

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING

FEBRUARY 25, 2010

7:00 P.M. in Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Tad Heuer, Member

Douglas M. Myers, Member

Mahmood Firouzbakht, Member

Ranjit Singanayagam, Commissioner of
Inspectional Services

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Tad Heuer, Douglas Myers, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 8741, 220-226 Hurley Street. Is there anyone here wishing to be heard on that matter? Please come forward.

HUSAM AZZAM: Good evening.

CONSTANTINE ALEXANDER: Good evening.

HUSAM AZZAM: My name is Husam Azzam. I'm the petitioner and I'm here to ask to continue on both cases. I believe it's March 25th.

CONSTANTINE ALEXANDER: We're going to take it one at a time. March 25th is the date you requested?

HUSAM AZZAM: March 25th.

CONSTANTINE ALEXANDER: Sean,

that's okay?

SEAN O'GRADY: March 25th.

TIM HUGHES: Case not heard.

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

(No response.)

CONSTANTINE ALEXANDER: The Chair moves that this case be continued to seven p.m. on March 25th on the condition that the petitioner sign a waiver of the time for a decision, Sean will give you.

And on the further condition that you take the sign and modify it. Cross out the date, today's date for the hearing and write in March 25th.

HUSAM AZZAM: Okay.

CONSTANTINE ALEXANDER: All those in favor for the case continuing on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. That case will be continued.

(A discussion off the record.)

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Tad Heuer, Douglas Myers, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 8840, 220-226 Hurley Street. For the record.

HUSAM AZZAM: Again, Husam Azzam. I'm the petitioner and I'm requesting a continuance until March 25th, please.

CONSTANTINE ALEXANDER: Is there anyone here who wishes to be heard on the motion to continue?

(No response.)

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

The Chair moves that this case be continued until March 25th at seven p.m. on the condition that the petitioner sign a waiver of notice for time of decision.

And on the further condition that

you cross out tonight's date and put in March 25th.

HUSAM AZZAM: Okay.

CONSTANTINE ALEXANDER: All in favor of continuing the case on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(A discussion held off the record.)

(7:00 p.m.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Douglas Myers, Tad Heuer, Mahmood Firouzbakht.)

TIM HUGHES: The Board will hear case No. 9867, 625 Mass. Avenue.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, Members of the Board. For the record, my name is James Rafferty. I'm an attorney with the law firm Anderson Rafferty located at 130 Bishop Allen Drive in Cambridge, Mass, appearing this evening on behalf of the applicant TD Bank. To my right is Jennifer Roy, R-o-y. She is with Bohler Engineering the designers.

JENNIFER ROY: We're actually Symes, Maini, McKee, 1000 Mass. Avenue in Cambridge.

ATTORNEY JAMES RAFFERTY: We've got these boards with all types of dimensions and measurements and things on them. The

variance involves a very simple element. It is solely related to the two green shields as the bank refers to, located over the two doors in the TD Bank sign. The shield itself is considered part of the sign. And it has to do with the way in which they light the shield. They light the shield internally. The Ordinance says for internal lighting the size of the sign cannot exceed 30 inches. In the shield here, exceeds -- goes to 36 inches. But what's worth noting is that the letters B-A-N-K, which could be 30 inches as of right are only --

JENNIFER ROY: 15 and a half inches.

ATTORNEY JAMES RAFFERTY: 15 and a half inches. The letters T-D themselves which could similarly go to 30 inches, are only --

JENNIFER ROY: 20 inches. A little over 20 inches.

ATTORNEY JAMES RAFFERTY: And then

the overall signage on the building which could contain an area of 152 feet, all channel -- here's an example of an as-of-right sign which could be lit which has every letter at 30 inches, which could be built as of right. And in the world of signs, I have learned not all signs are created equal. You could have what are considered rather unattractive box signs where you see these boxes with plastic acrylic shields in front of them and they're lit internally. But if that's 30 inches, that's fine. This sign is part of a well thought out and design brand logo that permeates all levels of the bank. And the shield is an artistic element much like the racing stripe that appears under the letter "bank" that complements the overall design aesthetic of the sign. And in order to have that shield at that size and to have it illuminated the way the rest of the sign is illuminated, given the way the

Ordinance is constructed, relief is required. And that is what the relief being sought here today is.

There are significantly fewer signs on the building than the number of signs have been reduced. The area of the signs is almost 60 percent of what's allowed, but the trade off here has been an effort to make the signs conform in abundance to the Ordinance with the exception of the shield. So, it's the presence of the shield and not merely the shield, it's the manner in which the shield will be illuminated which is the internal illumination.

We do have some imagery of the shield itself. You may have noticed it on some other locations. As I said, it is not, it is not garish. It is not contained in a box. It is not intended to, you know, simply be an attraction that will stop passersby. It's part of a proportional branding and signage.

So that's, that's the sum total of the relief that's being sought. That's why we're here, and that's what we're looking for this evening.

TIM HUGHES: Any questions from the Board members?

BRENDAN SULLIVAN: Well, I would agree that it's not garish. It's probably tastefully done. It's just that going down Essex Street, the word excessive comes to me. I notice in your application of the pleadings, it's that you're really looking for -- to identify the bank. And I mean to me identification is one thing. So shouting TD Bank going down Essex Street, I just thought it was excessive. Yes, it may be under the form of the number of square footage, it's just sort of a -- the amount. I mean, it's --

ATTORNEY JAMES RAFFERTY: That's the Essex Street elevation.

BRENDAN SULLIVAN: It's all of that.

ATTORNEY JAMES RAFFERTY: And every bit of it -- do you have the as of right?

JENNIFER ROY: Right here.

ATTORNEY JAMES RAFFERTY: This is what the Ordinance would allow on Essex Street, at 30 inches backlit. The area along Essex Street is the sign area permitted -- we're permitted to have 152 feet of sign -- 89 feet of sign because we count the items. There was an additional banner upon one of the windows on Essex Street to that point, Mr. Sullivan. I know the bank has said to me that the thinking was that there's one too many on Essex Street, then they would be prepared to go every other. I think there's three and then it stops. If that's a concern, I think we've discussed this with the bank, and I know Ms. Roy has as well, and the bank was thinking well, Essex Street, maybe the middle one could go out and

would only be two. These are now -- they're below the edge of the awning.

MAHMOOD FIROUZBAKHT: And on the Essex Street side I assume putting this sign on the corner to catch the eye if you're going down Mass. Ave?

ATTORNEY JAMES RAFFERTY: Correct. It's the principal area of the building. It's a corner location. As you come down Mass. Ave, pedestrians will see that first because depending how you approach from the MIT direction, the other sign is facing -- so it is a prominent corner and it's the key entry area into the bank.

MAHMOOD FIROUZBAKHT: I don't know if this is easy to answer. But how visible is that from the residential corner or the residential area down Essex Street?

ATTORNEY JAMES RAFFERTY: Well, we have some photos that might assist in that kind of analysis.

MAHMOOD FIROUZBAKHT: That's convenient.

ATTORNEY JAMES RAFFERTY: I'm not sure if it goes directly to that, but it would be helpful. The current -- by comparison the current signage at that corner has a projecting sign which we will not have. That those GAP signs -- the balance of the building is largely a blank wall. So we do have glass openings. Part of the awning effect frankly is to soften -- the introductive awnings is to soften the cold facade there.

MAHMOOD FIROUZBAKHT: You would be continuing the bay effect for two more slots so to speak into Essex Street, right?

ATTORNEY JAMES RAFFERTY: Right. They're going to be opening up. They're going to be taking -- if you look at the existing condition which is a series of in-fill masonry with glass block, and then if you look at the design guidelines for retail

and the Central Square Overlay District with transparencies, you'll be able to see in. I think one would have to conclude that this facade represents a significant improvement from the streetscape perspective.

TAD HEUER: From a purely procedural perspective, I find all of these very useful. Is there a reason that when I went to see the file on Tuesday morning after the Monday at five o'clock rule, that I'm sure counsel is aware of, all that was present was a rather pitiful one-page photo sim that doesn't show the Essex Street side?

ATTORNEY JAMES RAFFERTY: No, I checked the file. There's a black and white version of these. They weren't as -- they weren't as prominent, I agree. So I went over to file them. But frankly the issue is that discrete. It's the size of the -- and I was mindful of that, and Jennifer and I talked this week, could we get some enhanced

imagery? But there was in the file a black and white, because I copied. I don't know if you or Mr. O'Grady --

TAD HEUER: I think that's true. I think we also tend to like to grant according to photo sims. Quite frankly if we're granting from the photo sims, I can't see the Essex Street sign in the photo sim that's in the front. I have no idea what it would look like.

ATTORNEY JAMES RAFFERTY: I don't think it was a photo sim. That wasn't alone. Now Mr. Hughes is pulling out the information I'm referring to.

TAD HEUER: Correct. Am I incorrect?

SEAN O'GRADY: To my knowledge, that's the only photo sim. Those are the plans.

ATTORNEY JAMES RAFFERTY: That's the black and white version -- to the notion

that it wasn't in the file, that's the black and white elevation. It wasn't done in color because I didn't have it in color when I filed.

TAD HEUER: Right. When did you file?

ATTORNEY JAMES RAFFERTY: Months ago.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: No, no, I agree. If the color -- if the --

TAD HEUER: If you're looking for an illuminated sign, I mean, we're not talking about a structure. We're looking for something that's illuminated that will have color in it. It would be helpful to the Board to have a something that has color in it, no?

ATTORNEY JAMES RAFFERTY: I agree I did not do that. With the technical requiring of the filing, it was there. I hadn't frankly looked at it in such a long

time. When I did look at it recently and I didn't notice that it didn't contain color, and I did ask Ms. Roy and I considered and didn't discuss filing, but I agree, I would prefer -- and if it's an issue that -- I mean, the typical remedy for that is to continue the case to allow the Board additional time to understand the vocation, if that's the considered judgment of the Board, I would understand that. But, I'm very mindful of the rule and tried to adhere to it because I know it's important to the Board. Had I been aware earlier or -- I shouldn't say -- had I remembered that the filing was less than it -- because it doesn't advantage my client as well as the color does.

TAD HEUER: No, certainly not.

Can you just go over, and I'm sure we did this on Alewife Brook Parkway, just so the record is clear. So the T-D, the bank and the stripe, the shield the bank, and the stripe,

is that considered as a singular sign for the purposes of a sign ordinance?

ATTORNEY JAMES RAFFERTY: Yes, it is.

TAD HEUER: So all of the brick that is in the middle of it is counted even though it's not illuminated, correct?

ATTORNEY JAMES RAFFERTY: Correct.

TAD HEUER: So here if TD Bank had a corporate logo that squished it together with a TD right next to bank, you could conceivably not even have to be here.

ATTORNEY JAMES RAFFERTY: It's even better than that. This still meets -- this meets everything. It's only the shield. On Alewife Brook Parkway it was the area of the sign and the dimension itself. These signs are not as big as those signs.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: The only issue here, it's not per se the size of the

shield, it's the manner in which they wish to illuminate the shield. So the shield and only the shield, but the overall sign dimensions, if you see, those dimensions fall within what's permitted for a sign area and sign size. So you take -- we measure it from the bank down to the stripe. Yes. It's a very good recall because the hardship we articulated at that time was that we had elements of the sign, elements of the building facade that were being treated as part of the sign even though the sign had three distinct components. If we simply moved the racing stripe up in that case, we wouldn't have needed the relief. But the sign has a proportionality to it so the separation between -- but the size of the shield, it's all, so if this were not to be approved, the bank would have two options.

They could further reduce the sign, which they think would be less than

advantageous. Or they can choose to light the shield differently than the rest of the sign which would feel a little bit unusual as well.

TAD HEUER: Understood.

ATTORNEY JAMES RAFFERTY: So it's really limited to the shield.

TAD HEUER: And then on the awnings it's just the shield --

ATTORNEY JAMES RAFFERTY: Nothing on the awning. In terms of relief?

TAD HEUER: In terms of illumination.

JENNIFER ROY: It's the TD, shield and the bank and open seven days. The racing stripe is not illuminated.

TAD HEUER: Okay. I'm just trying to get an overall sense on the illumination on the facade that you're requesting.

BRENDAN SULLIVAN: I didn't understand. On the awning, the TD Bank --

JENNIFER ROY: TD Bank and open seven days would be illuminated channel letters.

BRENDAN SULLIVAN: Would be illuminated?

JENNIFER ROY: Correct. And the racing stripe is not. And that's exactly the way it's done at Fresh Pond. So if you drove by there, it's done exactly.

ATTORNEY JAMES RAFFERTY: By contrast, Mr. Sullivan, the racing stripe on the two that are over the entry is illuminated. But the racing stripe along the awning is not.

TAD HEUER: And that's an entry door on both streets; is that correct?

JENNIFER ROY: Well, it's for the most part facing Mass. Ave. It's just at an angle. So you have a slight --

TAD HEUER: Oh, I see. It's a cut in. It's a triangular --

JENNIFER ROY: Right.

DOUGLAS MYERS: So you access from the sidewalk on the Essex Street side?

JENNIFER ROY: There is, there is.

ATTORNEY JAMES RAFFERTY: Yes.

JENNIFER ROY: A small, yeah.

ATTORNEY JAMES RAFFERTY: It's chamfered. This is the existing condition. So they'll be changing the opening and relocating it to the corner. The current GAP location doesn't exist. As I said, in the case of the GAP, they have, they have additional signs then we have. But they have two projecting signs, which the Ordinance would also allow, but there's no projected signs.

TAD HEUER: Do you happen to know the total square footage of what the GAP signs is?

JENNIFER ROY: I don't.

TAD HEUER: If you don't, it's not a big deal.

JENNIFER ROY: I don't, no, I'm sorry.

ATTORNEY JAMES RAFFERTY: If you look at the photo, you can see 1, 2, 3 -- I count five in that photo.

TAD HEUER: Yes.

TIM HUGHES: Any other questions?

DOUGLAS MYERS: What would be involved in making these signs such that they would conforming?

ATTORNEY JAMES RAFFERTY: It would involve a modification to this green shield. It could not be backlit. It would have to have more of a goose neck or the shield itself would have to be reduced in size, which given the relationship and the proportions, that would need additional balance of the sign because the bank is interested in maintaining portion of the logo. That is six inches greater. So you would see the shield shrink, the bank could then elect to shrink the shield

by six inches and illuminate it as they wish to now, or they could simply put a lamp over it, extend a goose neck lamp, light that, leave it in its current form and then light the balance of the sign the way they're doing now. They think that doesn't look good. They think there's a -- that -- so I'm not sure what their preference would be. The non-conforming, the relief is all related to the size of that green square. Not the letters on it, not the letters next to it, but merely the green square itself and the way it's being lit. Because the Ordinance says if you choose to illuminate internally, you're limited to not more than 30 inches. So what you see here, if they simply weren't focussed on the brand and wanted to write TD Bank as long and as big as they wanted, they could do that. And they have chosen a different approach to the sign. And as I said, there's a lot of interest in

maintaining the proportions of the sign as seen as an integral part of the brand, so that's why they're asking for the relief. Because at the moment as you heard from Ms. Roy, the bank letters are starting to get modest. They're only --

JENNIFER ROY: 15.

ATTORNEY JAMES RAFFERTY: 15 inches. They're half what they could be.

TAD HEUER: And the as of right is an illuminated as of-right-scheme, right?

ATTORNEY JAMES RAFFERTY: Yes, channel letters. It could be. And, again, we're not saying not give us what we want or we'll do this. Just to understand the context of the Ordinance and how it does treat it, and then there are, there are a lot less flattering as-of-right signs. Those rather simple unattractive box signs that have -- those are internally lit, and you see them in some buildings. But the bank would

never put one up.

TAD HEUER: And is the bank the only tenant of the building or is there --

ATTORNEY JAMES RAFFERTY: No, it's a multi-tenanted building.

TAD HEUER: So would we be in a situation of more signage going up on the building in other places in a future point?

ATTORNEY JAMES RAFFERTY: Right. Well, this isn't an area variance and the calculations only get done based on the store frontage. So it would be independent of, even though it's a multi-tenanted ground floor building. For purposes of the calculation, our street frontage is measured only and along the Mass. Ave. side it's measured at --

JENNIFER ROY: It's 50 feet. And then we have 102 feet on Essex Street.

ATTORNEY JAMES RAFFERTY: So the calculation only applies to the two feet

there. And as I said, we're only allowed nearly a third of the area that's below. So there's no spillover effect. It's not as if this -- even if it were an area request that would be a case, but it's not. Nor is it a number of sign request.

DOUGLAS MYERS: What would be the hours of operation of the sign in question and the areas for which the variance pertains?

JENNIFER ROY: That's a good question. I don't know the answer to that. I don't know if we have the answer to that.

ATTORNEY JAMES RAFFERTY: My sense is that signs of this nature tend to be on all the time. That seems to be the prevailing -- I'm not up as late as I used to be, but if you ride through Central Square, most of those signs are on up until early hours of the morning.

TAD HEUER: Is there an ATM facility?

JENNIFER ROY: Yes.

DOUGLAS MYERS: Directly inside?

JENNIFER ROY: Yes.

DOUGLAS MYERS: This would be an entrance to an ATM?

JENNIFER ROY: Yes.

DOUGLAS MYERS: Would the ATM be 24 hours, seven days a week?

JENNIFER ROY: Yes.

DOUGLAS MYERS: Fair to conclude that this sign would be illuminated probably 24 hours a day, seven days a week.

JENNIFER ROY: Right. Well, not during the day. I believe what they've done is on a photo cell so that during the day it turns off.

DOUGLAS MYERS: During the evening and dark hours.

ATTORNEY JAMES RAFFERTY: Whether it could be illuminated as 36 inches or 30. If they chose to do like the GAP does,

that's -- they could put a goose neck light on it and leave it on 24 hours a day. It's only the nature of the lighting here which is backlit lighting. I suspect the GAP did leave it on all the time. So it's not a question of illumination. And the only -- again, the illumination only applies to the shield. So I guess -- I think one of the ways to measure the extent of the relief and the extent to which it derogates from the Ordinance is whether that shield is at 30 inches versus 36 inches has an appreciable impact on streetscape and surrounding uses. It is the heart of the commercial district so it would be in good company if it were lit 24 hours a day. I would dare say every sign on that stretch of Mass. Ave. probably has that type of operation.

TIM HUGHES: Anything else from the Board?

I just have one question. I wonder if

the logo is a trademark, a registered trademark?

JENNIFER ROY: Yes.

ATTORNEY JAMES RAFFERTY: I suspect it is.

JENNIFER ROY: So they can't really adjust.

TIM HUGHES: Any adjustments would be to maintain the integrity --

ATTORNEY JAMES RAFFERTY: The simple thing is just shrink the shield and it -- but if the shield gets shrunk by the six inches, then they need to shrink the bank letters, and the words bank are already in 15 inches. They presumably have to go down another three or four inches. So it's well below what's permitted. To the issue about the sign itself, the elements of the sign that contain lettering are both the TD and the bank are below the 30 inches significantly.

TIM HUGHES: So does the petitioner

have anything more to add before I open this to public testimony?

The Board will open this to public testimony. Is there anyone here that wants to be heard on this matter?

(No response.)

TIM HUGHES: Seeing no one, I close the public testimony.

There are some letters in the file and I'm going to read them into the file. There's two here from Daniel Goldstein in favor of the variance request, and they seem to be saying exact same thing. "Attached please find a letter of support for the sign variance requested by TD Bank North." I guess it's just TD Bank now.

JENNIFER ROY: Yeah, that's true.

TIM HUGHES: "I'm sending it in on behalf of my organization which is Clear Conscious Cafe and the Cambridge business association."

And there are also two letters expressing opposition to the sign. "I'm writing in opposition to the request for TD Bank to receive a variance to permit signage not in conformance with the current regulations. 625 Mass. Ave. is in a prominent position on Mass Ave. having lived in the Central Square neighborhood for 35 years and having worked on signage regulations, a variance for a billion dollar corporation was not in the thinking of the community. To suggest that TD Bank could not properly market their product without a variance, is absurd. They have every means at their disposal to let people know where the latest bank outlet is located. To subject the community to a size and/or lighting signage variance for the TD Bank is wrong. If a mom and pop commercial operation came before a Board for a reasonable variance, it should be seriously considered. But TD

Bank, no variance should be allowed. It is not needed. It sends a wrong message to the community." It's signed by Gerald Bergman, 82 Elm Street, Cambridge.

And the second letter seems to express -- yes, it definitely expresses opposition.

ATTORNEY JAMES RAFFERTY: Oh, it does.

TIM HUGHES: Craig Kelley City Councillor. "I encourage you to deny TD Bank application No. 9867 to allow signage in excess of the City's variance dimensional and lighting limitations. While I have contacted you in the past and supported various variance requests, it has generally been for a small property owner and a situation where altering our zoning would make the situation easier for the owner without setting precedents that might undermine our overall zoning program. In

this case TD Bank's application for relief of their sign, it is hard to argue that one of the nation's 15 largest banks and an organization with over \$130 billion in assets is in the position to need such specific zoning relief. If this bank can get relief from our regulatory programs, programs that have a very specific goal limiting the intrusion of lights and signs onto our streetscape, I cannot imagine how one can say no to any relief requested by many small organizations that line Mass. Ave. from the Charles River to the Arlington line. Revolving lights, flashing lights, interactive signs and more could easily be the next step with the many merchants hopeful to make their businesses stick out more on the Cambridge streetscape. It may be possible that our Ordinance regarding signs and lights no longer meet the needs of current businesses in Cambridge, TD Bank being one of

them. If that is the case, then I urge TD Bank to offer language to change the relevant regulatory programs that better suit today's world. But to approve this variance on behalf an institution with \$134 billion in assets would make a travesty out of our newly defined variance procedures and would I fear rob the City Council of its obligation to provide the city with ordinances that work rather than our worked around. Please feel free to contact me, Craig Kelley, City Councillor.

