going to be very helpful for us.

CONSTANTINE ALEXANDER:

Petitioners always want less restrictions.

Let me read some letters into the public record or to the record of our case. In regards to the Board on the letterhead of the Cambridge City Council signed by Timothy J. Toomey. And it's addressed to the Board. Dated February

12, 2009. And Toomey by the way is spelled T-o-o-m-e-y.

Dear Members of the Board: I'm writing in favor of case No. 9755 by ASN Kendall Square, LLC to allow parking for 195 Binney to be located on the requested parcel on Third and Rogers Street. The request will allow for residents to park closer to their building and does not appear to have any negative impact on the overall parking situation in the neighborhood.

Thank you for taking this into consideration.

There's also a package I see in the paper from Mr. McKinnon addressed to Brendan Sullivan, Chairman. I hadn't seen this before. Can you tell me what's in this packet?

RICHARD McKINNON: That package contains just an explanation of the exhibits that I ran through tonight.

You'll find Exhibit A1, A, B and C. There's a second communication that attached the letter from the East Cambridge Planning team.

CONSTANTINE ALEXANDER: That's what I'm looking for. Is there one in there from the East Cambridge Planning Team? Is there a letter here from --

ATTORNEY DEBBIE HOROWITZ: There should be.

RICHARD McKINNON: Here's an additional copy.

CONSTANTINE ALEXANDER: Let me read that into the record.

RICHARD McKINNON: Sure.

CONSTANTINE ALEXANDER: It's a letter on the letterhead of the East Cambridge Planning Team. It's dated February 11, 2009, addressed to the Board. Re: This case.

Now that the Alexandria Real Estate Equities re-zoning petition has been

approved by the City Council, the members of the East Cambridge Planning Team are unanimous in their support of the ASN Kendall Square request for the Special Permit which will allow parking for their existing multi-family residence at 195 Binney Street to be relocated across Roger Street from its present location. This will enable ARE to enlarge the public park included in their plan to the full block between Second, Bent, Third and Rogers Streets. With all good wishes. And it's signed by Barbara Broussard, B-r-o-u-s-s-a-r-d, President of the East Cambridge Planning Team.

I don't believe there's anything else in the file.

Questions, comments from members of the Board? Mahmood, we'll start with you.

MAHMOOD FIROUZBAKHT: I say I feel fairly satisfied this application meets the requirements of the code for relief to

be granted.

CONSTANTINE ALEXANDER: Brendan?

BRENDAN SULLIVAN: No problem.

CONSTANTINE ALEXANDER: Chris?

CHRISTOPHER CHAN: I agree. And I also don't see that it would make sense to add the condition onto the other lot as it didn't exist on the first one.

CONSTANTINE ALEXANDER: Tad?

TAD HEUER: I am in support of the petition. I have a slightly different position than Chris, only because my sense is that any condition placed on the lot is certainly not to the benefit of Archstone. Archstone knows that it owns the lot, Archstone knows that it must meet its parking requirements in order to maintain conformity for its existing residential use. The protection of the condition would be for a future bona fide purchaser. If the lot were divided, that they would know that there were restrictions that

they could not meet. So it's not, I understand Archstone not wanting to have it on there because Archstone's position is that we will always be in conformity. The issue is that it's for a future bona fide purchaser who wouldn't have no such notice and would then arrive and try to build something, come in here and say, I'm sorry, that needs to be parking lots. Archstone has found it otherwise. It would seem easier for Archstone to negotiate its own affairs with this Board in identifying adequate parking before it sold or otherwise transferred that lot and waited for that bona fide purchaser to come across that information themselves without notice recorded with the deed and permit. So that is, that's my only consideration in addition. Otherwise I'm in favor. In general, I would support whatever the Board decides.

CONSTANTINE ALEXANDER: Go ahead.

BRENDAN SULLIVAN: Doesn't the property owners have neon lights around it anyhow? It's already flagged as being accessory parking for the building anyhow.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, if I could just briefly -- if Archstone were to do that or their successor, the Zoning violation would exist not on the parking lot but on the apartment building. So the notion that the unsuspecting buyer would be injured, frankly, that isn't where the concern needs to be. They own the lot --

CHRISTOPHER CHAN: They're in good case.

ATTORNEY JAMES RAFFERTY: The one that would be screwed would be the owner of the apartment who sold off the parking and now could lose their CO. They would have to reduce the number of units. So, I appreciate the concern about making buyers aware of things that would presumably come

up in due diligence anyhow, but the harm would not accrue to the new owner of the lot. The injury would happen to the -- it's the principle use that would suffer. So I don't think the Board needs to concern itself with a potential buyer inheriting a problem that they're unaware of. The seller, who also owns the principle use, would have created a Zoning violation and thus put their whole apartment building at risk.

MAHMOOD FIROUZBAKHT: And I guess if Archstone wanted to sell the lot separately, to do it properly, they would have to come back here and get relief for the --

CHRISTOPHER CHAN: And find parking. Below grade someplace.

RICHARD McKINNON: Even the movement of the lot --

CONSTANTINE ALEXANDER: They could sell a 99 year lease. They could go

around it, but you're -- basically your point is correct.

ATTORNEY DEBBIE HOROWITZ: We still need the parking. And the reality is that anybody who is going to buy the principle's use is going to do their Zoning due diligence and figure out -- they're not going to find themselves in a position of owning the principle use and then have to come and figure out parking.

CONSTANTINE ALEXANDER: Well, to buy the principle use --

ATTORNEY DEBBIE HOROWITZ: Well, anybody who's big enough to buy the principle use, better get it right. Better figure it out. And in this economy nobody is selling the principle use.