Do you have any response to this?

ATTORNEY JAMES RAFFERTY: I checked I was concerned that he might have had a mortgage application rejected. But other than I couldn't verify whether it's a \$130 billion in assets. I think it's best that I say nothing.

TIM HUGHES: Before I open it up for more questions from the Board, I would like

to express my opinion that I think this is a variance about the size of your sign and not the size of your assets, but I'm not positive about that.

Now, are there any other questions from the Board? I would like a little more clarification on the case that you make for hardship. I read the hardship owing to circumstances clause, and then I read your hardship as related to the unique design. I don't see that it speaks specifically to the clause and I wonder if you could --

ATTORNEY JAMES RAFFERTY: When I say it goes to the unique -- it goes really to this proportional issue which is the size of the shield, it has a relationship to the rest of the sign.

TIM HUGHES: And the size of the sign has a relationship to the rest of the building?

ATTORNEY JAMES RAFFERTY: Well,

that's also a very important point. We discussed proportionality both in terms of the size of the entrance and the size of the sign. Frankly it's been commented to me that one goes by the Alewife Brook Parkway sign and those signs are actually rather on the smaller side. This sign overall is within the area, but as was noted during the discussion, it's a unique sign in that it has these three components, stripes, letters and shields which applied in the way they are against a brick facade really make it pleasant looking, but again, it has to do with the size of the shield. So the hardship really is related to a unique circumstance and that is the size of the shield. We're of course talking about a hardship. The converse of hardship, of course, is an examination of what is the nature of the relief and whether or not other remedies are available. And while there are other

remedies available, I think an examination of hardship, the overall sign would lose its impact if the shield -- the size of the shield has been reduced. It has everything to do with the size of the sign and the size of the building entry. They're creating a new more prominent entrance at this corner and they hope the sign is a complement to that.

TIM HUGHES: Any further comments on questions? We ready for a motion?

BRENDAN SULLIVAN: I don't mind Mass. Avenue. I think it's probably, you know, it's going down Essex Street which is somewhat of a narrow street. I find those awnings that have lettering on them and what purpose do they serve? Because if you're coming up Mass. Avenue with your back to Boston, you see the corner and you see the sign at the corner, two signs, three signs, four signs, but if you're walking along, you can obviously see the signage. And I just

don't know, I think it's excessive going down Essex Street and that is the transition to the residential area down the street. And I don't -- well, I could not support that.

MAHMOOD FIROUZBAKHT: You know, I have to agree with Mr. Sullivan on that. Especially finding out that the sign on awnings are also lit in conjunction with the larger TD emblem and the aggregate, I think it becomes a little excessive for the Essex Street side, and I think you can serve your purpose with what you're doing closer to the corner of Mass. Ave. without sort of fringing on the residential side of Essex Street.

TIM HUGHES: I would like to ask a question. Is what you're saying that you'd actually like to see a trade-off on those signs? Because most of the signs down along Essex Street, they're not being disputed, they're not being asked for a variance. They're only asking for a variance on the two

signs on the corner. So you're suggesting redesign somewhere down Essex Street would make the other two more palatable?

BRENDAN SULLIVAN: Less objectionable.

ATTORNEY JAMES RAFFERTY: Well, I think --

TIM HUGHES: Counselor?

ATTORNEY JAMES RAFFERTY: We noted and we're mindful of that concern. They started with four, they're down to three. They said well, we could live with two. I mean, I would only say that the existing condition, you talk about compatibility, pedestrian friendly. The existing conditions are rather stark. The awnings are a pleasant feature for the design guidelines in Central Square.

BRENDAN SULLIVAN: Maybe just a green stripe sort of carries somewhat of

their logo around without the actual logo, without the lettering, but it's the, you know, 24-hour thing just shouting at you. You know, TD Bank and open seven days. I think it's not necessary, and I think it -- well, to me it's objectionable on Essex Street.

ATTORNEY JAMES RAFFERTY: Could I inquire as to -- the applicant would be pleased to modify the request by eliminating one or more if --

BRENDAN SULLIVAN: It's the or more.

ATTORNEY JAMES RAFFERTY: So, let me think. So three goes to two and two goes to one?

BRENDAN SULLIVAN: It's the or more.

ATTORNEY JAMES RAFFERTY: No signage along Essex Street in exchange for six inches on the shield?

BRENDAN SULLIVAN: The corner. Not on the awning.

ATTORNEY JAMES RAFFERTY: Well, I suppose if that -- if that view is shared by more than yourself, then I would suggest that we would amend as such and the bank would make a decision. They may conclude for a range of other reasons that that trade-off frankly isn't what they want and they will proceed with their as-of-right sign. The size of the letters and open seven days, I might consider more of a whisper than a shout. They're about six or eight inches high. Six inches high, the lettering open seven days.

MAHMOOD FIROUZBAKHT: Why do those have to be backlit?

JENNIFER ROY: Well, again, it's -- this just as TD Bank is a trademark, they actually have that as part of their trademark as well. Their branding open seven days is actually part of their --

TAD HEUER: I'm sorry, the fact that it's illuminated is --

JENNIFER ROY: No, no, I think just to -- you're right, you could have just the TD Bank maybe.

ATTORNEY JAMES RAFFERTY: Yes, we could suggest that they backlit the open seven days and just backlit the TD Bank.

JENNIFER ROY: And then keep potentially two of those along --

MAHMOOD FIROUZBAKHT: My question is why do the signs in total on the sign have to be backlit?

ATTORNEY JAMES RAFFERTY: Well, they don't have to be. The Ordinance allows them to be and they engaged design professionals to help them. But if that was seen as excessive, then certainly their highest priority is at the entry and they would like to maintain the proportion that allows the sign to be effective for them. So, illumination of that we would certainly, to the extent that there's illumination

relate, contained in the relief, I suppose one could say there's some nexus between a further reduction and as-of-right illumination in exchange for illumination on the shield. So, I would at this point think I'm authorized -- I'm not even positive, so I don't even know. I think we could agree to not illuminate the open seven days. If that was seen as -- and we would agree to remove one of the awnings, whichever one the Board would -- we were thinking the middle one, because just spread it out a little and certain symmetry to have one with and one without.

BRENDAN SULLIVAN: Doug, you had words of wisdom?

DOUGLAS MYERS: I will yield to your judgment on this, but I'm rather glad myself that the Chair raised the question of hardship, because although I understand the appeal of the argument Mr. Rafferty made, but

it seems to me that the very fact that it's simply an executive decision, there's absolutely no impediment here to the bank making this sign completely conforming. And to me the very ease with which it could be made conforming is a very strong indication that there's no legal hardship.

ATTORNEY JAMES RAFFERTY: Well, I understand that. I don't think frankly that that is the test as to whether a hardship exists to the extent it could be made conforming. But the hardship is related to the size of the sign. It is a design choice of their making, that's correct. But that is why in evaluating requests for relief, the Board does often look at alternatives. I mean, zoning is a blunt instrument. There could be a lot more signage, a lot more lighting here as of right. A lot less tasteful, and there's lots of examples of it all over the place.

DOUGLAS MYERS: But our job is to enforce the Ordinance and then apply it as it's written to the circumstances.

ATTORNEY JAMES RAFFERTY: I understand. Your job is also however to look at individual cases, examine the conditions as they're presented and determine there are four elements to the hardship findings as you know. If this is deemed to be a derogation from the intent of the Ordinance, obviously you can't support it if you find that to be the case. If the nature of this sign and the size of this illumination is seen as not inconsistent with the overall commercial feel of Central Square, then I don't think you should have a problem with reaching -- granting relief that was requested. If someone was looking to have more signs, if someone was looking to have bigger signs, this is a rather discrete request and an Ordinance -- Section 7 of our

Zoning Ordinance in my experience is one of the most complex areas of the Ordinance. Things based on size, distance, you're doing quantum physics by the time you figure out what signage can take. In the meantime we're faced with a deteriorating situation in Central Square. A store that's been empty for over a year. New capital, whether it's a bank, it may not be the highest form of retail, but they'll bring life and they'll bring people. And that's what we're trying to -- I mean, the bigger picture exists here beyond the six inches of this shield. And this Board historically has been willing to consider that in its deliberations.

MAHMOOD FIROUZBAKHT: I think the difference here for me with respect to the Alewife Brook Parkway that was in a very commercial, that was a roadway. So the notion to grant relief in that context was more appropriate. Whereas here, we're

taking it from commercial district and we're bringing it into a residential district.

ATTORNEY JAMES RAFFERTY: Excuse me, we're not. It's Business B District the entire length of Essex Street.

MAHMOOD FIROUZBAKHT: I understand that, but you have residences that this property would be full view of and when the backlit signs, I think if you look out your window and you're a resident of one of those homes down Essex Street, you would see these signs 24 hours a day.

ATTORNEY JAMES RAFFERTY: Well, you may still see them. You just may see it six inches smaller. I agree, but it's not a residential district. And we're -- when you look at -- when you look at the Central Square action plan, they promote retail on the side streets. The notion that you have secondary retail, that's what -- the parking is -- we have parking lots. It's not a movie set with

a false front. This urban center works when side streets contribute, and that's the reason the block -- the Business B District runs from Green Street to Bishop Allen. Everything within it is part of the overall mix. So, I hear what you're saying, but I think it's probably not the case that there would be an adverse impact on residents if that shield were six inches larger. I'm not sure what the residential view is of that shield.

And if I haven't made it clear, the bank would remove the illumination on the balance of the awning signs. They would reduce them by one or two or three, but I think that's probably a concern. I do think there's a trade off -- I would hope the Board would look at the existing condition and be able to also conclude whether or not a blank concrete wall with glass block present a pleasant experience for residents or pedestrians who

traverse along Essex Street.

MAHMOOD FIROUZBAKHT: I certainly find the canopies to be a very attractive feature. And I think minus the signage, that's certainly, in my mind, would be a good amount of balance of the increase of six inches on the sign on the corner.

ATTORNEY JAMES RAFFERTY: I should point out, it's clear, it's not just the canopies but the introduction of glass the entire length of the storefront on Essex Street which today is masonry. And if you look at the design guidelines of Central Square, that's exactly what's called for. This is a significant move to the building on the design side. The design guidelines are part of the Central Square Overlay District. So, this element brings the building more in conformity, the introduction of the glass. Now, that I think is worth evaluating in the context. I don't know if you've had an

opportunity to see the existing condition. The introduction of four transparent windows in a commercial district, it brings this building into great conformity with the design guidelines in Central Square.

DOUGLAS MYERS: There's no question about that.

TIM HUGHES: Well, I'm at a loss to call a motion because I think it's obvious that you haven't gotten over the hump on the hardship with at least one member of the Board, and you haven't gotten over the hump from derogating with the intent and purpose with the other two members of the Board. So, I don't know exactly where they are, where they stand. So, I mean the fact where they are, where they stand, what it is you need to do at this table to make this thing pass. So I mean what we technically do --

ATTORNEY JAMES RAFFERTY: I guess if I haven't made it clear, and I know we've

taken a lot of your time, I apologize. It would seem that there's legitimate concern about Essex Street and we're hearing that. We could come back another time and even without being an architect, I can see okay, we will eliminate, to the extent the Board feels it appropriate, signage along Essex Street. We can eliminate the -- we're talking about the awning signs. We can eliminate the illumination. We can eliminate, if it's necessary, we can eliminate all of the signage. We would like to preserve the corner awning to have signage on it, but we would not illuminate anything on the balance of these awnings. And we would reduce by at least one awning that contains any signage. So we would have two awnings that would void the signs. And if that was seen as not enough, we would reduce to one awning, the awning right at the corner to have signage. If the sense of the Board

was that three awnings with no signage beyond the racing stripe and no illumination, address the issue or concern, the legitimate concern as one is moving in the direction of the residential district having gone over this with a client, I know they would do that. That's how much they value the proportions of that shield and their brand. So, I was told to other than giving you free toasters, you know.

BRENDAN SULLIVAN: Well, I would support what's proposed on Mass. Ave. On Essex Street I would support the corner brick facade, the awnings without lettering and with the green racing stripe. That's what I would support.

ATTORNEY JAMES RAFFERTY: All four, no signage on any of the Essex Street awnings.

BRENDAN SULLIVAN: Awnings, correct. Except for the racing stripe, if that's considered signage or maybe that's

considered part of the awning.

ATTORNEY JAMES RAFFERTY: It's not just illumination, but no signage beyond the racing stripe?

BRENDAN SULLIVAN: Correct.

TIM HUGHES: Anything further?

TAD HEUER: I feel like I'm playing Let's Make a Deal on awning size lettering and coloring. I'm fine with Mass. Ave. I think it's entirely appropriate. I actually do think there's a hardship for the reasons that were discussed earlier. You're looking to maintain the corporate identity which is what it is for better or worse. I think it's a modest change. It's not taking up the illumination to the four corners of that height, the way we would possibly be concerned if this were fully that height and fully that length illuminated with the extra six inches. We're talking about the smaller element. The rest of it as you pointed out

is brick and not illuminated. It's not as though the entire area is illuminated even though the entire area is counted.

On the Essex Street side I would agree for the sign over the entryway. I could even agree that the illuminated sign on the corner does help create a bit of a more commercial environment as the petitioner is noted leading into some of the secondary areas off of Central Square. I don't think that Central Square is designed to be a thoroughfare and singularly up against the street and everything else cuts off. I think there is some value to seeing it slowly bleed into that residential neighborhood. I'd agree that illumination all the way down the street isn't ideal. I would be fine with non-illuminated lettering on the signs. I don't particularly see a difficulty with that. If it was the sense of the Board to go further than that to either illuminate

lettering, to illuminate illumination, all the way down to the corner, I would support that. I don't see a need to support the petitioner in that respect, but I also would not be opposed to maintaining at least signage and illuminated signage on the first awning or any signage as proposed non-illuminated on remaining awnings.

MAHMOOD FIROUZBAKHT: My main concern is the active illumination along Essex Street. I think if we eliminate illumination on the canopies, then that, I would be satisfied with the remaining design.

BRENDAN SULLIVAN: You're saying the -- you're saying that the lettering is okay but not illuminated or not towards the lettering?

MAHMOOD FIROUZBAKHT: The lettering in my mind is okay. I think the concern that I have is the illumination going down Essex Street which I know your concern -- you would

prefer to have really no lettering whatsoever.

DOUGLAS MYERS: Just so the participation of the Board members is complete on our efforts to reach a disposition, I would say that I note with great interest much of what Mr. Heuer has said and I agree with the position of Mr. Sullivan.

ATTORNEY JAMES RAFFERTY: That being the case, allow me to modify the request and suggest that the petitioner in its request for relief for the shield in excess of 36 inches, they would modify the design to remove signage along the signage and illumination along the Essex Street awnings.

JENNIFER ROY: Maintaining the racing stripe?

ATTORNEY JAMES RAFFERTY: Yes, thank you.

To the extent -- I'm not sure by itself

the stripe and even the signage, stripes are signs, yes, we would presume that wasn't seen as objectionable.

BRENDAN SULLIVAN: Right.

ATTORNEY JAMES RAFFERTY: Thank you. You could initial the plan to that effect and Ms. Roy can take note of it.

TIM HUGHES: We're ready for a motion?

BRENDAN SULLIVAN: Yes.

TIM HUGHES: The Chair would move that the Board grant a variance to allow the backlighting of the oversize shields incorporated in the TD Bank logo over the entranceways and with the proviso that the plans as presented do not include illumination or lettering on the awnings on the side of the building along Essex Street.

A literal enforcement of this provision, of this Ordinance would involve a substantial hardship, financial or otherwise

to the petitioner.

As in that a literal enforcement of the 70 inch limitation on horizontal and vertical dimensions of illuminated letters shall preclude the petitioner from adequately identifying the entrance of the facility at the corner of the building with its stated logo and trademark logo.

The hardship is owing to circumstances related to the structure, and that the proportions of the sign on the structure at the corner of the building at Mass. Ave. and Essex Street and the desirable relief may be granted without either a substantial detriment to the public good. The public good will not suffer any detriment by the granting of this variance since the relief requested will allow for its time significantly less lettering and would be allowed as of right.

Nor does it nullify or substantially

derogate from the intent or purpose of the Ordinance. The overall area of the signage proposed for this bank is significantly lower to what is permitted under the Zoning Ordinance.

Did I get everything in?

SEAN O'GRADY: Conditions.

TIM HUGHES: I did the conditions on the Essex Street side.

All those in favor of passing the variance.

(Show of hands.)

TIM HUGHES: Five in favor.

(Hughes, Sullivan, Firouzbakht, Heuer, Myers.)

TAD HEUER: Can I ask that any of the new colorized versions are able to be inserted in the file, they be done so by the petitioner to assist in the variance?

ATTORNEY JAMES RAFFERTY: Sure. We'll reflect the new Essex Street elevation

as well.

TAD HEUER: That would be wonderful.

ATTORNEY JAMES RAFFERTY: Thank you
for your time.

(A discussion off the record.)

(8:00 p.m.)

(Sitting Members: Constantine Alexander,
Tim Hughes, Brendan Sullivan, Tad Heuer,
Mahmood Firouzbakht.)

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

You want to tear down and then rebuild?

SCOTT KENTON: Scott Kenton, I'm the designer and one of the co-owners of the property.

MEREK FRANKLIN: Merek Franklin, one of the co-owners of the property as well. And we have our structural engineer Daniel Webb.

SCOTT KENTON: I wanted to give out, this is not particularly new information, but just clarifies a few things, two points.

CONSTANTINE ALEXANDER: These are new photos? These are not in the file?

SCOTT KENTON: They should be, I believe, under one of the larger inserts. It could be.

CONSTANTINE ALEXANDER: Okay. You

did hand something in to a special, whatever. I know what you're referring to.

SCOTT KENTON: So we purchased this property in November, and the intention -- it was vacant for some number of months, five or six months. It's a two-family. You can see from the handouts I gave you, the siting of the property, the corner of three streets, Saville, Granville and Fayerweather. And it's, it might be something we're going to make reference to a little later. It's just the large, open area around this house on that corner. The intention is to renovate the property and to sell it. Merek Franklin is the developer, co-owner, and I have 25 years experience in working with the developers and developing plans and permitting them and doing a lot of construction walk-throughs. The initial walk-through of this house seemed to indicate a settlement that were unusual. We're all used to settlement in Cambridge

houses. Typically it settles within a first decade or two of construction. This house, when you walk in, one of the doors, the doors fly open by themselves and, you know, you really see a settlement of the floor structure from 12 to 15 inches across about a 40-foot length which is a lot. You literally feel like you need some Dramamine to walk across the floor of this building.

So then looking down through the basement, there's also evidence, not only of sort of the cracks you see in the foundation, but the entire foundation itself just curves. The photo that also is showing you from Seville, a little small, but you might see evidence from the outside photograph of this two-story bay, which is really just tilted and it looks like it's ready to fall off the property.

So, I talked to the builder Merek Franklin who is a developer/builder, and

based on my experience, we decided to go another step and do borings. It's not something you typically do in houses. Unfortunately we found that we are sitting on peat moss and it's not near the surface. It's down some distance about approximately 20 feet. We have the engineer here to answer any questions about it, and it's a layer of peat moss. It's thick enough so that we really cannot sit this house on it. Renovating the house would be a substantial amount of money. We would like to improve the property, but we want to make sure that it's stable and sound. So our understanding is the way you do this is by putting in a deep pile foundation system. We considered the idea of trying to revive this structure, but economically and for various other reasons, it really doesn't make sense. The structure itself is twisted and contorted.

And so we then went to the Historic

Commission to ask for a waiver from the six-month moratorium. They initially were not in favor of it. We then had them through the property, which was the beginning of January, with our second hearing. And after that and some discussion with our engineer, I think they came around to the viewpoint that the property can't really be kept. And then we went ahead and developed actually three different plans. I'm not going to bore you with the other designs, but what you see before you here is a result of a process that was rather lengthy. And the last iterations involved, just the detailing, the outside and the dormers. Our idea from the beginning, though, was for the most part to reconstruct a new property turned from a two-family to a one. Use pretty much the exact footprint of the house that's there and do what we could to lessen the non-conformity the property is over the FAR.

It has -- because of the corner lot, it has I think dimensional setback violations on all sides. It conforms to height. It does not conform to parking. It doesn't have any parking. It's a two-family. So we would propose to basically use the same footprint. Translate -- move the new structure four feet further from the adjacent house thereby creating enough room for a parking space. So in other words, moving the footprint this way toward the corner four feet. It's an open corner. Typically, I don't suggest moving the property closer to the property line, but this is, this is an open corner. It's quite open public ways.

And it serves two purposes: It allows us to provide a parking space which is a little reduction in non-conformity, and probably most importantly it gives us a little breathing room from our neighbor who is fairly close to the property line with

their house. It's a condominium. They had a lot of concerns about it.

We did talk to our neighbors there. We had two meetings that we held prior to our first historic meeting with our neighbors, so that's why the -- moving of the house.

CONSTANTINE ALEXANDER: Is the parking under your plans now will that be conforming dimensionally conforming with the Zoning Law?

SCOTT KENTON: I believe parking is required to be five feet from a property line.

SEAN O'GRADY: For a new property.

SCOTT KENTON: For a new parking space?

SEAN O'GRADY: This would be a new property.

SCOTT KENTON: I believe if we kept the structure and somehow -- it's a structure allowed in its existing position --

CONSTANTINE ALEXANDER: The plans

you're bringing before us which include the parking, is that parking in conformance with those Zoning By-Laws? Right now there's no parking on the lot. So we have a non-conforming situation that's parking. I'm trying to determine whether we're going to -- now if we grant you relief, conforming parking.

SCOTT KENTON: I think it's non-conforming because we would need a five-foot setback for the edge of the parking spaces.

SEAN O'GRADY: At least, yes.

SCOTT KENTON: My understanding, trying to help out, if we kept the structure and put the parking space there, we had the room, because it's an existing house, we wouldn't be in violation. We're taking down the house, the minute the house is not there, that's a technicality there.

CONSTANTINE ALEXANDER: What I'm

trying to get at is the extent to which the non-conformity of the existing structure or use of the property will be diminished by what you're going to do. You'll slightly reduce the FAR. You will still be non-conforming with respect to FAR but less than today. You'll still be in the same situation as far as the dimensional setbacks. You have a problem now and you'll have a problem afterwards. I'm just wondering if you have parking non-conformance by doing what you want to do but I gather that's not the case.

SCOTT KENTON: Number of spaces but dimensionally, no.

I want to point out details. When we started the case with Historic, we wanted to literally keep exactly the square footage that was there. We then, we also wanted to use a dormer structure. And the dormers that we had proposed did not add any FAR because they were in an area that was five foot

headroom. But aesthetically the Board was not in favor of them, so we went through two different changes. And essentially what the Board wanted us to do was perhaps increase the height of the house, the new house, in order to the proportions that they liked. And we decided we didn't want to start that sort of a precedent especially coming before this Board. So their concern was this dimension. We really had to bring the wall of the dormer out in order to get the proportion right. So when you look at the application, and it shows about 130 square feet greater than what is there, I believe that's contributed to the dormers that were amended.

CONSTANTINE ALEXANDER: Is it fair to summarize the case along the following lines: Today the lot has a non-conforming structure on it. If we were to deny the relief you're seeking, the city would be left with a lot with a non-conforming structure.

If we grant the relief you want, we will have still a non-conforming structure on the lot but one that is less than the non-conformity than the existing structure. We will have a house on the lot, then at least in the opinion of the Historical Commission it's at least a house on a lot that's fair now.

MEREK FRANKLIN: I think one other point is that the house isn't structurally sound and it needs to be rebuilt.

CONSTANTINE ALEXANDER: I know you have to make structural repairs.

MEREK FRANKLIN: Exactly, yes.

CONSTANTINE ALEXANDER: But that's what someone would have to do. Either that or tear it down and build a different kind of structure.

MEREK FRANKLIN: Excuse me. I'm saying that the new house --

CONSTANTINE ALEXANDER: Right.

MEREK FRANKLIN: Right. -- will

have the foundational system that we deem -- that we end up choosing to get the house structurally sound.

BRENDAN SULLIVAN: Well, you requested on the FAR is going from 0.83 to 0.82?

CONSTANTINE ALEXANDER: That's what the form shows.

SCOTT KENTON: Well, the --

BRENDAN SULLIVAN: What is the requested square footage?

SCOTT KENTON: One second.

CONSTANTINE ALEXANDER: Why is this a stump the band question? You have a form.

SCOTT KENTON: There should have been a second dimensional form that was in the file.

CONSTANTINE ALEXANDER: It's not in there. The only one that's in there --

SCOTT KENTON: The last page of the drawing should have the dimensional form with

a partial survey.

CONSTANTINE ALEXANDER: This is the page. There is one more page? Here it is.

SCOTT KENTON: That should show a number that shows increasing.

CONSTANTINE ALEXANDER: You're going up now? 0.84 to 0.88.

SCOTT KENTON: What I'm trying to point out is that number was a result of --

CONSTANTINE ALEXANDER: I understand, the dormer.

SCOTT KENTON: Yes, it is slightly further in violation.

CONSTANTINE ALEXANDER: To what extent are you less in the non-conformance were we to grant you the relief you're seeking tonight?

SCOTT KENTON: At this point I was discussing the process, and maybe I spoke a little too soon. The initial intent as I was just talking about, the history of it was to

decrease the non-conformity we could. At this point I guess you could say that we're decreasing the non-conformity is the number of parking spaces.

CONSTANTINE ALEXANDER: But you are increasing the intensity, the use of the land because you're going to go from 0.84 to 0.88 in FAR in a 0.5 district. It's a completely different case in my mind than the case before and that's why I posed it before and you said yes. And now as Mr. Sullivan points out this dimensional form is not true.

SCOTT KENTON: Well, I was trying --

BRENDAN SULLIVAN: Let me run through this in a minute and we can maybe wrap it up in one discussion.

You're going from a 0.83 to a 0.88. A front setback which is 11.3 now will remain at 11.3. But then you're other front which is at a 9.4 feet is going to go to six feet. So that's an another violation. The left

side which is now six, will be increased to 10. The height is going to be reduced, but then the open space is going to be reduced below -- right now it's more than what's required is going to be less than what's required. So there is -- it's more than -- so there's three, four items there.

SCOTT KENTON: I think that the dimensional items that you mention are a result of just translating the house but, yes, it is true that we --

BRENDAN SULLIVAN: Did you come up with an as-of-right scheme?

CONSTANTINE ALEXANDER: Yes.

SCOTT KENTON: We, the as of right scheme to our mind is very difficult for us to sort of economically justify. In our mind it was certainly -- maybe I should back up. And --

BRENDAN SULLIVAN: Well, I guess the answer is yes or no.

SCOTT KENTON: We did look at it.

BRENDAN SULLIVAN: Okay.

SCOTT KENTON: It didn't make any sense to us. We incurred maybe another hundred thousand dollars in cost just with the foundation. And one of the things I may want to -- at least throughout early in this process is that there's certainly ways for us to amend the overall footprint of this structure so that the resulting FAR is literally exactly the same as what is there. We, as I mentioned from the beginning, and I guess I wasn't clear, we were tipped from our initial keeping everything the same, we were tipped over the existing FAR by the process of these -- the dormers and how that worked out. But we could retain the dormers if the Board found the dormers were a reasonable addition to the structure.

BRENDAN SULLIVAN: So the additional dormers, were they to be similar

to the ones that are around the corner of Fayerweather and Concord?

SCOTT KENTON: On the corner of?

BRENDAN SULLIVAN: Fayerweather and Concord.

MEREK FRANKLIN: The shed dormers?

BRENDAN SULLIVAN: Yes.

SCOTT KENTON: The blue house?

BRENDAN SULLIVAN: Yes.

SCOTT KENTON: Yeah.

BRENDAN SULLIVAN: So they would be like that. Okay. So we got that. That's the step in the right direction to do that.

I guess where I'm coming from, and as I am, and not just in other cases similar to this, we're starting off with a blank piece of paper initially. We're tearing down the house. And then when you start off with a blank piece of paper, that then triggers this book. And there's a reason why the ordinances and the numbers and rules and

regulations in this book to keep you within a certain envelope I guess. And I guess I would have to be convinced that why did you need to extend beyond that? Why did you need to create a bigger structure than what is allowed? Then you say well, again, you mentioned the word economics. It makes no difference to me whether you make a dollar or \$10 million on this thing. And the Ordinance doesn't address that issue. So, in my thinking what you do is you start back with an as-of-right solution. And an as-of-right solution, I don't know, let's argue and say 1.4 million on a, you know, put a for sale sign on it and say 1.4, 1.6, whatever you want. Just for argument 1.4. And then you backtrack from there as to what your construction costs are with the architectural -- everything, what it takes to get this building built. And then you're back at, I don't know, maybe a million

dollars. And then, of course, you add in your acquisition costs. Well, the value of the property is not what you paid for it at your cost. The value is what you can do as of right and then sell it. So rather than starting at an acquisition cost of so many hundreds of thousands of dollars and then adding the structure on top of it, and it gets you to a high number, and in order to justify that high number, you have to build something that's marketable. My way of thinking is you start at that high number, what is the max market for that area and then you back down. And if that acquisition cost becomes arbitrary, and if you overpay for your acquisition costs, it doesn't necessarily justify the high costs which doesn't necessarily justify a bigger building or a require a bigger building.

CONSTANTINE ALEXANDER: I absolutely agree with what Mr. Sullivan is

saying. Is that to be sure the bigger the structure you can build on the property, probably the more value. And you can make more money on the property. We're not in here to increase your profit. If you can do -- if you can make a building on this property which is possible to do, you won't make as much money as the building you have before us right now, I don't see the basis for relief. There's no hardship.

SCOTT KENTON: Okay, well, if the Board has no feeling that that -- creating the literally the exact same house -- this is hypothetically. We want to create this exact same structure new with a sound foundation, the exact same look, the exact same FAR, the exact same setbacks, the exact same non-conformities, dealing with a site that is unique in terms of its soil, and I feel from that point of view, maybe you disagree, there's a real hardship. The Board grants

variances all the time and sometimes I can say well, what was that hardship? Here's a hardship. I think it's fairly obvious. If we wanted to create the same structure that was there, would the Board be sympathetic to that or is that something that you would say look, the house, once it comes off, all bets are off, let's start with the Zoning Ordinance?

CONSTANTINE ALEXANDER: That is a rule basically. Once the house comes down, all bets are off. You have a vacant lot and then you can build on that lot what the Zoning allows you, and to the extent you can't you come to seek a variance before us. And that's clear. Once you take the building down, as Brendan has said, you've got a vacant lot. So whether you have to build exactly the same structure that's there now, rebuild, or a different kind of structure, but you could -- you got to start with what's

permitted by our Zoning. To the extent you deviate from that, I would suggest you want to deviate as least as possible to substantiate the hardship argument. It's not a hardship that you can make some money doing what you want to do, but not as much as you would like to make. And that's what I'm hearing tonight.

MEREK FRANKLIN: Mr. Alexander, I'd just like to jump in for a second here.

CONSTANTINE ALEXANDER: Yes, sure.

MEREK FRANKLIN: We were thrown a curve ball with the house. I think what Scott is saying to replace the house is basically as it stands today, just taking the house down, rebuilding it, basically as it stands down the same lines, same architectural details, you know to a T, we were thrown a curve ball with the soil. You know, once we did our test borings and such. I mean, I'd love to rehab the house, get the

house and redo the house. I mean, I've done several houses to that extent, you know, throughout the neighborhood with, you know, quite frankly very good success. And I -- that was our initial inclination and, process you know, when we purchased the house. The soil condition is the hardship. We cannot, you know, actually -- it's cost-prohibitive for us to make that foundation, you know, workable.

And, Dan, maybe you can speak to this a little bit, I mean you know.

BRENDAN SULLIVAN: Well, I mean it's obvious to even an untrained eye, an unprofessional eye there was a soil problem there because the house is all over the place. You know, it's the old preverbal house of cards in a sense. You go down to the basement and you say, yeah, it's a soil problem. So you bought it and said oh, my God, we have a soil problem. It doesn't resonate with us.

CONSTANTINE ALEXANDER: You just told us you walked in the house and the floors were tilted and the doors flung open.

BRENDAN SULLIVAN: You're a savvy developer.

CONSTANTINE ALEXANDER: Yes. So you weren't surprised. You knew when it when you bought the property.

BRENDAN SULLIVAN: That doesn't resonate with me. You should have known what you bought.

DANIEL WEBB: If I can elaborate. Before he bought the property he consulted me and said, hey, I'm looking at this property, the floors are all over the place. I did not see the property, but I consulted with a number of people about buying property in Cambridge and I say, well, you're buying in Cambridge. You know, you've got sloping floors and stuff like that. Sometimes it's a big problem. Sometimes it's not a big

problem, you know. So I guess I disagree with the notion that it was a slam dunk that this building had substantial foundation problems. I walked through a lot of houses in Cambridge that the foundations look horrific and, you know, but the building's still okay. I guess the only point I'm trying to make is I don't necessarily think it's a slam dunk that Merek knew.

BRENDAN SULLIVAN: It should have raised flags. Whistles should have gone off. More investigation should have been done.

CONSTANTINE ALEXANDER: The suggestion that it's a slam dunk, you're right. You have a sophisticated developer. You've got known structural issues in Cambridge. It strikes me as part of the process deciding whether to buy the house during your inspection, you would have taken a good hard look at it. And I'm not

sympathetic when you come in to us tonight and say well, we didn't take a good hard look and now we have and we've got a problem, please help us out. That's what you're saying to us. That's not what we're here for.

SCOTT KENTON: Well, I guess to some extent partially it's our philosophy is reconstructing a house by renovation that doesn't require any decision from any Board Historical or Zoning Variance Board was option A. And option B is creating a new house replicating that house in every way. Doing so, it sounds like we would not receive any sympathy from the Board, even the worst soils in the world. If I come back to you and say in a month or something, you let us continue it, and I have same FAR, the same footprint, and the same location without the parking space, it's the same -- everything is the same. And say we really just need to reconstruct this house so that we can have

housing in this location that's viable and someone can live in safely and it's not going to move in ten years and no one gets sued. Is that acceptable? Would that be creating terrible precedent or is it a reasonable thing to request?

CONSTANTINE ALEXANDER: Anybody else want to respond?

TIM HUGHES: I have to disagree with Gus and Brendan on this. I think not only is that acceptable, but that's exactly what we would like to see happen. But in this case, it doesn't seem feasible to do it that way. It seems more feasible to take the house down and start from scratch and put in a better foundation. Your ultimately -- the ultimate result is that there's no -- there's less use on the land going from a two-family to a one-family. The house is only fractionally bigger than the other one. And I, you know, I buy the explanation that you were

handcuffed by the Historical Society. It's not the first time they've done that to somebody. That you had to add a little FAR so you got proportional dormers on the building so it looks better to them. I buy that. And I buy the fact to put a structure back in place here, it's easier and more cost-effective and more sensible and safer to take this thing down and start over again with a pile-driven foundation or whatever your engineered-foundation is going to be on this particular location. It doesn't seem to me to be that big of a departure from Section 6 of Chapter 40(a) in replacing, you know, a single-family or a two-family house that already existed in this spot. It doesn't seem to be that big of a departure to me. And the idea if you demoed this thing, you would have to go back to 1689 square feet and lose 1200 possible square feet on this piece of property in this area. It's not just that

you're not going to make as much money, you can't make any money on this piece of property there doing that.

MEREK FRANKLIN: Agreed.

MAHMOOD FIROUZBAKHT: Can I ask a question about open space that you're losing. Are you losing some of the open space because you're adding a parking space?

SCOTT KENTON: I think it's partially that, but I think it's literally a proportion of there has to be -- I believe a 50 percent of the required open space has to be 15-by-15 and we lose a little bit of that even though there's no -- perhaps no coverage that increases -- we do lose it by translating it a little bit. So I wanted to be honest in the application. The overall net change to green space might be the same, but technically open space does get reduced. We did not also take into consideration the asphalt that exists currently between the

house on Fayerweather in trading that off to our parking space. So yes, the answer is technically we would decrease our open space by removing the house, and that's probably why the number 1500 square foot by 15 foot decreases the parking.

MAHMOOD FIROUZBAKHT: To ask it another way is your parking space not being counted toward your open space?

SCOTT KENTON: It's not being counted towards open space.

MAHMOOD FIROUZBAKHT: So essentially by adding one conforming characteristic, you're taking away from what used to be a conforming characteristic and you're going to, you know, that may be contributing to the non-conformant open space.

SCOTT KENTON: In the interest of disclosure and all that good stuff, you know, the translation of the house, even if we

didn't add the parking space, probably would technically reduce our open space a little bit.

MAHMOOD FIROUZBAKHT: Right.

TAD HEUER: Why does the house have to be translated?

SCOTT KENTON: Well, it doesn't. But I think we did want to provide a parking space. And when we look at the site plan of existing, we did actually walk the site initially prior to buying the property with Bill Dwyer to see where we could achieve a parking space. Nothing on the corner makes any sense. And the other -- there's a small area on the corner of -- just right on Granville, right, right here, that we could possibly put a parking space right here. It would actually require, you know, construction of this little traffic common park which I was told by public works it's not something they like to do. And we would also

be limited by this space, by, you know, parking in the front yard.

TAD HEUER: But when you're talking about translating the house, even if you did that, you still would go up in your FAR. Why is that true? For example, why can't -- this is the site now, right? This is the property now. I can remove FAR without much difficulty by doing that, right?

SCOTT KENTON: Sure.

TAD HEUER: And I think what I was hearing earlier, is more that -- and I'm not sure where I fall on this, but that at least initially we felt, or lack of a better term, bait and switched by seeing an FAR by 0.83 to 0.82 and then coming back and saying it's not an FAR of 0.83 to 0.82, it's up to 0.88. I don't see any justification whatsoever of any increase above 0.83. That is for me your upper ceiling at any point here. If that means you want dormers and you've got to

remove FAR from somewhere else in the house, that means you got to fill a basement, go to it. But 0.82 or wherever you were, 0.83 I think for me is your upper ceiling.

Particularly given that you're in a 0.5.

Quite frankly I don't see, and going somewhat to Brendan's point, I don't see why the calculation can't be as maybe a 0.5 is maybe not a viable period. Maybe you're in a Lucas taking situation, I don't know. But, you know, is a 0.75 really going to kill you? I'm betting not. You can make up some of that in a nice finish on the kitchen counters.

So I think part of the reaction you're getting is that we saw two different dimensional forms, and one went down and one went up. And we're at a loss to figure out where the loss, where the more conforming nature of the new structure comes from.

SCOTT KENTON: Okay. I apologize for trying to make it perceive as though I

was, you know, I'm trying to pull the wool over someone's eyes here.

TAD HEUER: I understand.

SCOTT KENTON: The first dimensional form was inserted into this package -- there were two historic hearings that happened after that. About three weeks ago I included the new design with the last page showing a new dimensional form. We were not aware that it was a good idea to amend something that Historic had approved reducing the square footage. We then go back to that, etcetera. But what I mentioned earlier, and would like to throw in again is that, yes, we would be perfectly able, and I think happy to amend some other aspects of this so that the square footage that triggers this over what's existing can, can be reduced somewhere else. Keep those dormers, and literally be right at the -- with what we started out with.

TAD HEUER: If this is a situation where we have someone says I want to build on my foundation. You're coming in and saying I can't use my foundation. The point that you can't use the foundation, the idea of translating the foundation as to where the foundation was at one point, but you couldn't get anymore unless you dug it out to 20 feet, kind of goes by the way side for me. I don't necessarily need to see an identical house on the site, but if something else is going to go there on a new pile-driven foundation where you can pick where your foundation is going to go, conform it and make it more conforming than what was there. I mean, I think the general Zoning Ordinance, we're trying to reduce non-conformities. I think your soil hardship issue probably gets you some of the way there. But I think that these issues of adding conformities, adding non-conformities where it takes them away,

you know, come back and show us the side by side of what's going away and what's being non-conformed, what's being conformed and, you know, show us something that we can essentially rough sum at the bottom to see why this is a better deal under the Zoning Ordinance than what we've got there now.

SCOTT KENTON: Yeah, I mean, you know, I've been before the Board many times over the years and I would never advise a client with a blank slate with nothing preexisting, non-conforming to go for almost twice the FAR that's allowed, that sort of thing. So, that's definitely something we could work with. And keeping the footprint there, though, we -- although it's translated, we did feel that that would maybe be generally more palatable to the neighbors, to the Board. But we understand the concern and then either further, you know, proposal it's further non-conforming so we can think

about that and come back to you.

CONSTANTINE ALEXANDER: I'll suggest that we continue this case to allow you time to reform your plans and do whatever you got to do with Historical. It will be a case heard so we have to come back before the same five people that are here. I don't know how much time you would want to do what you have to do. You have a suggestion as to how much time you would like and then we'll see how it fits in our schedule?

SCOTT KENTON: I think we can do it fairly quickly.

CONSTANTINE ALEXANDER: You have to go back to Historical though?

SCOTT KENTON: I guess that's a question depending upon what the reductions are. If literally we're shrinking the proportions of the house five percent and everything's aesthetically looks similar, they might not have a problem with that.

MEREK FRANKLIN: And the other thing is they circulate the revisions that we did, you know, from the last meeting rather quickly. So, you know, our feeling is that if they can get back to us, you know, pretty quickly.

SEAN O'GRADY: We're out to May 13th.

CONSTANTINE ALEXANDER: That would be the earliest?

SEAN O'GRADY: Yes.

SCOTT KENTON: We'll get it done.

BRENDAN SULLIVAN: Who was the previous owner, was it Pierce?

SCOTT KENTON: Yes.

CONSTANTINE ALEXANDER: Is everybody available for May 13th?

MEREK FRANKLIN: The families are good friends of ours.

CONSTANTINE ALEXANDER: Everybody available for May 13th?

BRENDAN SULLIVAN: Yes. I'm sorry.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on May 13th as a case heard on the conditions that the petitioner sign a waiver of the time that we're making a decision. And on the further condition that you modify the sign on the property of the new hearing date.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(8:35 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9894, 25 Coolidge Hill Road. Is there anyone here on that matter?

For the record, give your name and

address.