CONSTANTINE ALEXANDER: Brendan?

BRENDAN SULLIVAN: I think we're making more out of it than really needs to be. I think it's sufficiently flagged that this lot belongs to that apartment

building.

CONSTANTINE ALEXANDER: Ready for a motion?

TAD HEUER: Sure.

CONSTANTINE ALEXANDER: Chair moves that a Special Permit be granted to the petitioner pursuant to Section 6.22.2 on the basis that the proposed location of its off-site accessory parking satisfies the requirements of 6.22. And further that the requirements for a Special Permit as called for by Section 6.22.2 have been satisfied.

I'll go through the conditions again. We went through them very quickly, Counsel, but I have to go through them a little bit more deliberately.

ATTORNEY DEBBIE HOROWITZ: Sure.

CONSTANTINE ALEXANDER: That the Special Permit be granted on the basis that there would not be a detriment to the public interest because all the

requirements of the ordinance can be met.

That the traffic generated or patterns of access or egress will not cause congestion, hazard or substantial change in established neighborhood character. In fact, that granting relief will improve traffic in patterns of egress and access because it would back the accessory parking lot closer to the principle structure.

The continued operation of adjacent uses would not be adversely affected by the nature of the proposed use. Putting a parking lot across the street instead of down the street will not impact adjacent uses.

No nuisance or hazard would be created to the detriment of the health, safety and welfare of occupants or the proposed use or the citizens of the City.

And that granting relief would not impair the integrity of the district or

adjoining districts or otherwise derogate from the intent or purpose of the ordinance. The parking order is permitted in this district.

Again, it would be consistent with the parking requirements for residential structures. It's just really improving the location, the site of the parking, and the convenience and accessibility of parking for the residents of the structure.

The Chair moves that the Special Permit be granted on the condition that the proposed parking in the site to which it's going to be moved to be in conformance. You've got to follow these plans, in conformance with the plans, they are three pages in length.

The Chair is going to sign, initial all three pages because they're a little bit different in what they show forth in terms of identification. But I will sign

and initial them.

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

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Motion granted.

(Alexander, Sullivan, Firouzbakht, Heuer, Chan.)

RICHARD McKINNON: Thank you very much. Appreciate it.

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

(9:20 P.M.)

(Sitting members: Brendan Sullivan, Constantine Alexander, Christopher Chan, Tad Heuer, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: They're asking for a continuance on 9563 which is the original one.

The Board will hear case No. 9563, Shady Hill Square.

The Board is in receipt of correspondence dated February 6th to Mr. Sean O'Grady on behalf of the petitioners in the above entitled matter and by agreement with Thomas Harrington, Esquire representing Stone House.

I hereby request a continuance of the above matter now scheduled for a hearing on Thursday, February 12, 2009, to allow the completion of settlement negotiations being conducted directly by the parties. I understand that the next available hearing date may be in April or

May, either of those would be satisfactory to the parties. Please call me should there be any questions and advise Mr. Harrington and me of the new date. Thank you.

On the motion to continue this matter --

CONSTANTINE ALEXANDER: You want to show a copy to Mr. Harrington, the other side?

BRENDAN SULLIVAN: The motion then to continue this matter until May....

SEAN O'GRADY: 28th.

BRENDAN SULLIVAN: May 28, 2009 to allow the parties to engage in further negotiations.

All those in favor.

(Show of hands.)

CONSTANTINE ALEXANDER: Condition to change the sign.

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer, Chan,

Firouzbakht.)

BRENDAN SULLIVAN: On the condition -- there is no sign, is there?

SEAN O'GRADY: On an appeal would have --

CONSTANTINE ALEXANDER: No sign. But is this appeal? This is appeal. Okay. No sign.

SEAN O'GRADY: Actually, they're both appeals.

BRENDAN SULLIVAN: Yes. So five in favor.

(Sullivan, Alexander, Heuer, Chan, Firouzbakht.)

(9:22 P.M.)

(Sitting members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Mahmood Firouzbakht, Christopher Chan.)

BRENDAN SULLIVAN: The Board will hear case No. 9651. 12 Shady Hill Square, slash Holden Street.

The matter was scheduled, it was on the docket to be heard tonight in conjunction with case No. 9563. The Board notices an absence in the file of a letter from Mr. Wodlinger W-o-d-l-i-n-g-e-r, attorney for the petitioner, referencing this particular case.

I would make a motion that it might be an oversight upon Mr. Wodlinger's part and that the Board continue this matter the same as matter case No. 9563 to May -- I'm sorry, 28th did you say?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: May 28, 2009.

Does that seem to be in order for the Board?

TAD HEUER: And there's no time limit in which we need to hear it, correct?

CONSTANTINE ALEXANDER: That's the key point. We don't have to worry about the variance situation where if you don't grant -- take action by a certain date the variance is automatically granted. In the field there's no statutory --

SEAN O'GRADY: We have waivers in any event.

BRENDAN SULLIVAN: Both of them are appeals?

CONSTANTINE ALEXANDER: I didn't think you had a waiver in the second case.

CHRISTOPHER CHAN: It was continued several times.

BRENDAN SULLIVAN: Both of them have been appeals.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: But I would make a request that Inspectional Services transmit to Mr. Wodlinger the fact that there was an absence of correspondence from him regarding this particular case and that Mr. Wodlinger, W-o-d-l-i-n-g-e-r furnish same, a request for a continuance.

All those in favor, then, of continuing this matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Chan, Heuer, Firouzbakht.)

BRENDAN SULLIVAN: Good, done.

(Whereupon, at 9:25 p.m., the meeting was concluded.)

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 19th day of February
2009.

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

My Commission Expires:
April 23, 2015

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