ATTORNEY THOMAS BRACKEN: I'm Thomas Bracken, B-r-a-c-k-e-n and I'm the attorney for the petitioners in this action. And my address is 33 Mount Vernon Street, Boston.

BEVERLEY EVANS: And my name is Beverley Evans and I live at 29 Coolidge Hill Road. And I'm one of the petitioners.

LAWRENCE EVANS: And I'm Lawrence Evans. I also live at 29 Coolidge Hill Road in Cambridge.

CONSTANTINE ALEXANDER: You're here on behalf of your clients to appeal a decision of the Inspectional Services Department. We'll hear more from the Department as we go forward. But they move the proponent had no jurisdiction over this eight-foot high brick wall fence. And you dispute that on the basis that -- I have your memo here, that, one, you believe that this brick wall is not

a fence. And, further, that if it is a fence, then it is a structure that it could not be added to the non-conforming.

ATTORNEY THOMAS BRACKEN: That's right.

CONSTANTINE ALEXANDER: Would you like to elaborate?

ATTORNEY THOMAS BRACKEN: Yes. I think it would be helpful to look at our petition, and particularly the photographs that we've attached. And the photographs attached are in black and white. And Mr. Evans has the same photographs in color which make it easier to reference here.

The one photograph we don't have in color is the before photograph of the house that we took off the website. And that's the first photograph in our petition. And this shows the house before the wall was built.

Now, what is important to keep in mind here is that this is an aide to Zoning. And

the only allowable dwellings are attached to the family houses.

CONSTANTINE ALEXANDER: Right.

ATTORNEY THOMAS BRACKEN: Now, the building in question as well as the adjoining building where the Evanses live and others, were all built before Zoning. So all these houses are non-conforming.

CONSTANTINE ALEXANDER: Right.

ATTORNEY THOMAS BRACKEN: But they were built in a way to look like they were a single-family house. So you have three houses and a structure, but as you see from this photograph, there's only one door in the center and windows and shutters and everything. And then the units on each end have separate entrances on the sides. And that's the way these houses have all been maintained. So they have the appearance of a single-family house even though there are three separate dwelling units in the

structure.

Now, the second photograph shows the center house which is 23 with the wall that is the subject of our petition built by the owner of the unit No. 25 which is at the north end. And the other photographs similarly show the wall from various angles; from the north, from the south. So now, the reason we say it's not a fence is because first, a fence is not defined in the Zoning Ordinance. So we look to the Massachusetts Statute which defines fence. Fence is four feet high and so forth and so on.

CONSTANTINE ALEXANDER: In what context is that definition? Is it the Zoning. Chapter 40(a)?

ATTORNEY THOMAS BRACKEN: No. Chapter 49, Section 2.

CONSTANTINE ALEXANDER: What's the context? Define the fence in what context. It may not be relevant to us from a Zoning

Board.

ATTORNEY THOMAS BRACKEN: Well, I must say it's a provision that sort of stands alone. Because in the annotations to this section you find cases that are not Zoning cases but they are cases as to what is a fence in terms of keeping cattle and pastures so they don't stray out onto the railroad track and stuff, and they go back to the last century -- or two centuries back.

TAD HEUER: But that's the provisions of the fence in those cases. I mean there are provisions, if I'm remembering my statutes correctly, that's when I believe a fence should not be paid less than five dollars for adjudicating a dispute over the course of a day. These are old statutes designed for agricultural uses, are they not?

ATTORNEY THOMAS BRACKEN: I don't know whether the five dollars or what it is. In any event, we have that definition for

whatever it's worth.

CONSTANTINE ALEXANDER: What I'm trying to tell you it's not worth very much because it's not in the context of Zoning.

ATTORNEY THOMAS BRACKEN: All right. Let's go on to a dictionary definition.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY THOMAS BRACKEN: Which seems to be more relevant. We have Webster's Unabridged dictionary, and you may come up with other dictionaries. What I find is that a fence is defined as a structure. Now it could be brick, it could be wood or --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY THOMAS BRACKEN: -- the substance in material is not critical or even the height, but it is the function that it encloses a yard or, again, keep the cattle or keep the children in or keep the dogs out or in or whatever.

CONSTANTINE ALEXANDER: But doesn't a fence -- I mean, that's the point of your memorandum. That to be a fence encloses an open space. But aren't there fences that delineate boundaries? I mean, it was Robert Frost, "Good fences make good neighbors." That's why you have a fence. It doesn't necessarily have to enclose an open space.

ATTORNEY THOMAS BRACKEN: If you had a fence down the boundary line to keep people from going from one side to the other and it went out to the street on one side or the sidewalk or someplace on the other, then it would enclosure property on the front from the neighbor's side. But no matter how you define a fence, to put a wall that just extends eight feet out from the house, I think defies any definition of a fence.

Now the one case that we have, and I must say there aren't many cases, but the Appeals Court case which, again, relied on the

concept of enclosure. And the Court found that that -- and in this case it was only two feet high, and it was stone, but it enclosed an area to keep the tenant's children. And there, again, it's as in a Cambridge situation, the fence was defined as a structure.

So, going on to our next point, if this wall is deemed to be a fence -- and I might say that the only precedent that we could find was a decision involving No. 49 Kirkland Street where it was a brick wall like structure. It went up seven feet or whatever. But, again, it completely enclosed the property.

CONSTANTINE ALEXANDER: Are you now talking to the point whether this wall is a structure? Are you saying it's a structure?

ATTORNEY THOMAS BRACKEN: Oh, no. I mean under the definition of structure in the Zoning By-Law and in the Ordinance, a

fence, it specifically says a fence is a structure.

CONSTANTINE ALEXANDER: No, that's not correct, sir. I'll read you the definition of structure from our Zoning Ordinance.

ATTORNEY THOMAS BRACKEN: All right.

CONSTANTINE ALEXANDER: It says a combination -- structure is defined as a combination of materials assembled at a specific location to give support or shelterer.

And then it gives examples: Such as the building and one of the -- such as is a fence. The definition of a structure is a combination of materials assembled at a fixed location to give support or shelter.

Now, let's look at this brick wall. Is it giving shelter? Maybe to squirrels, but is it giving shelter to anybody else?

ATTORNEY THOMAS BRACKEN: I would agree that it's not giving shelter.

CONSTANTINE ALEXANDER: Okay. Does it give support to the structure, to the building itself?

ATTORNEY THOMAS BRACKEN: It doesn't give support.

CONSTANTINE ALEXANDER: Then it's not a structure.

ATTORNEY THOMAS BRACKEN: But the definition says a fence is a structure.

CONSTANTINE ALEXANDER: No, it does not. I just read you the definition.

ATTORNEY THOMAS BRACKEN: You read me the definition. You're reading out the word fence.

CONSTANTINE ALEXANDER: No, because the fence is given as an example as something that could be a structure. If it gives support or shelter. It has to give support or shelter. That makes it a structure. And

then the statute goes on to give you kinds of things that give you support or structure and one of the things is a fence. It doesn't say the structure is a fence.

ATTORNEY THOMAS BRACKEN: The example said defy the language that you're relying on, the flag pole doesn't give shelter. A sign doesn't give shelter. A platform doesn't give shelter. Retaining wall. This, you can say this is a retaining wall.

TIM HUGHES: I think all of those things do give support. A flag pole supports a flag. A retaining wall holds back dirt. It's one or the other, not just a structure.

ATTORNEY THOMAS BRACKEN: A tunnel, a tent, a fence.

This is the same definition that the Court was looking at, the Appeals Court looked at in the case that we cite. It defined the case, defined structure. And it

defined it -- I'll find the case. It defined it in the same way. If you look at --

CONSTANTINE ALEXANDER: What I'm saying, sir -- what we're saying is that if there were no definition of structure in our Zoning Ordinance, that case may be relevant. But we have a definition of structure in our Zoning Ordinance, that definition controls.

ATTORNEY THOMAS BRACKEN: I agree.

CONSTANTINE ALEXANDER: And the cases that defines structure for a different Zoning By-Law or defines structure in the abstract are not relevant. You've got to work with the definition of structure that's in our Zoning Ordinance.

ATTORNEY THOMAS BRACKEN: I would point to footnote 5 in the Wachino (phonetic) case that give the definition. It's in the by-laws of Long Meadow. "Structure shall be anything proposed of any material or combination of materials to reconstruct

placed on the property for which occupy more than four square feet and projected base area" -- dah, dah, dah. "Shall include a fence."

TAD HEUER: But that's the definition for Long Meadow.

CONSTANTINE ALEXANDER: That's not our definition. There's a complete definition we have in Cambridge.

TAD HEUER: In footnote 5 it says: Occupies more than four square feet in projected base area.

Clearly, I would imagine, that this fence or this wall, whatever it is, is the size it appears to be, occupies more than four square feet in base area. But we're not in Long Meadow. We're not under their Article 2, Paragraph 44. I mean, I would also point out that the first substantive paragraph in the Long Meadow case is that the court concludes that a variance was unnecessary and

the wall be constructed as of right. I'm not quite sure that the Long Meadow case is your strongest point of view. I understand that cases can be cited for elements what's in them --

ATTORNEY THOMAS BRACKEN: Well, the Long Meadow case we construct it as of right because it's setback 40 feet.

TAD HEUER: Right.

ATTORNEY THOMAS BRACKEN: Which was the setback, the distance for a fence.

TAD HEUER: Yes.

ATTORNEY THOMAS BRACKEN: And then it goes on and says that -- but I'm stunned at this definition that you're -- the instruction you're giving to the definition of structure. When it specifically says that a structure such as, and then it goes on gives all these examples; sign, flag pole and the like.

CONSTANTINE ALEXANDER: I'm going

to repeat myself --

ATTORNEY THOMAS BRACKEN: So, and there's no definition of fence.

CONSTANTINE ALEXANDER: That's true.

ATTORNEY THOMAS BRACKEN: By by-laws.

CONSTANTINE ALEXANDER: That's true.

ATTORNEY THOMAS BRACKEN: And it seems what can you go to other than the dictionary definition which we've given you. And this wall that's not fit any definition that I've seen of a fence. So, whether it's a structure or isn't it a structure, I would submit it is not a fence.

CONSTANTINE ALEXANDER: Any questions or maybe we should ask for the Commissioner --

BRENDAN SULLIVAN: I'm interested in the determination of the Commissioner --

CONSTANTINE ALEXANDER: Exactly.

BRENDAN SULLIVAN: -- from a historical point.

RANJIT SINGANAYAGAM: I considered fences today board or brick or stone, anything as long as it's not a shelter is a fence. And we don't -- they don't have a setback problem to start with. So, there are a lot of (inaudible) that you may know that separate the backyard from the front parking areas between the houses to the exterior fence. Those are fences. We don't consider them as structures and setbacks. So, and this is giving support and just separates the back from the front. It happens all the time. The only thing if it's more than eight feet, you need a building permit. So I consider this a fence.

CONSTANTINE ALEXANDER: Okay.

Questions from anyone? Questions?
Sure.

LAWRENCE EVANS: May I make a comment?

CONSTANTINE ALEXANDER: By all means.

LAWRENCE EVANS: I don't know if this is appropriate, but a sort of different point here. These houses are non-conforming houses. They're in an A2 District Zoned for single-family houses that can be converted to a two-family house or actually a three-family house provided the exterior has not changed.

Okay, this wall that comes out dramatically changes the exterior appearance. It wouldn't make any sense to have a Zoning: Law that prohibited changing the exterior appearance, and to make a non-conforming house and then allowed someone to make a dramatic change that changed the appearance.

CONSTANTINE ALEXANDER: But isn't the notion of not changing the exterior

appearance of the structure itself, the building, the residence and not of an appendage like a wall, why does a wall change --

LAWRENCE EVANS: This appendage dramatically changes the appearance. And if you look at the letters that have been submitted and the statements that the people have here, they will very much attest to the fact that this does dramatically change the appearance of this structure from a single-family residence to a multi-family residence.

TIM HUGHES: I'm not willing to give you that. I'm willing to give you it changes the appearance of the building, but it doesn't necessarily change the appearance of the building to suggest it's a multi-family residence.

CONSTANTINE ALEXANDER: Why didn't somebody build a wall to give you more privacy

in the backyard?

TIM HUGHES: More to protect from prevailing winds and snowdrifts and stuff.

LAWRENCE EVANS: What do you? What do you think this wall is for here? What are you saying the wall is for?

TIM HUGHES: I'm looking at the picture, it suggests to me that it's a block of snow drifts or a wind drift or it's to provide privacy to that window next to it. But that doesn't necessary tell me it's privacy from one family to another. It's just from one room to another. Or people coming in a door and it provides a little privacy to that room if that was an office, and you wouldn't want everybody that came to -- every Jehovah Witness to bother you while you're writing the great American novel. I don't know. It doesn't suggest to me that makes it look more like less like a single-family house.

LAWRENCE EVANS: All I can say is that 13 neighbors who signed this petition, and many others who've written letters who did not sign the petition, all come to the conclusion that this alters this structure so it does not look like a single-family residence.

CONSTANTINE ALEXANDER: The one thing that struck me most noteworthy is the people in the structure itself, the ones most directly affected, 21, 23 and 25, none of them oppose the decision. It's the people in the neighboring houses. I think the most dramatic evidence that it doesn't really impact the neighborhood is the people that live in the house that are supposed to be impacted.

LAWRENCE EVANS: I would say to the contrary. The reason for the Zoning, in my opinion, or for Zoning as a single-family is to preserve the character of the

neighborhood. And so it's -- the neighbors are very much affected. It preserves the value of the property. The property is more valuable in a single-family Zoning than it is in a multi-family Zoning. So all of us are affected.

CONSTANTINE ALEXANDER: Your point is very well taken. If this were a case of a variance or Special Permit, we would take that into consideration. That's not the case before us. The case before us is a determination, a definition of fence made by the Inspectional Services Department. We, and in passing on that, on your appeal, we don't take into account at all the aesthetic impact of the neighborhood. Again, if the people who lived at 25 wanted to put another room on the house, let's say, and they came to us for a variance and perhaps they want to do it by Special Permit, your arguments that you're making would be considered by this

Board quite seriously.

LAWRENCE EVANS: A variance would be needed, should be needed to make a change in the house that alters the appearance of the house.

CONSTANTINE ALEXANDER: But the Inspectional Services Department has determined that it is not -- a variance is not required, a Special Permit is not required and you're challenging -- you got to persuade us that the determination they made is wrong, and you don't get there, to me anyway, by talking about the aesthetic impact of the neighborhood.

LAWRENCE EVANS: Well, I would say that this, this fence provides as much support as a flag pole or as the other some of the other examples I heard of a structure.

TAD HEUER: But what's the support? It clearly doesn't support the house because the house was there before the wall.

LAWRENCE EVANS: Well, it supports the --

TAD HEUER: I don't think we can use metaphysical support like (inaudible) to the neighborhood.

LAWRENCE EVANS: Well, yes, I mean I can't --

TAD HEUER: The other difficulty here, I mean, is supposing they decided to paint the house orange, bright orange, the neighborhood would hate it and probably so would I, but there's nothing that the inspector can do about that. It's just an unfortunate fact that some people decided to be ostentatious and, you know, want to be Halloween year round. There are things that we don't like that aren't necessarily things that we can pass upon. And it seems to me that the inspector has said regardless of whether you like the wall or not, it's not supporting anything. It's not a structure

in and of itself. It may be horrendous, hideous, ugly and way too big, but at a certain point if our jurisdiction ends and neighborhood mores and collegiality begins and we can't police the latter, we can police the further, but our jurisdiction is limited.

ATTORNEY THOMAS BRACKEN: And what you're all relying on, and that's support or shelter. I heard someone, he probably put the wall up here so he can have privacy. And what is privacy? Shelter that is caused by this wall. Shelter from the neighbor on the other side. Shelter.

BRENDAN SULLIVAN: You're really stretching it now.

TAD HEUER: I understand the number that we're trying to create, but I don't believe that we're in a Constitutional type situation. I think that --

ATTORNEY THOMAS BRACKEN: I would respectfully say that your argument that a

flag pole provides shelter or support, I mean it's not supporting the flag, the flag is hanging there. I mean....

TIM HUGHES: I'd like to see a flag hang there without the pole. That would be pretty good. Did you bring any pictures of that?

CONSTANTINE ALEXANDER: I'm sorry, why don't you go ahead. We're giving you a lot of questions. You want to finish your presentation or do you want us to open it up to public comment?

ATTORNEY THOMAS BRACKEN: Beverley wanted to make a comment.

BEVERLEY EVANS: We have other people.

CONSTANTINE ALEXANDER: I want to give them a chance to speak. I wanted to give you a chance to speak.

BEVERLEY EVANS: My name is Beverley Evans. I live at 29 Coolidge Hill Road. I'm

a resident for 42 years. Our house is in the middle house in a three structure -- in a three-house structure which appears as a single-family dwelling house, whatever. We are on the corner of Coolidge Hill Road and Mount Auburn next to the three-house structure in which Mr. Caligaris's house is located. I was out of town when this brick wall went up. I returned home late on Tuesday evening, November 10th. The next morning I received a call from a neighbor who lives directly opposite No. 23 and saying "Have you seen the brick wall?" I did not know what she was talking about. When I did look at it, I was shocked as were other neighbors I received calls from or saw over the next day or so. The brick wall was very high and appeared to me to serve no purpose.

Two days later on Thursday, November 12th, I saw David Caligaris outside by the brick wall in progress. I asked to speak to

him. I asked him if he had a building permit. And he said he didn't need one. He then said, "You will love it when it's finished." His concern seemed to be privacy. And I told him if he had not removed all the huge bushes, which are in this photo here, which we submitted earlier, that -- let's see. He would have had plenty of privacy. No one could see the previous owners who lived there for about 50 years when they had friends over, they were having dinner or a gathering on their front brick patio.

The next day Friday, November 13th I sent an e-mail to David Caligaris saying the Zoning did not allow changes to the exterior of these houses. I received no response back from him over the next few days. And after several neighbors checked the city Zoning online contacted Tom Bracken to check the Zoning for us.

On November 18th, I got an unsolicited

e-mail message from Tim Dunken (phonetic) one of the petitioners who is also an abutter, and Tim could not be here this evening. His father is gravely in the midwest and he had to go out there last night. His e-mail said, "That's a hell of a brick wall that appeared next-door to you." Tim also said, "The nice thing about your house is that they look like a single-family home that wall makes the place look like an apartment or something." That's a quote.

Several weeks later, December 1st or 2nd, in a phone conversation with David Caligaris, David Caligaris called me to see where we were at, and I asked him why he had not talked to the neighbors about building this brick wall? And his response was, "I didn't have to."

As I said earlier, we have lived here for 42 years and have never had a problem keeping these structures appearing as

single-family homes. We all live in very close proximity to one another here on Coolidge Hill Road, and people have always been most respectful of each other.

Thirteen petitioners signed this appeal to the Board of Zoning Appeal. Several others have asked if they could send a Board letter or come to this meeting to support all of us. I respectfully ask the Board of Zoning Appeals to accept the appeal which 13 petitioners have asked to remove this brick wall and return the structure in which 21, 25, and 23 Coolidge Hill Road are located to the original condition of a single-family structure as it has been for close to 90 plus years.

CONSTANTINE ALEXANDER: Thank you.

BEVERLEY EVANS: And I will say that one person who will speak tonight is a neighbor and she's lived in that house for 60 years. And I when I add it up, the average

number of the 13 petitioners, it came to like 28 years per person.

CONSTANTINE ALEXANDER: I will open it up to public comment. I just would like to make one comment. I think there's a basic misconception as to what our Zoning By-Laws are supposed to accomplish. You don't know what the limits are of Zoning. And I think that's at the heart of the neighborhood's quality. I think that because something is changing the appearance of the neighborhood, there must be a Zoning issue. And what you heard from the Inspectional Services Department, which we will we're considering tonight, there is no Zoning issue.

BEVERLEY EVANS: Of the house. It changes the appearance of the house.

CONSTANTINE ALEXANDER: Yes.

BEVERLEY EVANS: Which appears as a single-family.

CONSTANTINE ALEXANDER: That's a

subject matter subject to debate. Let me open it to public comment.

ATTORNEY THOMAS BRACKEN: May I make a comment here?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY THOMAS BRACKEN: In the Section 4 where it says that we can convert a single-family to a two-family and so forth. Footnote 15 is provided that in a Residence A District which is the exterior design of the structure has not changed. And I would submit that no matter how you look at that wall, the design of the structure has changed. Now, the other point I would make is the way you were reading the definition of structure is to simply read out of the definition the "such as" examples. Not only are you reading out fence, but you're reading out the flag pole is given a support for a flag, well, I would say that's a little bit -- anyhow, right in the same breath as

they say fence, they say sign. Now what sort of support or shelter does the sign give? Put a sign up for your candidate of your choice, that's giving support to something. Yes, the candidate maybe, I mean, you can argue --

TAD HEUER: But I'm almost certain that putting up a candidate's sign doesn't require relief from the Inspectional Services. Quite frankly because it's not a structure. It's a sign. It's not -- and these things are as, they are if these things do provide such. If these things provide support or shelter, then they are structures. If you have --

ATTORNEY THOMAS BRACKEN: When did a sign ever provide support or structure?

TAD HEUER: If you have a huge sign that's put up as a lean to, I don't know, but I can see it happening.

ATTORNEY THOMAS BRACKEN: And the

bin --

CONSTANTINE ALEXANDER: My point
is --

ATTORNEY THOMAS

BRACKEN: -- retaining wall. Somebody
mentioned put it up here as a retaining wall.

CONSTANTINE ALEXANDER:
Mr. Bracken, you're ignoring -- this is an
example. The such as gives certain examples
for the main point of a definition. Now
perhaps the City Council in giving
illustrations chose some bad illustrations
and you're maybe pointing them out. What we
should start with and end with is the basic
definition. And the definition ends before
you get to the such as. And it's got to give
support or shelter. It's a focus on the
examples which may be poor, doesn't address
the basic definition itself. That's where I
think you're going astray.

ATTORNEY THOMAS BRACKEN: Well, I

would disagree with you as a matter of statutory structure. That when there is a definition and it says such as, it intends to incorporate.

CONSTANTINE ALEXANDER: No, it doesn't incorporate. It illustrates, and if there's an ambiguity in the basic definition you look to the such as to give you answers. I would suggest there is no ambiguity in this case as to what a support or a shelter means. It's quite clear to me that this wall, fence does not provide support, does not provide shelter. Therefore, it is not a structure. You know, no need for you and I to debate this any further. We both made our points. Let's go on to public. I want to ask for public testimony. You've had your opportunity.

Is there anyone here who wishes to speak in favor of the petition? You have to give your name and address and if you want to sit

down, feel free.

KARIEN KLEIN: On supporting the petitioner. And my name is Karien Klein, K-a-r-i-e-n K-l-e-i-n. I live at 416 Mount Auburn Street. I am the end of the first of the two houses.

We moved to 416 Mount Auburn Street in 1990, so we have been there 20 years. So we are among the newer neighbors. I was glad to hear Mr. Heuer speak about neighborhood morays because that's very much at the heart of this issue. When we moved in, I didn't like the green shutters. I thought lovely blue, sort of a certain -- not quite cobalt but a wedge wood blue shutters would be much bet are on the brick. But everyone has green shutters. And when I spoke to the neighbors, it was made quite clear that we would continue with green shutters, because we're not just talking about one house, we're talking about two, side-by-side houses. We all have

six-by-six windows. We maintain that. We have kind of similar gardens and plantings, and we're very proud of our neighborhood. It's a very close neighborhood. We have on-street parking. We have to deal with all the snow stuff all the time. We have to cooperate.

When I saw this -- I don't know what to call it, because I don't know what was within the legal definition says, as Mr. Alexander has pointed out so well. What I would call it, it appears to me to be a protuberance that juts out for no conceivable reason marring the look when you come down, because it's a one way street coming down. And you come down on a one way street with your car and there's these two lovely houses which are very well maintained with a lot of effort. And this just looks grotesque. And the neighbors are appalled. No one was spoken to. Certainly, and this isn't a vendetta

against you Mr. Caligaris. We welcome you in the neighborhood. I feel that I have to say that because I think that there may be some misunderstandings.

No one was spoken to. We have a neighborhood now that has been rocked by a behavior. And now something that has really marred the general appearance, that several families living in that neighborhood have tried for many, many years, more than the 20 years I have been there, to maintain and we are appealing to you.

CONSTANTINE ALEXANDER: Thank you. Thank you very much.

Anyone else wish to speak in favor of the petition? Is there anyone here? I'm sorry, I didn't see your hand.

ELIZABETH VAN BUREN: Elizabeth van Buren, 19 Coolidge Hill Road, Cambridge.

CONSTANTINE ALEXANDER: Where do you live? I didn't get your address.

ELIZABETH VAN BUREN: 19 Coolidge.

CONSTANTINE ALEXANDER: Thank you.

ELIZABETH VAN BUREN: I'm not one of the three buildings, but I'm next to it and I have lived there for 60 years. And so I feel quite strongly about the neighborhood. As I said, I'm an abutter. And I see the integrity of the building as being -- as having been destroyed by the addition of the wall, or whatever you want to call it, and I'm distressed without going through what I consider the proper channels which would be aside from the city just going through the asking the neighbors, having general consensus about our neighborhood. And as I said, I've lived there 60 years and this is not been a problem before. And I would agree that it's nothing against David. It's just that we feel very strongly on the subject and we're bringing it up with you.

CONSTANTINE ALEXANDER: Thank you.

Thank you very much.

You wish to speak?

DEBORAH FORSMAN: My name is Deborah Forsman. I live directly across the street at 36 on the opposite side. My objection is simply that it's so illogical that I would expect anything to have a purpose. And this simply sticks out like a sore thumb. Like a big, you know, pimple on a face with no purpose at all, and it's an eye sore.

CONSTANTINE ALEXANDER: Thank you. Thank you very much.

It's quite clear that I can observe for the record that it's a close-knit neighborhood that cares as much about the aesthetics, but you have to keep in mind the function of a Zoning By-Law, and particularly the Zoning Board of Appeals, what our responsibilities are and where we go and where we don't --

BEVERLEY EVANS: There's one more

person but she isn't here yet so I don't know that she'll be able to speak.

CONSTANTINE ALEXANDER: Well, if she's not here, she can't speak.

LAWRENCE EVANS: I received some letters, also.

CONSTANTINE ALEXANDER: I'll read the letters into the record after I finish public testimony.

Anyone here wishing to speak against the petition? Please come forward.

ATTORNEY JAMES RAFFERTY: Thank you. Good evening, Mr. Chairman. I represent David Caligaris and he's the property owner. I speak in support of the Commissioner. And I would say briefly that this is a matter for which the Board should have little difficulty in reaching a quick resolution. The appeal frankly is meritless. There is no legal theory that's been advanced here that makes any sense.

What's clear is that there's been a change in the appearance of the structure. I would refer the Board to my correspondence that I submitted which contained an e-mail that lays out the position. These arguments set forth in the memo, the wall destroys the symmetry of the building and the appearance of the independent structure. The wall has made a structure incompatible with the character of the neighborhood. All opinion, and perhaps relevant if this was a neighborhood conservation district or such exterior alterations required the certificate of appropriateness. It is not. The notion that this wall is not a fence, I find rather ironic. I don't imagine if Mr. Caligaris went out to Home Depot and bought himself a stockade fence and put it in the location of this wall, that any of the concerns that have been cited here would be any different in terms of its impact.

Mr. Caligaris and his wife believe that this was amenity, an improvement to their property. That may be a matter of opinion, but it's certainly, with all due respect, not a matter of law. The theory if it were to be adopted by the petitioner, would suggest that any fence that ran along the property line into a setback area violated Zoning. That's absurd. We know that's not the case. So this wall is a fence. It is treated as a fence. And fences and walls, we have them all over the city, and in some cases they define property lines. In this case it happens to define a property line and it runs out to the edge of the property where it meets the public way. Well, there's nothing unique about that, and there's nothing that would suggest that Zoning relief is needed to do that.

So as I noted in my correspondence, this is not a congruent association. This is not

a neighborhood association. This is a property owner who erected a fence and it should be noted that Mr. Caligaris wanted to and did have conversations with the immediate abutter. He showed her what he was doing and she voiced no objection. So at great expense and some attention to the design and detail Mr. Caligaris installed what he believed to be a very attractive functional wall that will provide separation just as identified by Mr. Hughes between the comings and goings of the door next to his unit. And it's done in a very classic style with the high skilled masonry effort, and apparently some people, interestingly not the immediate people living in the building, but others living far away. Maybe Mr. Caligaris doesn't share the same concern that the mere appearance of the multi-family dwelling is somehow causes appreciation in ones value. We have many fine neighborhoods that contain row houses,

and it's obviously a concern for people who taken the time and hire counsel. And the Board from its questions tonight, this has no legal basis for it. And I honestly think that for someone to come here and express an opinion about the aesthetics about something and the changes and character they're simply in the wrong place. There are forms for that and properties exist in districts that require this. This isn't the case. The Commissioner certainly should be affirmed in this case and the appeal should be dismissed.

CONSTANTINE ALEXANDER: Thank you.

Mr. Rafferty, as you referenced, you did submit a letter. Do you want me to read it into the record or did you cover everything in your letter with the remarks you made?

ATTORNEY JAMES RAFFERTY: I don't feel any need. Whatever the pleasure of the Chair is. Thank you.

CONSTANTINE ALEXANDER: Anyone else

wishes to speak in opposition to the relief being sought?

(No response.)

CONSTANTINE ALEXANDER: Public testimony will be closed.

I will read into the file what we have. We have three letters, one of which was Mr. Rafferty's. And I see no reason to read it now, because he's covered all of his points in his comments.

We have a letter from Molly Miller at 157 Coolidge Avenue. It's not that long. It's addressed to this Board. "I am writing with regards to case No. 9894 and a brick wall that was built recently at 25 Coolidge Hill Road in my neighborhood. Not only is the eight-foot high wall visually objectionable and against the character of the neighborhood and surrounding houses, but the wall was built without permit or any consultation with abutters or neighbors. I am a founding

member of the Coolidge Hill citizens group, a group of neighbors who joined together to address quality of life issues in the immediate neighborhood of Coolidge Hill. The wall in question completely violates the visual and historic character of the neighborhood. The dense brick wall feels more appropriate for a prison than for a family home in a neighborhood where trees and bushes often separate properties. Brick walls in the neighborhood, whether they exist at all, are two to three feet high and wooden fences less than six feet. See attached pictures." Nothing's attached. At least in the copy of the letter I have. "Are there no height limits for fences and walls in historic neighborhoods? Would a 15 foot high wall be acceptable? Of equal importance is the violation of community spirit that this wall offends. This is a rare neighborhood filled with citizens who

make a great effort to form and maintain personal bonds. Not only are there a neighborhood Yahoo group and a printed neighborhood phone directory, but there are numerous annual all-neighborhood events. There are potluck block parties and a caroling party during the holidays to name two. When we got a dog six years ago, we decided to build a fence. So we went to our abutters and asked what they thought. Everyone felt strongly that if there were a fence at all, plantings would have been preferred as a more traditional method for privacy in the neighborhood. Then the fence should be wood, and have some transparencies and less than five feet high. That is what we built. Even though it entailed getting an electric fence later as our dog grew. Our neighbors across the street followed the same process last year when they were changing a fence on their property. Is it too much to

ask even in this age of e-mails, text and phone tag that a neighbor walk next-door, knock on the door and share a conversation and a compromise about a renovation that so strongly affects the quality of life of both? I hope not. I urge you to require that a more reasonable fence be built, one that is significantly lower and more in keeping with the character and spirit of the neighborhood. Thank you for your time."

And we also have a letter from a Mrs. John R. Moot, M-o-o-t who resides apparently at 44 Coolidge Hill Road. "Dear Sirs: Because I am unable to be present this evening" -- perhaps this is the person you were referring to -- "because I am unable to be present this evening. But felt very strongly about giving my opinion on the proposed "fence" down the street, I am writing a brief summary of my reaction to the unfortunate erection of the brick

wall -- underscored -- at 25 Coolidge Hill Road. You probably know that this hill has been in its lifetime (85 years) a very friendly neighbors and a warm community. Here the petitioners are violating other traditions of working together by erecting an ugly and divisive wall without even asking for a permit to build it. Contrary to the requirement for a Special Permit for neighborhood approval. For this area to be zoned an A2 District of single-family houses or two-family houses that have not changed their exterior appearance, this special group of brick houses were constructed to appear as single-family houses -- a single house, but are cleverly disguised three-family dwellings. The wall violates its appearance and presents a somehow hostile feeling to its neighbors hardly in the Coolidge Hill tradition nor legal under the A2 requirements or so we believe. The

petitioner apparently seeks privacy for his outside front terrace. In fact, he had privacy before he removed all the nice trees and bushes that he had from the street. I remember pleasant mornings of coffee with former owners Alice and George Mackey sitting on that terrace. They also presented a nice green appearance to the street. The final and unfortunate aspect of this wall leaves the bad feeling that it has aroused all up and down the street and the hill. I hope you consider Mr. Bracken's presentation favorably many of us would applaud. Very truly."

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

Any brief rebuttals on your part, Mr. Bracken, or further comment before we close all testimony and make our decision?

ATTORNEY THOMAS BRACKEN: I would certainly pick up on what Mr. Rafferty said.

He said the wall provides separation. And that's the point that everyone has been making. It is clearly separating the units of the house to make it no longer appear to be a single-family dwelling, but a two-family dwelling. And so, I would simply say that in this A2 District it is impermissible to convert the single-family, the appearance of a single-family dwelling into the appearance of a two-family dwelling because there has been an exterior change.

CONSTANTINE ALEXANDER: Thank you.

TAD HEUER: Mr. Bracken, is that really true? Is it impermissible to convert the appearance or impermissible to convert the dwelling? There's a difference, right?

ATTORNEY THOMAS BRACKEN: Is that -- yes, there is a difference. Because they have been three-family units in the building from before Zoning.

TAD HEUER: Right. So it's just as

preexisting non-conforming non-A2 -- the existing is preexisting non-conforming A2 because they're not single-families, right? And they've never been single families. They look like that. But establishing them -- it's not as though the conversion occurred. The conversion exists and they're demarking it. That's different from the conversion occurring and you added on something, because you created a second unit, you bumped out a wall or something to create an entryway. That's what the Ordinance is talking about when it says don't change the exterior appearance. You have a one-family and it goes to a multi-family. Here we've always had a multi-family, right?

ATTORNEY THOMAS BRACKEN: That's right. But when you go from a single-family to the two-family, you're not knocking out interior walls and things necessarily either. You're just creating a space for two

families. Here you're making an exterior change that makes it quite clear and apparent that you have a non-conforming two-family dwelling.

TAD HEUER: But you already had a non-conforming two-family dwelling, right?

ATTORNEY JAMES RAFFERTY: Excuse me. For the record, they're three single-family houses.

TAD HEUER: That looks like a single house.

ATTORNEY JAMES RAFFERTY: But there's no multi-family. What the Ordinance says, you can't change the appearance for the purpose of creating an additional dwelling unit. We're not creating -- the Ordinance does not say you can't change the appearance as Mr. -- it says the appearance for the purpose of creating a second dwelling unit. So then you could never change the appearance of a single-family house.

CONSTANTINE ALEXANDER: Let's not debate.

ATTORNEY JAMES RAFFERTY: I apologize.

CONSTANTINE ALEXANDER: You're fine. I would rather not have a back and forth. You made your point and you presented your rebuttal. I'd like to move to a vote.

Any further questions or discussion from the Board members or are you ready for a vote?

MAHMOOD FIROUZBAKHT: Point of clarification. Can our review of the Commissioner decision would the standard that we would use -- be arbitrary and capricious?

CONSTANTINE ALEXANDER: No, I don't -- I'll give you my opinion. I don't know if it's right. I don't believe it's arbitrary or capricious. I think it's right or wrong. In answering that question,

though, the courts have made it very clear most recently in the decision that we are entitled to give deference to the Commissioner's decision which can almost translate, I don't want to say exactly, but the presumption that he's right. I think it's right or wrong in short. That's my view anyway.

MAHMOOD FIROUZBAKHT: Okay.

CONSTANTINE ALEXANDER: Ready for a vote?

I will make a motion. We're talking about an appeal. I will make a motion -- I move that the decision of the Commissioner of Inspectional Services, finding that an eight-foot high brick wall is the fence of which he has no jurisdiction is a correct decision. And, therefore, the appeal would be denied on the basis that there is no definition of fence in the -- in our Zoning By-Law.

That in the common sense definition of a fence; namely, separating two -- running down a boundary line to separate two properties, this would fit a definition that the argument of the appellant that this is a structure that has no basis under our Zoning By-Law. It does not meet the definition of structure since it neither provides support nor shelter.

That the arguments that have been addressed to this Board mostly are not relevant to a Zoning determination. That we, this Board recognizes and values the neighborhood (inaudible) and neighborhood spirit of working together, but that is a neighborhood issue to be resolved. It's not a Zoning issue. And I think what is at heart I think the Board will finally find that there is a number of people in the neighborhood feel, and we're not judging whether they feel correctly, but feel this this wall should not

have been erected without prior consultation with the neighborhood, and it should have been erected with better aesthetics at least in the opinion of those persons who are appealing this case. But whether that is right or wrong is not a Zoning issue. And it doesn't go to the correctness of the decision of the Inspectional Services Department.

I move therefore on this basis that the appeal be denied.

All those in favor of that motion say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Appeal denied.

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

(9:30 p.m.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Tad Heuer, Douglas Myers, Mahmood Firouzbakht.)

TIM HUGHES: The Board will hear case No. 9895, 5-9 Ash Street. Can you identify yourself for the record, please.

ATTORNEY SEAN HOPE: Good evening, Mr. Chair. For the record, Attorney Sean Hope on behalf of the petitioner Carolyn and Laurence Tribe. Unfortunately they could not attend tonight's hearing. Attorney Goldstein has thoroughly interviewed the Tribes and has the authority to answer any questions the Board may have. And he can introduce himself.

ATTORNEY HOWARD GOLDSTEIN: Good to be here tonight. I should also mention that I've been appointed special master by the Middlesex Probate Court in connection with the sale of this property and so I'll have the authority of the Court to appear. I signed

the petition.

DOUGLAS MYERS: What is the nature of the judicial proceeding that caused you to be appointed special master?

ATTORNEY HOWARD GOLDSTEIN: It's a divorce case.

ATTORNEY SEAN HOPE: So we're requesting a Variance to subdivide two adjacent lots in Residence A2 Five and Nine Ash Street. It was judged by the city to be merged into one single lot under the common law document merger. The two lots came into the common law ownership when the Tribes purchased Nine Ash Street. They purchased Nine Ash Street which is adjacent to the family residence primarily for architectural, aesthetic and entertainment value. When the Tribes purchase Nine Ash Street, they were completely unaware that the Zoning purposes Five and Nine Ash Street would have merged into one single lot.

Throughout their ownership of Five and Nine Ash Street both properties maintain separate identities. They had separate tax bills, separate deeds, separate mortgages, separate utilities and most importantly separate uses.

A review of the relevant case law for merger will show that merger of adjacent non-conforming lots that come under common ownership are almost exclusively applied when either one or both of the lots are buildable. Which means they're either vacant or underused. This is not the case. Both Five and Nine Ash Street had existing houses on their lots when the Tribes purchased each of the properties, and the footprints have remained unchanged. At no time did the Tribes designate either of the properties to be designed, built upon or used as one unit, nor do they take any steps to combine the two units. The application of

the merger documents have caused severe hardship to the Tribes personally and financially as they work through a difficult divorce.

I ask the Board to rationally apply their authority under the Ordinance and to return Five and Nine Ash Street to its intended and known use as two separate lots.

TIM HUGHES: Any questions from the Board?

TAD HEUER: So when they originally purchased Nine Ash Street, what was the purpose that they meant Nine Ash Street to serve? Was it -- I guess to be more specific with my question, did they ever intend that it be used for residential purpose?

ATTORNEY SEAN HOPE: I mean it is a residence, it's a residence A2.

TAD HEUER: Right.

ATTORNEY SEAN HOPE: I mean, how one uses a residence -- but, you know, so Nine Ash

Street is also known as the Philip Johnson house. It was created in 1948. Maybe you're familiar with it. So, they were using it to entertain, maybe to meet with students or friends or to hold dinners. But it was a residence. And they bought it in thinking that it was its own separate residence. It had no other use allowed by Zoning.

DOUGLAS MYERS: Under Section 1031(b) as part of the requirement for this Board to establish the hardship that's necessary before it can grant a variance, the hardship must be said to be owing to circumstances relating to the soil conditions, shape or topography of such land or structures. Could you help us by explaining how the circumstances of this case and your request for relief relate to the soil conditions, shape or topography of such land and structures.

ATTORNEY SEAN HOPE: This is a

unique case. But I would say in terms of the requirements for the variance, that it's the shape and size of the lot with the structures thereon that have created two non-conforming lots. So for Five Ash Street it's the fact that the house that sits on the lot is non-conforming in terms of the FAR. And for Nine Ash Street it's non-conforming because of setbacks and the actual size of the lot itself. It's undersized. So it's the combination of the size of the lots and the house thereon that has created the hardship -- which is creating the hardship and the hardship that has applied the merger document. So it's a combination of the size of the lots and the house thereon and the fact that they are adjacent to each other that's created the hardship.

DOUGLAS MYERS: My concern is that the merger would have occurred, as I hear you, regardless of soil conditions, shape or

topography of the land or structures; isn't that so?

ATTORNEY SEAN HOPE: I disagree because if there was a different shape or a size of the lot, you can even argue topography, then the lots may not have been non-conforming and also the fact that they are adjacent has created what -- has created the effect that has allowed the common law merge doctrine to be applied. So I say it's but for the houses on the lot and the shape of the lot where they're situated there would be no application of the common law merger doctrine. If they're both conforming, then there would be no merger doctrine to be applied.

TAD HEUER: Are the two lots now merged, does that combine the parcel decrease, the overall non-conformity of that lot in any way?

ATTORNEY SEAN HOPE: If you take the

each parcel separately. So for Nine Ash Street it actually increases, it increases the non-conformity in terms of the FAR. So Nine Ash, it's in a 0.50 district, the FAR. And it currently has a 0.24 for the lots separated. Now, when you combine the two, they have a total of 0.75 FAR which is above the 0.50. So in terms of FAR, they've created a non-conformity in Nine Ash that was non-existing.

At the same time at Five Ash, Five Ash has a 1.0 FAR in a 0.5 district, but it actually reduces the FAR non-conforming. So as you increase one, you increase the other.

And I'd also like to say I don't see that there's any stated goal in the Ordinance that would be served by combining these two lots. If it was a total decreasing in the non-conformity, I still don't think the merge doctrine was intended to apply to but I could see one of the goals of -- the stated goals

of the merged document to increase in non-conformity but it increased non-conformity and increase in the other lot.

TAD HEUER: And this isn't a situation where the merger would have eliminated a non-conformity, correct? For example, it doesn't eliminate them by having additional land for the larger house. It doesn't bring that house somehow into the compliance with the Zoning By-law?

ATTORNEY SEAN HOPE: Not into compliance, but it does bring it --

TAD HEUER: It brings it close, but not --

ATTORNEY SEAN HOPE: Right.

TIM HUGHES: Any more questions?

TAD HEUER: No.

MAHMOOD FIROUZBAKHT: Can you give us a sense of what the areas of relief are that you're requesting?

ATTORNEY SEAN HOPE: So it's a

subdivision. So it's the exact same lot lines and same boundary lines that are at the Registry of Deeds that have been known to everyone. There's a letter in the file from the Historical Society. So we're not actually moving the lot lines, but when the merger occurred, there's no more lot line between Five and Nine Ash Street. We're asking to return what has been known as two separate --

TAD HEUER: At the risk of bringing up the issue of tall fences, this lot is fenced at its lot line; is that correct?

ATTORNEY SEAN HOPE: Yes. At Nine Ash Street, yes.

TAD HEUER: So it would be very clear. It has been clear and will be clear again if we were to grant relief exactly where the lot line is between Nine and Five Ash Street?

ATTORNEY SEAN HOPE: Yes.

MAHMOOD FIROUZBAKHT: And are there set of other dimensional areas of relief that you would need in order to unmerge these lots as well?

ATTORNEY SEAN HOPE: I believe it's just to subdivide the lots. And then, you know, each lot is non-conforming in certain respects. So each additional would have to come before the Board. Nine Ash Street, you probably could add GFA to Nine Ash Street because it's below the FAR. But we still would have to meet requirements of Residence A2. But to subdivide the lots, actually submit as part of the file a subdivision plan, and that plan is exactly the plan that's at the Registry of Deeds. We went and just remeasured to make sure it's accurate. But there is no creation of lines that but for this document merger, it exists.

And I would also like to say, I think this case is best viewed as a title issue.

When the Tribes purchased Nine Ash Street, they purchased it as an LLC, a trust, a corporation, the common law doctrine merger wouldn't even apply, you know. And I'm sure when you buy a property, you have a title and the attorney goes to rundown a title. You wouldn't find merger. You wouldn't find the fact that these were under maybe common ownership under that certain title. When they did that, I feel the hardship, although we do talk about base on the land, it's really about the fact that common law doctrine merger is not applied in this situation but for taking ownership in the same name as their existing home that we're here today.

TAD HEUER: Of course. I would point out parenthetically that Mr. Tribe is I would say prominent member of the Bar of the Commonwealth, and as such I would imagine that he more than most individuals would have an understanding of some of the legal

documents that might apply to situations such as this one. Would that be an unreasonable presumption?

ATTORNEY HOWARD GOLDSTEIN: I think his field of specialty is Constitutional law.

ATTORNEY JAMES RAFFERTY: The record needs to reflect he went to Yale Law School.

TIM HUGHES: I've seen lawyers before this Board and I don't think you can presume them.

ATTORNEY JAMES RAFFERTY: Present company excluded.

TIM HUGHES: Exactly.

BRENDAN SULLIVAN: Every lot has its boundaries and a fair and reasonable request so that that particular property can be put to a fair and reasonable use.

TIM HUGHES: Is there anyone who wants to be heard on this matter? Step forward and identify yourself for the record.

ATTORNEY JAMES RAFFERTY: My name is James Rafferty. I live 40 Larch Road. It's about a mile from this property. I only offer one perspective. And that is this is such an interesting area of the law, and I use that somewhat euphemistically. If the subdivision isn't granted to convey these properties, you have to create a condominium. How is the public interest better served by calling Nine unit A and Five unit B and putting a master deed on record and making people then forever more to have to live with the governance structure of the condominium? It doesn't change the character nature or purpose of anything. So I understand the need for hardship and what the Ordinance requires, but I think when you're dealing with common law concepts like this, I think it would be a mistake for the Board not to acknowledge that what is happening here, as Mr. Hope said, is really related to title.

And even Constitutional lawyers hire conveyances. I suspect Mr. Tribe relied upon a conveyance whose name he's furiously looking for at the moment.

TIM HUGHES: Anyone else that wants to be heard on this?

(No response.)

TIM HUGHES: Seeing no one, I'll close public testimony.

There are three correspondences in the file. All of them in support by the way.

One from Charles Sullivan the Executive Director of the Cambridge Historical Commission. "I'm writing to support the petition of Carolyn and Laurence Tribe to subdivide the contiguous properties at Five and Nine Ash Street. While I have not done a title search, it is clear from the Assessor's records that the Nine Ash Street lot originated as part of the corner lot occupied by the house at Three Acacia Street.

Elizabeth Brooks the owner of Five Ash Street acquired the new 4800 square foot corner lot when it was created in 1924. Ms. Brooks sold the corner lot at Nine Ash Street to Philip Johnson in 1941 when he erected the present house. Johnson sold Nine Ash Street in 1945, or '46 and it was owned by a succession of until the Tribes the current owners of Five Ash Street acquired it. The Cambridge Assessors treated it as a separate lot from 1924 at least until 1985. I have written you before about the significance of this house and the desirability of preserving it in its present form." He's talking about the one at Nine Ash Street. "I hope you will approve the separation of these two lots into their previous configurations."

A letter from Dorothy S. Zimberg at Three Acacia Street. As an abutter of Nine Ash Street, I'm writing to support the motion to unmerge the two properties Nos. 5 and 9 Ash

Street which does not appear to be any way in which the neighborhood would be adversely affected by merging the properties."

And the third letter is from Susan W. Payne at Three Ash Street. "Dear Board: I'm writing to you to express my support of unmerging the properties at Five and Nine Ash Street. I live at Three Ash Street which abuts Five Ash Street and take an interest in my neighboring property and in the historical and architectural significance of the Philip Johnson house at Nine Ash Street. The house at Nine Ash Street is closely tied to the Cambridge community since Philip Johnson designed and built the house as his thesis project while he was at the Harvard Graduate School of Design. This was his very first residential property in the United States and the first modernly supported courtyard house built in America. I was surprised to learn from you that the properties at Five and Nine

Ash Street were merged. Already living at Five Ash Street, you purchased Nine Ash Street in 1989 -- this is to besides to the Board this is also written to Larry Tribe if it confused you a little bit as it confused me. "The neighboring houses were built at" -- because we don't live at either of these properties in case you were curious. "The neighboring houses were built as distinct properties over 50 years apart and have always been used independently, the Philip Johnson House and the surrounding fence at Nine Ash Street had been unchanged since the house was designed and built in the 1940's. I have observed that your acquiring Nine Ash Street did not alter your use of your home at home in Five Ash Street so I see no reason why the City of Cambridge would have merged the properties into one. The properties should be untethered from each other. There would be no adverse

consequences from the neighborhood from separating the properties, only benefits as the Philip Johnson House with its historical significance as an example of the international style of architecture should not be tied to the residence at Five Ash Street, a colonial revival house built in 1888. The Zoning Board should separate the two properties so they may have separate futures."

And that's the sum total of the correspondence.

Are there any other questions from the Board? I'll make a motion.

The Board moves that the subdivision according to the subdivision plan filed in the record of the two properties, Five Ash Street and Nine Ash Street should go forward.

A literal enforcement of the provisions of the Ordinance would involve a substantial hardship, financial or otherwise to the

petitioner. A literal enforcement of the Ordinance would be an undo hardship for the petitioner because they would be prohibited from fully utilizing Five and Nine Ash Street as two separate and independent properties as they have since acquiring Nine Ash Street in 1989.

The hardship is owing to circumstances relating to the shape and topography of the land and the structures situated on the land.

The hardship is owing to the merger of Five and Nine Ash Street which occurred unintentionally because of the pre-existing non-conforming floor area ratio of Nine Ash Street and insufficient setbacks at both Five and Nine Ash Street adjacent locations of the lots and common ownership. It should be noted that if they were conforming lots, they would not automatically be merged.

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

Granting the request for the relief will not be detrimental to the public good as the two lots have been continuously utilized as two entirely separate properties with distinct boundary lines and have and will remain unchanged.

And granting the relief will not derogate from the intent or purpose of the Ordinance because subdividing the lot to its original form as two separate adjacent lots is in accordance with Section 1.0 of the Ordinance, promoting the most rationale use of the land throughout the city and to conserve the value of land and buildings.

All those in favor.

(Show of hands.)

TIM HUGHES: That's five in favor.
Subdivision is granted.

(Hughes, Sullivan, Heuer, Myers,
Firouzbakht.)

(9:50 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: I'm going to take the Follen case next because it's a simpler case and we can dispose of it very quickly. I'm going to call case No. 9897, One Follen Street. Is there anyone here wishing to be heard on that matter? For the record give your name and address for the record.

DENIS CYCAN: My name is Denis Cycan. I'm representing the Longy School of Music.

GARY WOLF: I'm Gary Wolf, from Gary Wolf Architects.

HARRIET GRIESINGER: My name is Harriet Griesinger and I'm the trustee at the Longy School of Music, 221 Mount Auburn Street, Cambridge. G-r-i-e-s-i-n-g-e-r.

CONSTANTINE ALEXANDER: Before you proceed I want to state for the record that my wife is a member of the Board of Visitors of the Longy School. It has no policy weighing not at all in this. And under all those circumstances, I don't believe I have to recuse myself. However, if anyone, including members of the Board wish that I recuse myself from this case, I will.

(No response.)

CONSTANTINE ALEXANDER: The record should show that no one has asked I recuse myself.

Go ahead.

DENIS CYCAN: This is a case where we're going to do a renovation project to our Garden Street entrance of the building. And the, and the Historical Commission got their approval. We've met with them and sent letters to our neighbors to get their -- to solicit their input as well. We've received

three letters from our direct abutters that (inaudible) -- and I'll turn it over to Gary.

GARY WOLF: Thank you. We have the board that we can present or shall I walk through this? Are you familiar with --

BRENDAN SULLIVAN: We're familiar so maybe you can do it very quickly in 30 words or less.

GARY WOLF: Okay. Basically we're primarily doing an interior a small interior renovation at the Longy School, but one portion of that comes to the outside of the building. That is, we're taking the existing vestibule that's built in 1968 when the addition to the Pickman's Hall was added to the building. We're removing that and putting a larger vestibule in. It conforms with the code between the space of the doors and provides more shelter. It adds about 108 square feet to the building. The building is non-conforming for a couple different

factors, but are only an increase in the non-conformance or change in non-conformance is that addition of square footage which represents about three-tenths of a percent of the total square foot or GFA.

CONSTANTINE ALEXANDER: And the plans? These are the plans that you're going to --

GARY WOLF: Those are the plans. For the neighborhood, if you're familiar with it. The school is here. They have another building down here which we previously renovated five years ago. One of the neighbors who wrote a letter of support lives next-door to that building and was very pleased with the way that the renovation was handled and supported that. And clearly the context is one that includes substantially larger buildings that have all been built after Longy. In fact, it was in this building at One Follen Street the Zoning

permitted that the hotels and apartment buildings be constructed so that buildings with significantly greater mass and greater GFA on the in the neighborhood. This one was added to in 1968, an addition was put on that subsequently in 1990 with a variance at that time. This is the existing building, the back addition and the subsequent addition there.

The change is relatively modest in terms of the area of the building and the appearance of the building. This is the before which was submitted. We got the historic house here which is a national register house. We got addition from 1968 here. And the 1990 addition in the back. This is the vestibule we're talking about. If you stand there for a half an hour, you see kids bump into each other with violins and cellos and tubas and stuff.

CONSTANTINE ALEXANDER: And

particularly tubas.

GARY WOLF: For sure.

And what we're doing is taking the vestibule, removing it and putting a much slightly larger one in its place. I'm sorry, I don't have these boards in order here. But, this just represents the minimal addition here. The existing one in your plan is dashed in. It comes up to this point. This one comes out further. It's still within the building envelope. It doesn't protrude beyond that. And in terms of its appearance, we took it into the Historical Commission and --

CONSTANTINE ALEXANDER: You don't have to get into that. I'm going to read the letter from the Historical Commission.

GARY WOLF: That he signed off on it. And basically we're looking at a small but contemporary addition between the historic house and the modern 1968 building which is

highly regarded from the Historical Commission similar to the Philip Johnson House that you just heard about it. It's an important piece of architecture within the City of Cambridge.

TAD HEUER: What's the purpose of this slightly off right angle door placement?

GARY WOLF: The off center door placement?

TAD HEUER: It's off center but it's also not parallel.

GARY WOLF: It's angled.

TAD HEUER: It's off center.

GARY WOLF: The off center, the angle. The off center, it's large enough now that we'll have a waiting area for kids to have parents waiting to pick them up after classes. Right now there's no such place. The vestibule serves as a waiting area and bench there and a traffic, by the angle is a design issue. We don't want it to look like

it's part of the 1968 building. The philosophy for the approach is to say there's a historic 19th century building and now historic 1968 building, we're putting a new piece between the two and it was just one way to emphasize that. Most of the traffic is coming from Harvard Square, so it's a little bit in that direction.

TAD HEUER: How much additional height does this have off of what your current vestibule is?

GARY WOLF: Roughly four feet. This is the elevation of it. This stripe along here which was picked up is where the existing one is and we're above that.

TAD HEUER: And is that just a proportionality issue?

GARY WOLF: Exactly.

CONSTANTINE ALEXANDER: Further questions? Anyone here wishing to be heard on the matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. There are letters in the file. I'll briefly refer to them.

There is a memorandum from the Cambridge Historical Commission. The Historical Commission approved the proposed alterations at a public hearing. And there's a certificate appropriateness attached.

We have a letter from Harvard University, the University Planning Office. "Harvard University is a direct abutter of the property at One Follen Street which is the subject of a Zoning variance request from the Longy School of Music. After reviewing the matter, there does not appear to be any adverse impacts, and therefore Harvard University has no objections to the proposed variance." And it's signed by the director,

Tonya Iatridis, I-a-t-r-i-d-i-s, Director.

And lastly there's a letter from Florrie, F-l-o-r-r-i-e Darwin who must reside at Seven Follen Street. "My husband Paul Wyler and I are owners of the property at Seven Follen Street which directly abuts the Longy School of Music property on the corner of Follen Street and Garden Street. We are writing to say that we have reviewed the plans for the proposed changes to the school's entrance on Garden Street and we fully support the proposal and urge you to grant them the necessary Zoning relief. We feel that the new entrance which is larger than the existing one would be appropriate in appearance as the Historical Commission's approval indicates and was thoughtfully designed. It will offer a significant improvement and safety and convenience for individuals entering the building with bulky and expensive instruments especially in

inclement weather. But we can imagine no aesthetic or practical detriment to ourselves or to any other nearby properties or residence. We have lived near the Longy School and they have been cooperative and considerate neighbors. Having a busy institutional use next door can be irritating for residents of a neighborhood, but our experience with the Longy community has been consistently positive. We are pleased with this opportunity to return this neighborliness and to add our support for this proposal." And that's it.

DENIS CYCAN: There's one other letter that I dropped off.

CONSTANTINE ALEXANDER: I'll put it in the public record. It's a letter from Jane Mansbridge, M-a-n-s-b-r-i-d-g-e and Chris Jenck, J-e-n-c-k who reside at Three Walker Street, not necessarily abutters. "We live at 33 Walker Street." The top of the

letter says Three. But any. Either at Three or 33. "We live at 33 Walker Street and our back porch overlooks the Longy School of Music's yard and annex at 33 Garden Street. We are writing in support of the school's request of permission to enclose the main building at One Follen Street. We walk passed the school on our way to and from work everyday, and whenever the weather is cold or wet, we see students huddled outside the front entrance waiting to be picked up. Enclosing the area in front of building would be a real improvement for them and would pose no obvious aesthetic problems for anyone else. The school has always been an extraordinarily helpful and cooperative neighbor especially during their renovation at 33 Garden Street. We hope you can approve their request. Thank you."

Ready for a motion?

The Chair moves that a variance be

granted to the petitioner to expand the Garden Street entrance vestibule by 108 square feet on an existing landing beyond the building setbacks. And so making that motion I move that the following findings be made:

That a literal enforcement of the provisions would involve a substantial hardship to the petitioner. The hardship being that the current tiny vestibule does not provide code compliant clearances nor does it provide for a clear passage into the building, and that the vestibule is not lit from within and does not provide any exterior cover from the elements.

The hardship is owing to circumstances relating to the nature of the building itself. The structure is a non-conforming structure and it was really built originally as a residence but now used for institutional use. And that and

therefore the non-conforming shape of the structure justifies the hardship. And that relief may be granted without substantial detriment to the public good or without nullifying or substantially derogating from the intent or purpose of the Ordinance.

And the reason that is so is that this proposed relief will improve public safety because the proposed larger vestibule would mitigate safety issues, and that what we propose is not out of character with the existing structures and does not affect neighbors along Follen Street and not substantially existing the preexisting conditions.

The Chair would further note that the Longy School is an institution that is revered in Cambridge. That it has, and this proposal has the support of all neighbors. There is no one in opposition and also has the support of the Historical Commission.

The Chair would move that this variance be granted on the condition that work proceed in accordance with the plans submitted by the petitioner prepared by Gary Wolf Architects. They're four pages: A-1, A-1.1, A-2, A-2.1. And the first page of which has been initialed by the Chair.

And before we take the vote, if you're going to change these plans as you proceed with construction, you're going to have to come back before us. These are the final plans.

GARY WOLF: They are not the final plans but we will follow them.

CONSTANTINE ALEXANDER: Okay. Thank you. You're not going to change them.

On the basis of the foregoing, the Chair moves that we grant the variance. All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. Variance granted.

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

(Discussion off the record.)

(10:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9896. For the record, give your name and address.

DENNIS RIESKE: My name is Dennis Rieske. And Eric Scace is a resident of the penthouse unit at 55 Magazine Street.

CONSTANTINE ALEXANDER: You're here to seek a variance. It's in a sense three separate sub-variances.

DENNIS RIESKE: It is three separate issues. And our feeling is that we've been told by the Building Department is that you can consider any of the three separate issues one at a time.

CONSTANTINE ALEXANDER: I'm going to recommend that when we get to the vote,

we're going to take three votes, one for each.

DENNIS RIESKE: And I was going to say now we're required to have a variance specifically because of the extension of the FAR. And what I've done in time is file it as a variance. And the existing 55 Magazine Street is a six-story apartment building that was built, according to the Historical Commission, in 1902 with 20 apartments. It was subdivided into 56 apartments probably in the '20s and '30s and far enough in the past that it's now considered to be an -- it's either 55 or 56-unit building, depending upon how you count the base units. We would we basically have a problem because a literal enforcement of the Section 5.31, the table of dimensional requirements is not possible because the existing building is non-conforming to the present Zoning, and it was created before the present Zoning existed. And the variances are for the green

roof. And I would prefer to have that one taken first. Basically it's a new Ordinance by the City of Cambridge that we cover the green roof issue, but since that has not passed at the present time, we're required to have a variance. And the variance there specifically speaks to the issue that the green roof would be with the floor area for the unit and therefore increase the FAR. So we would love to be able to take that one first. But we also were advised by the Building Department to comply with all of the rules and regulations that have been proposed, so, therefore, the green roof would cover the entire roof and the usable space as being proposed in this new Ordinance is limited to 15 percent.

CONSTANTINE ALEXANDER: Forget about the new Ordinance because that's -- if it gets adopted, you're entitled to it as a matter of right to comply with it.

DENNIS RIESKE: Therefore we need a variance.

CONSTANTINE ALEXANDER: And I want to be very precise. You need a variance because you want the green roof as you call it. The green roof would create additional FAR. And just for the record, right now the building -- you have FAR of 1.59. With this green roof, I think, maybe it's with the elevator or penthouse as well. But anyway, you want to go to 1.64 and you're in a district that has a max of 0.6. You want to go further.

DENNIS RIESKE: Correct.

CONSTANTINE ALEXANDER: Okay.

Now, one other point. What you refer to as a green roof, I would refer to as a roof deck. And it has all of the effects and usability of a roof deck. And I have to tell you generally our Board does not look with favor upon roof decks. In particular I would

think, this is my view, a roof deck on a building that already is too high for a Zoning point of view, it is one of the non-conforming aspects of this building that receives a height limitation from our Zoning By-Law. So convince us as to why you need -- why we should find the requirements for a variance for this roof deck.

DENNIS RIESKE: I guess the easiest thing to do is show you what we're actually proposing. The building itself is obviously a substantial building, but it is within a fairly large or L-shaped site. Let's look specifically at the roof.

The whole idea of a green roof is an environmentally correct approach. And it's low ground cover, it's only four inches of soil and plant material. It sits on top of the existing roof. So, therefore, it is not visible from the public way in any way. Environmentally it does a lot of different

things that are very positive, and specifically in mitigating water, runoff, quality of water, oxygen, it's basically part of the whole green movement, and there's a reason why the City of Cambridge has obviously prepared this task force.

CONSTANTINE ALEXANDER: I don't want to hear about that.

DENNIS RIESKE: Within that Ordinance as it's being proposed, the usable area is limited to 15 percent of the roof area. If you take a look at the elevation and basically the setbacks, the space that would be considered usable, the setback 10 feet from the edge of the parapet and therefore not being seen from the --

CONSTANTINE ALEXANDER: What about the fence?

DENNIS RIESKE: Oh, this is -- okay, the railing is only three and a half feet high.

CONSTANTINE ALEXANDER: From that drawing, that elevation you've shown us, there is going to be something added to the roof of the building that's going to be visible, namely that fence.

DENNIS RIESKE: It would not be visible from the public way, no.

MAHMOOD FIROUZBAKHT: So how far away from the wall is that fence?

DENNIS RIESKE: It's 10 feet. So all of the dimensions, if it's --

CONSTANTINE ALEXANDER: By your drawing it wouldn't be visible because it would be set back, is that what you're saying? Your drawing suggests it's visible.

DENNIS RIESKE: The setback is back 10 feet. And to tell you the truth, the original proposal was having the setback six and a half feet. It's moved 10 feet. I might not have changed this drawing.

CONSTANTINE ALEXANDER: That's

fine. We just want to understand.

DENNIS RIESKE: It might not have changed. Obviously I changed the roof plan. And the beneficial of the aspects of the green roof as being proposed is something that really is -- Eric is a scientist and does meteorological experiments. And as part of the purchase and sale agreement, obviously he had been given rights to roof access to have his experiments up there. And the existing building right now has a flat roof, has two stairs. It was built in 1902, and is accessible. So basically there's already two existing stairs. The residents in this building has had access to that roof since 1902. And, therefore, it's not like as if you're granting him something that doesn't already exist.

CONSTANTINE ALEXANDER: No, no but the difference is there's access to the roof. There's always access to the roof. Nobody's

going to go up there and put lawn chairs and use the roof for recreational purposes. This will allow you to use that roof for your living purposes.

One of our concerns, one we're not in favor to is privacy issues. You can, by using that, you intrude upon the privacy of abutting properties. You'll have quite a bit of ability to do that if we were to grant relief, No. 1.

No. 2, you've got to satisfy the hardship requirements for a variance. Typically when people come before us and want additional FAR or roof decks because of living accommodations, not enough room in the structure, you need additional living space on the roof deck, we're talking here about a two floor penthouse unit, that's the unit that will have access to this what I call roof deck, you call a green roof.

DENNIS RIESKE: Right.

CONSTANTINE ALEXANDER: What's the hardship? Why do you need that? I understand why you desire it. But we've got to -- to find a reason why from a legal point of view.

DENNIS RIESKE: As you can imagine, I have to deal with two things. Zoning Ordinances and building out.

So if Eric is allowed to go up on the roof, and right now there is no handrail up there. I'm required by the Building Code to put up a handrail.

TAD HEUER: Or you're required not to go on the roof.

CONSTANTINE ALEXANDER: You do at your own risk.

DENNIS RIESKE: I'm trying to obviously balance off the two requirements. And by following the rules as they're proposed in setting everything back, this generates an open space that we call usable.

It's only 160 square feet. That's enough space for Eric to put his experiments up there, to get up there safely, and to basically yes, you can use that. Remember, this is this roof, the top of this roof is 60 -- I think it's 62 and a half feet above the street level and we're setback 10 feet. Everything is setback, you know, the 10 feet from the parapet. And even though this elevation might be slightly wrong, that's the 45 degree line. No one will see anything that's up there. So the question of this isn't like it was a three-story, you know, triple decker where, you know, if you went up on your roof, everybody in the neighborhood would see it. This is a case where this was going to have no visual effect and no privacy issues would be -- come into play because nobody's going to see it.

CONSTANTINE ALEXANDER: You keep referring to people seeing it. But what

about people who use the roof deck seeing other -- look into other people's yards?

ERIC SCACE: That's an interesting question. And because of how far it's set back from the edge, you can't see any of the other housing structures in the neighborhood because all the other houses are three stories or less.

DENNIS RIESKE: You can see City Hall. That's basically how high it is. The privacy issues are not generally correct.

CONSTANTINE ALEXANDER: You're saying by virtue of the height of the building and the setback, the privacy issues are mitigated?

DENNIS RIESKE: Yes, sir. Yes, sir. Yes, sir. You know, right now I will tell you that this is the condition that we find where other people have put air conditioning equipment up there. Whether it's, you know, service mechanics go up

there. Right now there is no handrail. And that by itself is a building code violation. So technically there should be handrails going up there because people are going up there even if they are mechanics or elevator technicians.

CONSTANTINE ALEXANDER: You're not seeking relief for the technicians.

DENNIS RIESKE: No, no, no. I understand that. We have two stairs, the penthouse is up there. If you stand on the street, you can't see it. What we're proposing to do is no different than what already exists. You stand on the street, any of the streets, you can't see anything that's on this roof. So there is no privacy issue. We're basically restricting ourselves to the proposed Ordinance even though I understand that's not the -- our argument. And we believe that this could be granted without encumbering the Board on any other future

cases because it's so unique.

CONSTANTINE ALEXANDER:

Understood.

DENNIS RIESKE: The second piece
is --

CONSTANTINE ALEXANDER: Wait a
second. Are you going to go on -- I want to
see if members of the Board or people in the
audience want to ask questions on the green
roof. Are you finished?

ERIC SCACE: May I add one last
remark?

CONSTANTINE ALEXANDER: Sure.

ERIC SCACE: As I understand it,
this is at present the only we proceed to
convert it black membrane surface into a more
environmentally positive green surface.

CONSTANTINE ALEXANDER: Thank you.
Questions from members of the Board?

BRENDAN SULLIVAN: It's a
condominium; is that correct?

DENNIS RIESKE: Correct.

BRENDAN SULLIVAN: Have you been given exclusive use of the roof?

ERIC SCACE: Yes. So part of the roof that's above the demising walls of the condominium -- I think that's the right term -- is the area that we have access and rights to use.

CONSTANTINE ALEXANDER: So the way that green roof is drawn you would have almost the whole roof. Where's the demising wall?

DENNIS RIESKE: This is his unit.

CONSTANTINE ALEXANDER: That's all above your demising wall?

DENNIS RIESKE: Yes.

CONSTANTINE ALEXANDER: That doesn't represent the entire roof?

DENNIS RIESKE: This piece. There's the whole building. And, therefore, we can only put the green roof above Eric's unit.

CONSTANTINE ALEXANDER: I didn't appreciate that. Okay.

Other questions from members of the Board?

TAD HEUER: I just don't understand your dimensional form I think, because it appears that the GFA says same, the lot size certainly doesn't change but your FAR goes up. Help me out there.

DENNIS RIESKE: Yes. According to the way Cambridge, the Zoning Ordinance is, that the green roof would be considered entirely new FAR. And, therefore, I was following the rules as I understand it within the task force. They also admit that's the way you currently do it.

CONSTANTINE ALEXANDER: That's how we do it.

DENNIS RIESKE: And they're proposing to change the rules but they haven't done it.

TAD HEUER: So it's FAR but not new GFA? How is that possible? FAR is a calculation by dividing GFA.

DENNIS RIESKE: I understand. I think I understand that.

CONSTANTINE ALEXANDER: I think it's additional GFA. I think your form is wrong in that respect.

TAD HEUER: If that's true so I'm still, so looking at the form, you're at 58024 current GFA now and your lot area is 36493.

ERIC SCACE: That's not me. That's the building as a whole.

TAD HEUER: Yes, yes. Not any different to me. We're talking about a building's FAR that you're going over. And that puts you at a 1.59. And then down below you have a parens 3. I guess this is in the ratio of usable open space to lot area to say plus 1461 square feet green roof. But when I add that to the total GFA, I still don't come

out at a 1.64 FAR. There's still some missing FAR. So where is that additional FAR that gets you to 164?

DENNIS RIESKE: Again, I may have missed on the gross floor area because we were talking about floor area ratio and obviously that was the key piece there.

TAD HEUER: But you can't create a floor area ratio. You only need two numbers for floor area ratio; gross floor area and you know what the latter.

DENNIS RIESKE: The whole area of the roof is 1719. Basically I was counting the green roof only the portion that is plant material. I wasn't counting the deck.

TAD HEUER: Okay.

DENNIS RIESKE: Whether that's correct or not --

TIM HUGHES: Seems to me it should have been the other way around. You should have counted the deck and not the other. The

deck because it's above three stories becomes gross floor area, part of your gross floor area.

DENNIS RIESKE: Well, the way it's -- again, I may have been misled by this.

TIM HUGHES: Maybe.

DENNIS RIESKE: In terms of the definitions that the proposing to change as opposed to looking at your definitions as they currently exist.

CONSTANTINE ALEXANDER: Let me ask you a question -- I'm sorry, maybe you should answer. Have you finished answering Tad's comments? I have a question.

Would you be able to -- if someone comes up on the green roof, if we were to allow this, can they not walk outside of the fence and walk along on the grass, along there and get closer to the edge of the building? I mean, what's -- going back to your point earlier, you won't see the fence from the street. I

understand that. That's a matter to be expected, but in terms of ability to peer into the community and neighbors, would you be able to walk outside the white area and walk on the green area?

DENNIS RIESKE: You would have to climb over a --

CONSTANTINE ALEXANDER: There's no access or no gate or anything. How do you get out of that area, the white area? Can't you just walk?

ERIC SCACE: You would have to climb up over.

CONSTANTINE ALEXANDER: There's not going to be a gate of any sort?

DENNIS RIESKE: Right now you can come up this stair and walk out on the black.

CONSTANTINE ALEXANDER: I understand.

DENNIS RIESKE: Okay. And there's two of those stairs. The whole idea --

ERIC SCACE: We hadn't proposed a gate.

TAD HEUER: How are you going to water the roof?

DENNIS RIESKE: You don't have to.

TAD HEUER: How do you plant it? How do you mow it?

DENNIS RIESKE: You don't mow it. And you don't water.

TAD HEUER: What if it dies?

ERIC SCACE: Then you get the maintenance man up there.

TAD HEUER: So my entire roof dies, the membrane, the roof below it, you failed to put in the correct thing. We've got to replace the green roofs. It happens with real roofs all the time. How does the guy get out there to fix the green roof?

TIM HUGHES: It's only three and a half foot fence, they walk over the fence.

DENNIS RIESKE: There's two stairs,

both come up to the same roof and you come up the other stair and you don't have to climb over the fence.

CONSTANTINE ALEXANDER: The only point though is it goes back to the privacy issue and the green roof, and the fact of the matter is it's not restricted. I'm coming from the point of view, your use of that roof is not going to be constricted to the white area and there you're going have the ability and very well may use the entire portion of that roof.

DENNIS RIESKE: That was not our intention.

CONSTANTINE ALEXANDER: That may not be your intention right now but you put the fence up to satisfy us. But I have no assurance that that roof deck is going to become a whole green area.

MAHMOOD FIROUZBAKHT: What's the material that's being proposed for the green

roof?

DENNIS RIESKE: Well, green roof is called seedling.

BRENDAN SULLIVAN: It's a grounds cover.

CONSTANTINE ALEXANDER: Like in your yard.

DENNIS RIESKE: Basically it's a weed. Basically it's a very hardy plant.

CONSTANTINE ALEXANDER: How high does it grow by the way?

DENNIS RIESKE: (Indicating). The issue again because of building code issues, this is three and a half foot high fence and it has to have four inches picket. So it's not going three and a half feet high because it has to be. It's supposed to keep people from getting over. Then it's just like if you built it.

CONSTANTINE ALEXANDER: I hear you.

DENNIS RIESKE: Any outside area is

required to have a sizable, substantial fence.

ERIC SCACE: I think to respond to your question about what happens if the material dies, it has to be replaced or there was some other, you know, maintenance required. Wouldn't it be correct to say that there's nothing different than the occasional maintenance for the existing membrane?

CONSTANTINE ALEXANDER: That's exactly right. The point you're looking to use this roof as living space that's why you get additional FAR for the purpose of our Zoning. And the fact of the matter is we have -- it's been represented to us, argued to us I should say, that there's not going to be any privacy issues because you're only using a small area right in the center of the roof. When in fact the way this lays out, it's very quite possible over time, maybe by

people who are your successor who buy the property from you, that the whole area, the whole roof will be used and the privacy issues that we're worrying about and you say we shouldn't be worrying about may be real. That's why we're going down this route.

ERIC SCACE: Would that consideration be the same if the entire area were planted?

CONSTANTINE ALEXANDER: The notion is you want to create living space on the roof. That living space apart from our Zoning By-Law, you need relief from us. And we need to struggle what's your hardship if we don't allow you to do that. And we've got to balance your desires for a -- very legitimate desires for this rooftop space. Again, the impact on the residents of the city, particularly including abutters. That's what we're trying to juggle.

BRENDAN SULLIVAN: I appreciated, I

think, and somehow I get the feeling that you're going to be very respectful of and sensitive to the purpose that you want to put this towards. And I appreciate that and I applaud your efforts. But I think what the Chair is saying, and I think what we wrestle with is that should you not be there and a less sensitive person, a less respectful person might come along and then run a muck I guess for a lack of a better word.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: And that where you're occupying that particular area, then again, we take each case individual and what is before but yet we sort of envision other people wanting to do somewhat similar things. Or again, maybe not agreed with but saying hey, you know, you gave this guy this area and we want to do the same thing. And it comes to a very valuable asset to that unit, very desirable, not necessarily valuable in the

sense of an amenity which we historically just don't allow roof decks or people occupying roof areas, because being up there, noise travels, just it's an extension of your unit which I don't think it's intended for.

ERIC SCACE: Just to explore this a little further, if there were no railings and the entire area were planted --

BRENDAN SULLIVAN: Again, I think it's the relief that's being granted. And then it would be granted tends to put us in an area that I'm not comfortable with. I think with granting relief to the use of that area.

CONSTANTINE ALEXANDER: The point being if you just had a green roof, you're making that roof more accessible, in this case yourself, people own your unit. That and because that's going to happen, one, other people, people along the other side may ask for the same right to put their green roof

on there. All of a sudden we have people up on the roof. And people on the roof can cause noise, can cause privacy issues. And what's the reason, why should we allow this? There are potential negatives. I agree with Brendan by the way, we're talking about your successor, not you. Where's the hardship? Why do you need a green roof in a situation like this? In sense there's an unusual shape of the building. You can certainly inhabit your penthouse unit without a green roof or a roof deck which I think is a more accurate term. That's what we're wrestling with.

DENNIS RIESKE: Is a unique set of circumstances here, again, that are unique to this and Eric's profession, his work in meteorology, the rights that have been granted by the condominium association. I understand that is not your jurisdiction but he has the rights to this. And that literally you already have two stairs. You

already have access. This is something that already exists, you know. Yes, he can walk up there with your approval or without your approval, and obviously we're trying to come before you to ask for your approval because we think it's the right thing to do.

CONSTANTINE ALEXANDER: There's a gentleman here who's been dying to speak so I want to, if you don't mind, you'll have more time.

Sir, you want to speak?

PETER KEITH WHITTEN: Yeah, I have some questions on this. I'm Peter Keith Whitten, 55 Magazine Street, apartment 25. A unit which I own. And I'm also representing Mrs. Ellen Soreno (phonetic) who owns five apartments in the building. Ms. Lino (phonetic), Mary Lino is a tenant of one of Mrs. Soreno's apartments.

Now a couple of things I thought were a little bit, a little bit mistaken. No. 1,

the access to the greenhouse, would that be a private thing from your penthouse?

ERIC SCACE: Well, there is the two stairs that go up there, the public stairs.

PETER KEITH WHITTEN: Wait a minute, I know that, but I mean there's a problem because I'm also the site manager of the building.

ERIC SCACE: I know.

PETER KEITH WHITTEN: So there's a little problem there. The elevator room is located on the roof. Now, I'm just wondering if that would interfere for the --

CONSTANTINE ALEXANDER: No, it can't. But I think we're going to hear later on, before this is over, you're going to want to build up an elevator into your -- am I right? An elevator that will have a private elevator which would have access to your green roof?

ERIC SCACE: Yes.

DENNIS RIESKE: That's the second issue.

CONSTANTINE ALEXANDER: I know it's separate, but just to answer your question.

PETER KEITH WHITTEN: You said there are two access staircases, there are not. One side of the building you have to go through someone's apartment to get to the back staircase. And the other side of the building where anyone who is coming up to make any repairs of any kind is on Eric's side the penthouse side.

ERIC SCACE: That's the only one I've actually walked up so I don't have experience with the other staircase.

PETER KEITH WHITTEN: That's when you go up to the roof.

DENNIS RIESKE: Isn't it true the second stair on the other side when you get into from the basement and you go all the way up the roof?

PETER KEITH WHITTEN: You have to walk six flights of stairs, and most people, most contractors, most repair people are not willing to climb up six flights of stairs. That would be the problem. Unless someone who is gracious enough to go up to the sixth floor and the person on the sixth floor allowed them access. But it would have to be --

DENNIS RIESKE: I don't like elevators so I walk that quite often.

PETER KEITH WHITTEN: Well, most people don't like to walk up six flights of stairs.

CONSTANTINE ALEXANDER: Any other questions, sir?

PETER KEITH WHITTEN: Mrs. Soreno also has a concern. I'm also representing her. She owns five apartments in the building. Is the building -- I spoke to the subcontractor the other day, and he

mentioned -- I did mention that Mrs. Soreno's concern is that -- if that greenhouse, if a building is structurally sound enough to support a greenhouse, now it's a well built building. It opened in 1905 as a matter of fact. Construction began in 1902. But is the building structurally sound?

CONSTANTINE ALEXANDER: That issue is not for us for Zoning. That's a building code issue. That's not relevant as to whether we allow that or not. That's somebody else's, let's not go there.

DENNIS RIESKE: The answer is yes.

CONSTANTINE ALEXANDER: I assume that.

PETER KEITH WHITTEN: It's a concern of the tenants.

CONSTANTINE ALEXANDER: I understand that. And your concern is not wrong, it's not relevant to what we're trying to decide tonight.

TIM HUGHES: The Building Department would not issue a permit if it's not -- engineering doesn't sign off. And that's not what we decide.

ERIC SCACE: And the beams underneath that to support that.

CONSTANTINE ALEXANDER: Any other comments you want to make on the lot?

Do you want to speak, Ma'am?

MARY LINO: My name is Mary Lino and I'm a resident of 55 Magazine Street and I live in apartment 63. Which is -- I'm your neighbor.

ERIC SCACE: Across the hall.

MARY LINO: Hello.

ERIC SCACE: Or you will be our neighbor when we get to move in.

MARY LINO: My concern is that the roof has had construction problems for over 20 years, and the housing authority came in and evaluated the building and they were very

concerned about the structure of the roof and felt that it would need a lot of, a lot more work soon. That that's part of their report. So, and I have experienced leaks for over 12 years with the roof. So I can substantiate that there's a problem with the roof.

CONSTANTINE ALEXANDER: Again, that would be addressed if we should grant relief and he goes to pull a building permit --

MARY LINO: Okay. But I am concerned with the roof deck that it's going to add more weight. And also I don't know what the weight is of the garden that you have in mind. But that's gonna be even more weight. And the runoff, I don't know how you're gonna arrange the runoff. So I have -- in fact, I've never seen the -- what you're doing.

ERIC SCACE: So, well, I can respond to you the same as I did to the other gentleman. What we've done in the roof is

every one of the roof beams has been doubled up with a sister beam in there to more than provide the additional support that would be needed for the green plantings and supporting soil.

MARY LINO: But that doesn't speak to the rubber roof that's there.

ERIC SCACE: Yes, and we've had the rubber roof inspected. And the inspection said it's okay for the purposes to which we're planning to put it. And being the people who live right underneath it, of course, we're motivated that the roof be in good condition of course.

MARY LINO: I'm still contradicting that by saying the housing authority would disagree with that.

CONSTANTINE ALEXANDER: Okay.
Thank you.

MARY LINO: The other thing is, you're going to have a private entrance up on

the roof; is that correct?

ERIC SCACE: Well, that's one of the other subjects that --

CONSTANTINE ALEXANDER: We're going to get to that. Not yet. We'll address that and you'll have a chance to speak to that when we get there.

Anything else you wish to add on the green roof?

DENNIS RIESKE: On the green roof? The only issue again is that the roof has been restructured. What we have found, again, going back to the handout that I gave you, what they have found is they also now had green roofs in some of the areas in Scandinavia and Germany for over 25 and 50 years and they have actually documented that the green roofs actually extended the life of the roofs from 25 years to 50 years. So it's unbelievable. I didn't believe it until I actually took a look at that.

BRENDAN SULLIVAN: It keeps the sun off of it. That's all it is.

DENNIS RIESKE: It's contraction.

BRENDAN SULLIVAN: It's not what kills a roof.

CONSTANTINE ALEXANDER: You understand it's not green roofs, it's not whether we love green roofs or we hate green roofs. Let's not keep going.

Questions from members of the Board?

I'm going to suggest we go through the other two presentations and then take a vote unless you want to take the vote now before hearing anything else?

BRENDAN SULLIVAN: I'd like to see the whole thing.

CONSTANTINE ALEXANDER: So would I. Okay, move on to No. 2.

DENNIS RIESKE: No. 2 is that basically the elevator penthouse, Eric has the right, again, but from the condominium

association to have a private internal elevator within his roof. And the second request is to allow roof access by way of the elevators. The stairs already exist.

CONSTANTINE ALEXANDER: The elevator --

DENNIS RIESKE: The penthouse --

CONSTANTINE ALEXANDER: What you're going to put on the roof for the elevator is additional FAR and that's why you need Zoning relief. Why are you here before us for the elevator?

DENNIS RIESKE: Elevator shafts have to run through the roof.

CONSTANTINE ALEXANDER: Right.

DENNIS RIESKE: But we access, the right to actually have a stop at that roof is one of our requests. And this, again, was so that the request of the Building Department to, it was the access to the roof, it was sort of tied to the green roof. And to use the

green roof, we have the green roof, then we're asking for the right to have access to the green roof by way of the elevator.

CONSTANTINE ALEXANDER: Sean, I assume that the elevator access in and of itself creates Zoning issues which is why it's before us. Is it additional FAR?

SEAN O'GRADY: I read the plans to show a panel. But you're actually talking about getting off the elevator?

CONSTANTINE ALEXANDER: Yes.

DENNIS RIESKE: Yes.

SEAN O'GRADY: Because the plans don't seem to show that.

DENNIS RIESKE: The plans -- we have a building permit. And the plans do refer to the fact that the shaft comes through but there's no access. Therefore, we're coming to you to ask for the variance for the access not, for the shaft.

CONSTANTINE ALEXANDER: And I'm

trying to ask --

BRENDAN SULLIVAN: Normal elevator shafts which will penetrate a roof and come up above because of the mechanism is considered mechanical. And it's exempt. If a car goes up to that level so that you -- then that becomes floor area.

CONSTANTINE ALEXANDER: That's what I'm saying.

BRENDAN SULLIVAN: So it's the car itself.

CONSTANTINE ALEXANDER: Tell me what's the hardship that justifies giving you a variance to put a private elevator up on to the roof and get off on the roof? How do you meet the Zoning standard for a variance for that?

DENNIS RIESKE: The entire unit has been designed to be handicapped accessible.

CONSTANTINE ALEXANDER: Are you handicapped?

DENNIS RIESKE: Not today.

CONSTANTINE ALEXANDER: Does anyone else who lives on property handicapped?

ERIC SCACE: My wife, no.

CONSTANTINE ALEXANDER: Maybe some day needs a private elevator to get to the roof deck, that's a hardship.

DENNIS RIESKE: That is what we're requesting.

CONSTANTINE ALEXANDER: I understand what you're requesting. I'm trying to find out how you can get relief.

ERIC SCACE: That's the only way for a handicapped person to get to the roof.

CONSTANTINE ALEXANDER: If there was a handicapped person.

ERIC SCACE: And because the roof has with it a right to install antennas there, a person who is handicapped can only get there to work on those systems. If there was a lift available. The only other way is to take

your tools and parts up the fire escapes.

CONSTANTINE ALEXANDER: Sean, you had a comment?

SEAN O'GRADY: Yes, I just wanted to say elevators and stairs that go to areas with no FAR are not FAR. So if there was no deck, there'd be no FAR. But there is still in any either case a height violation just for a technical.

CONSTANTINE ALEXANDER: A height violation even though excluded.

TIM HUGHES: It's non-conformity.

SEAN O'GRADY: Excluded -- if it's mechanical, it's excluded. If it were a non-mechanical stop, I don't think that that would be excluded.

CONSTANTINE ALEXANDER: Let me ask you a hypothetical question. If we were to turn down the green roof so there's no FAR on the roof because there's no green roof, but they still wanted to put the elevator up there

to have access to the hard roof if they wanted, you're saying that's not a Zoning problem because you're not accessing a living area.

SEAN O'GRADY: It wouldn't be an FAR problem. I think it would be a height problem.

CONSTANTINE ALEXANDER: So they still need Zoning relief whether or not we grant the green roof.

SEAN O'GRADY: I'm a little soft on that answer I haven't had to think about that before.

CONSTANTINE ALEXANDER: Questions from members of the Board on this? I'm sorry, have you finished?

DENNIS RIESKE: Yes.

CONSTANTINE ALEXANDER: Any questions on this issue?

Do you wish to be heard on this issue?

MARY LINO: I do because there's

going to be a noise factor with the elevator I presume. And I'm going to be hearing the noise whenever you use the elevator. So I just wanted to comment on that.

ERIC SCACE: Well, the elevator is in the center of our unit, not adjacent.

MARY LINO: I understand, but the machinery is up on the roof. So every time it's engaged --

ERIC SCACE: It's an electric elevator. It's in the mechanical head house.

PETER KEITH WHITTEN: Where does it originate out of?

ERIC SCACE: What?

PETER KEITH WHITTEN: The elevator, the shaft.

ERIC SCACE: Fifth floor.

PETER KEITH WHITTEN: So it wouldn't structurally interfere with the floors below?

ERIC SCACE: No, it stops.

DENNIS RIESKE: These elevators are specifically designed for residential applications like this. They're very small. They're very limited in size and all.

CONSTANTINE ALEXANDER: It's what you see sometimes in a two-family or a three-family or a house with two stories and someone wants an elevator. It's a narrow one you put in a closet.

DENNIS RIESKE: Yes, exactly. And they're electric. They are a quiet. All the machinery is self-contained. I don't think it should be an issue for anybody.

CONSTANTINE ALEXANDER: Well, that's to be determined.

ERIC SCACE: And it's size to be big enough to take a chair and to have the --

CONSTANTINE ALEXANDER: Okay.

DENNIS RIESKE: The third piece was the -- there's proposed two Juliet fire

balconies.

Now, we went through all of the Zoning compilations and as a matter of right, we can put in the French doors.

CONSTANTINE ALEXANDER: Right.

DENNIS RIESKE: He can put in both handrails and as long as they're flush with the brick wall.

CONSTANTINE ALEXANDER: Right.

DENNIS RIESKE: So what we're requesting is the third variance is to project them -- I think it's 21 square feet. It's three-by-seven and basically that is what we call an area of refuge. Again referring to the building code. And that again comes back to the issue that if anyone is handicapped in this unit, they can't use the elevator, they can't use the stair, it is a legal means of egress and it's a recognized in a state building. So we're asking for the Juliet balconies. It does include -- it

does increase the floor area ratio.

CONSTANTINE ALEXANDER: It creates setback issues, too.

DENNIS RIESKE: It is not within the setbacks so that is not an issue.

CONSTANTINE ALEXANDER: I thought on the side of the building the building right now violates the setback, intrudes on the right side according to your dimensional form.

TAD HEUER: No, left side.

DENNIS RIESKE: The slight variances on the two streets, but you sort of see the red line right here. We very carefully calculated the setback, and the Juliet balcony would not violate the setbacks.

CONSTANTINE ALEXANDER: Okay.

DENNIS RIESKE: Those are the three issues. They're all sort of related one to another, but basically it was suggested that

we split them into three separate.

CONSTANTINE ALEXANDER: And to make a decision you take into account the aesthetic impact of the building. It's going to have a couple of Juliet buildings on a that has no other balconies.

DENNIS RIESKE: Again, this is the far back side. It's also 60 -- almost 60 feet up in the air. The issue here is that you can sort of see the elevation from the street. It would be very difficult to see this from the public way. And again, it is -- of the three, we would say it's the least important. Obviously, I would like to take the green roof as being the most important. The elevator access being the second most. The Juliet fire balconies being third on the list.

CONSTANTINE ALEXANDER: You wanted to speak to that, Ma'am?

MARY LINO: I just wondered where the Juliet balconies are going to be located.

CONSTANTINE ALEXANDER: Come and you can see.

ERIC SCACE: So if you look at the building from the top down, your unit is over here (indicating), and our unit is here (indicating). And the balconies are on the side furthest away from you.

MARY LINO: So towards the parking lot?

ERIC SCACE: Yes, overlooking the back T-section of the parking lot.

PETER KEITH WHITTEN: Near the parking lot?

ERIC SCACE: Yes.

MARY LINO: What, there are fire escapes there that I don't see.

ERIC SCACE: There's a fire escape on the back. But if you're in a wheelchair, you can't use a fire escape. So by having --

MARY LINO: How can a wheelchair use the balcony?

ERIC SCACE: It's flush with the floor and you can roll out to it and the fire department can pick you out.

MARY LINO: That's a stretch.

CONSTANTINE ALEXANDER: Questions from members of the Board on the Juliet balconies? No questions.

Well, any final comments?

DENNIS RIESKE: No.

CONSTANTINE ALEXANDER: Any final comments on your side? The persons in the audience indicated no further comments. I think we can close public testimony.

I don't believe there's anything in the file from anybody on this matter, letters of support or in opposition. No comments from the Planning Board.

Do you want to offer any comments or do you want me to make a motion?

BRENDAN SULLIVAN: Can I see the plan?

DENNIS RIESKE: I believe we submitted photographs.

CONSTANTINE ALEXANDER: They're in the file.

MAHMOOD FIROUZBAKHT: Question of clarification on the roof. The only thing being proposed is the green roof and not the roof deck?

CONSTANTINE ALEXANDER: Well, I refer to it -- what I refer to whether correctly or not, as the roof deck is a green roof. In other words, it's a whole area that has green on that, which would include an area that's not green but it would be an area where you would be out on.

ERIC SCACE: An unplanted area.

CONSTANTINE ALEXANDER: An unplanted area. Thank you.

MAHMOOD FIROUZBAKHT: So if a planted area is being proposed, that wasn't necessarily proposed for use, but strictly

for environmental effects, would that require relief from the Zoning Board?

CONSTANTINE ALEXANDER: Well, I think if that -- in my view, if that thing you want to do has environmental benefits, but it also increases -- it's liveable. People can use it for living purposes. That creates additional FAR. And it's different than putting let's say a wind turbine up there which is environmental use.

MAHMOOD FIROUZBAKHT: I'm looking at certain pictures of some of the materials used for green roofs, and I guess depending on the kind of material that's being proposed, I just don't know how useful, you know, that kind of space would be. Whether you can reasonably go out there and put out chairs and tables and make it a liveable space when it's not really, I don't think it's --

CONSTANTINE ALEXANDER: It's still the further issue, the unplanted area will

certainly be used.

MAHMOOD FIROUZBAKHT: That's a totally different ball game.

CONSTANTINE ALEXANDER: And keep in mind if, if we should turn this down, I'm not saying we will, and the City of Cambridge passes an Ordinance, you may have as a matter of right to do what you want to do. We're working with the Ordinance that we have right now. So there's also another bite of the apple if you will.

TIM HUGHES: See, I'm not good with your definition of this whole green area as being a deck. I mean, I just think of it as an alternative roof, you know? As an alternative way to do a roof.

CONSTANTINE ALEXANDER: What about the unplanted area?

TIM HUGHES: So I still think Mahmood's questions is legitimate. Could they get a permit to do a roof over to do a

green roof in this town?

SEAN O'GRADY: I don't know the answer to that. It hasn't been proposed to me before. I haven't sat down and thought about it.

ERIC SCACE: What I was told, the few instances of green roofs that exist in Cambridge all treated for variances. Which create a task force to find a way to make it more systematic.

TIM HUGHES: Because I --

ERIC SCACE: That's on the Cambridge city website around this issue.

TIM HUGHES: I don't think of that automatically as being use of the space without the cut out of the deck in the middle. The rest of it I don't automatically consider it to be usable space.

MAHMOOD FIROUZBAKHT: That's how I always perceived it.

TIM HUGHES: Roofing material.

TAD HEUER: Have we ever granted a variance on the green roof?

CONSTANTINE ALEXANDER: This is the first one.

MAHMOOD FIROUZBAKHT: What about the Swiss Consulate?

CONSTANTINE ALEXANDER: He wanted to put a brush on to --

MAHMOOD FIROUZBAKHT: Did they have any green roof components to that?

ERIC SCACE: There's something on the city website, I don't remember which it was.

SEAN O'GRADY: That was for an addition.

TIM HUGHES: They didn't ask us.

BRENDAN SULLIVAN: The house on Stearns Street, the addition proposing a green roof, that also went down on the side, but the relief was not fully granted, the green roof per se.

CONSTANTINE ALEXANDER: I guess your point's well taken, and Mahmood's, but you've got to put into context is this an area that looking to get a lot of access to per a private elevator. So, you know, the whole thing put together suggests something more than just doing something to help the environment. That doesn't mean it's fatal, but that's how I would respond to your --

MAHMOOD FIROUZBAKHT: I guess in doing the FAR calculations, I wouldn't count the green sections toward FAR. And were you suggesting that as well?

CONSTANTINE ALEXANDER: No, I think just counting, using the unplanted area adds FAR and that requires Zoning relief.

MAHMOOD FIROUZBAKHT: And I absolutely agree with that. And it sounds like the petitioner really wants to use the roof for your work anyway. It doesn't seem like to have a green roof that you want to get

use of the roof. So this may be just for our own philosophical --

TIM HUGHES: Yes, yes. Maybe.

MAHMOOD FIROUZBAKHT: It's almost eleven o'clock. We might as well keep going.

CONSTANTINE ALEXANDER: We're ready for a vote?

TIM HUGHES: How are we going to do this?

CONSTANTINE ALEXANDER: I'm going to make a motion on the green roof seeking a -- granting the variance, and then we'll vote yes or no. And then we'll take a vote on the elevator penthouse, and then last is the balcony. So in each case I'll make a motion to grant the variance and then we'll take a vote. Is that all right with everybody or would you like a different way to go about it?

TAD HEUER: What's the motion on the green roof? Is the motion that is as

proposed?

CONSTANTINE ALEXANDER: Were we to grant a variance to allow additional FAR to construct the green roof including the unplanted area. The variance is necessary because it's additional FAR and the building's over permissible FAR. So it would be to do what they want to do in their plans, which is a green roof with an unplanted area in the middle so to speak.

TAD HEUER: (Inaudible.)

CONSTANTINE ALEXANDER: Well, I've never to my satisfaction never figured out how much additional FAR was being added. There was a lot of confusion about that.

TIM HUGHES: Measure the white space.

CONSTANTINE ALEXANDER: The dimensional form says something.

TAD HEUER: So the very bottom of the dimensional form for this purpose what's

being asked, right?

TIM HUGHES: I don't think it's accurate.

CONSTANTINE ALEXANDER: I don't think it's accurate either. I'm not sure, from my point of view, the case terms on how many additional feet of FAR.

TAD HEUER: Well, it doesn't. It does and it doesn't. It matters what we're talking about, the white space or the white space versus the green space.

ERIC SCACE: The white space is how much?

DENNIS RIESKE: The entire roof white and green is 1719. And going through this with the Building Department, I was requested to add the whole thing. So it's everything.

TAD HEUER: Right.

DENNIS RIESKE: So that is what I did.

ERIC SCACE: The white space is that, 257.

DENNIS RIESKE: 257 is the white space. That's the -- but we're told to increase the proposed FAR increase for the entire --

CONSTANTINE ALEXANDER: That's the decision of the Building Department and it has been challenged, you accepted it, and now you're here for the variance, right?

DENNIS RIESKE: That's correct.

MAHMOOD FIROUZBAKHT: You know if that's the petition, I mean I think what we would be granting is a variance to make the entire roof a usable roof deck, basically whether you go green or not or -- I mean, that ultimately gives you, I think, that relief. Because wouldn't that, wouldn't that need to -- wouldn't the definition of usable space then allow a party who gets that decision to then use --

CONSTANTINE ALEXANDER: I suppose the condition of the variance to green roof.

DENNIS RIESKE: We've already done that in the application. Basically limiting -- it's right here in desirable relief. Limiting the 15 percent of the functional green roof and setting back 10 feet from the roof edge. Those are the restrictions that are in the copy that I'm not supposed to refer to.

MAHMOOD FIROUZBAKHT: Okay. So that's helpful.

CONSTANTINE ALEXANDER: Are we ready for a vote or not? Any further questions? Okay.

The Chair moves that we make the following findings with regard to the green roof as described and set forth in the materials set forth by the petitioner:

That a literal enforcement of the provisions of the Ordinance would involve a

substantial hardship to the petitioner. Such hardship being that the roof space that is available to the petitioner would not be usable without what the petitioner is proposing to do. Namely, adding planted and unplanted area on the roof.

That hardship would be otherwise available to the petitioner for living purposes would not become available because of the current nature of the roof.

That the hardship is owing to the shape of the structure. The structure is an apartment house, a non-conforming structure built before the advent of Zoning. And given that, and given the height of the building, this non-conforming building, any addition to the roof of the building which could have living purposes creates a Zoning issue.

And that the relief can be granted without substantial detriment to the public good or without nullifying or substantially

derogating from the intent or purpose of this Ordinance.

That we would make that finding on the basis that the green roof would -- is felt to be environmentally desirable and would add to the liveability of the city -- to the residents of the City of Cambridge.

And further that with the conditions that we would impose that no privacy issues would be involved with the neighboring properties given those conditions and the height of the building.

The conditions would be that the variance would be -- on the basis of these findings that the variance would be granted on the condition that the work proceed in accordance with the plans submitted by the petitioner; T1, A3, A4, A5 and A7-1, the first page of which has been initialed by the Chair.

And specifically as set forth I believe in the plans, that the usable rooftop space,

roof deck will be limited to 15 percent of the functional green roof and set back 10 feet from the roof edge. That such setbacks and limitation amount go to the privacy activities of the roof deck.

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

(Aye.)

CONSTANTINE ALEXANDER: One in favor. Motion does not carry.

(Hughes in favor.)

(Alexander, Sullivan, Heuer, Firouzbakht Opposed.)

CONSTANTINE ALEXANDER: And for additional findings we need to make them or we don't.

The Board, that we find that the green roof would in fact create privacy issues. It increases a substantial amount of additional living space on the roof, and further that there is no substantial hardship to the

petitioner.

The petitioner does not need the additional -- there's been no proof justifying the need for additional space on the roof of the building. And, therefore, the conditions -- and that they would be a detriment to the public good because given the nature of the green roof, it is entirely possible that privacy of neighboring abutters could be affected by this relief.

All those in favor of making those additional findings or any additional findings, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Okay, four in favor.

(Alexander, Sullivan, Heuer, Firouzbakht.)

CONSTANTINE ALEXANDER: Those are the findings with respect to that variance. So that variance has been denied.

The Chair would move with respect to the roof elevator access the following findings be made:

That a literal enforcement of the provision would involve a substantial hardship to the petitioner. Such hardship being without the elevator and assuming the petitioner would otherwise would want to get to the roof, if there's no green roof, that if the petitioner or any other occupant of the premises were to be handicapped, that they needed an elevator to get access to the roof, and they also applied to workmen or other people who need access to the roof through the petitioner's property.

The hardship is owing to the nature of the structure. The structure is such that if you wish to get to the roof easily from the penthouse owned by the petitioner or to be owned by the petitioner, that you do need an elevator to get there and that relief may be

granted without substantial detriment to the public good.

That the elevator shaft will have relatively minor impact on the visibility of the building. That to the extent that there is a need for handicapped access to the roof, this elevator will provide -- this variance will be granted on the condition that the work proceed in accordance with T1, A3, A4 and A-71, the first page has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Two in favor. The motion doesn't carry.

(Hughes, Heuer.)

(Alexander, Sullivan, Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair would with respect to the denial of the variance, that essentially there is no

hardship being demonstrated by the petitioner. That the petitioner has no need currently for a -- there's no handicapped person occupying the premises that requires an elevator access to the roof, and it could be there never will be anyone living in that apartment who has a need, who is handicapped and needs an elevator access. And if there is that need, that person or persons could apply to this Board for relief because it would be a hardship to be shown at that time. There's no hardship right now.

All those in favor making the findings say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Three in favor of the findings.

(Alexander, Sullivan, Firouzbakht.)

CONSTANTINE ALEXANDER: The last is Juliet balcony. The Chair would propose the Board make the following findings:

That allowing the Juliet fire balconies -- not allowing them would involve a substantial hardship to the petitioner. Such hardship is being that in connection with the installation of these French windows, access in the event of an emergency would be hindered, and the Juliet balcony to in turn justify putting in the French windows which in turn increases the ability of in case of an emergency access to the residential unit.

The hardship is owing to the shape or the structure. The structure is again a non-conforming structure. And that any change, including of this sort does require Zoning relief.

That there is no detriment to the public good.

The impact of the balconies is minimal in terms of the additional deviations from our Zoning By-Law. And in fact, given the

location of the windows where the balconies will be located, there is minimal impact on neighboring properties, and that just generally the relief being sought is modest in nature in terms of this departure from our Zoning requirements.

And the variance will be granted on the condition that the work proceed in accordance with the plans submitted by the petitioner numbered T1, A3, A4, A5 and A7.1.

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

(Aye.)

CONSTANTINE ALEXANDER: Three in favor.

(Alexander, Hughes, Firouzbakht.)

CONSTANTINE ALEXANDER: Not enough to carry. You need three under the state law. That variance is denied.

(Sullivan, Heuer Opposed.)

CONSTANTINE ALEXANDER: We'll make

the following findings:

That there's been no demonstration of a substantial hardship that would require the installation of the these balconies nor other special circumstances relating to the soil conditions or topography of the land. Essentially the building is accessible through the current windows as they are now, and that allowing further deviation from our Zoning By-Law for a structure that is already non-conforming would derogate from the intent or purposes of our Zoning By-Law.

All those in favor making those findings, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: The findings have been made. Case is dismissed.

(Sullivan, Heuer.)

(Whereupon, at 11:05 p.m., the meeting adjourned.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

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

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

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 8th day of March 2010.

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

My Commission Expires:
April 23, 2015

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