

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING

February 26, 2009 7:00 P.M.

in

Senior Center, 806 Massachusetts Avenue  
Cambridge, Massachusetts 02139

Brendan Sullivan, Chair

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Thomas Scott, Member

Tad Heuer, Member

Slater Anderson, Member

Mahmood Firouzbakht, Member

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: Brendan Sullivan, Constantine Alexander, Slater Anderson, Tad Heuer, Tim Hughes.)

BRENDAN SULLIVAN: The Board will hear case No. 9710, 11 Tufts Street. If you could reintroduce yourself for the record and please spell your last name.

MATTHEW LEVY: Matthew Levy. My last name is L-e-v-y.

BRENDAN SULLIVAN: Okay, since last we met there was a question on the dimensional form.

MATTHEW LEVY: Correct.

BRENDAN SULLIVAN: I guess, which has been corrected?

MATTHEW LEVY: Yes.

BRENDAN SULLIVAN: And is now up to date.

There was also some comment from an abutter. I'm not sure, was that the last one or was that the first one?

CONSTANTINE ALEXANDER: First one.

MATTHEW LEVY: The first one.

BRENDAN SULLIVAN: So that had been solved at the last meeting. It was just really the dimensional form.

MATTHEW LEVY: Correct.

BRENDAN SULLIVAN: Which the architect or you or somebody have corrected?

MATTHEW LEVY: Yes.

BRENDAN SULLIVAN: Okay.

And the relief being requested is to add a second and third floor porch.

MATTHEW LEVY: Correct.

BRENDAN SULLIVAN: Which increases the FAR.

MATTHEW LEVY: Yes.

BRENDAN SULLIVAN: Because it's a

--

CONSTANTINE ALEXANDER: Well, the issue is also a setback, right? You're also into the rear yard setback? You got to be 20 feet or you got to be 14 feet?

MATTHEW LEVY: That's correct. But our porches have no additional increase to the invasion on the --

CONSTANTINE ALEXANDER: No, no, I know. I understand that. You're not changing the basic footprint of the building.

MATTHEW LEVY: Correct.

CONSTANTINE ALEXANDER: Technically you are intruding the second and third floor into the rear yard setback?

MATTHEW LEVY: That's correct.

CONSTANTINE ALEXANDER: And you're adding to an FAR in a structure that's well over the FAR already.

MATTHEW LEVY: Correct.

CONSTANTINE ALEXANDER: And the

porch was originally going to be 10 feet and you cut it back six feet.

MATTHEW LEVY: Yes. Six feet by 17 and a half.

BRENDAN SULLIVAN: And that was to address, I think, the concern of the neighbors --

CONSTANTINE ALEXANDER: Neighbors, right.

MATTHEW LEVY: Yes.

BRENDAN SULLIVAN: -- in the original --

MATTHEW LEVY: The adjacent neighbors on Chestnut Street.

BRENDAN SULLIVAN: And there are probably porches on that house.

MATTHEW LEVY: There were.

BRENDAN SULLIVAN: And it was taken down and obviously then any redoing of the porch is going to require some relief?

MATTHEW LEVY: Correct.

CONSTANTINE ALEXANDER: And, again, for the record, you have no neighborhood opposition that you're aware of?

MATTHEW LEVY: No. We have spoken to our neighbors and they are in support of our project as it stands now.

BRENDAN SULLIVAN: Is there anybody else here who would like to speak on the matter?

(No response.)

BRENDAN SULLIVAN: I see none. And there is no additional correspondence in the file.

Any questions by the Board at all?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: Any concerns?

TAD HEUER: No.

BRENDAN SULLIVAN: I make a motion to grant the relief requested which were to reconstruct two porches on the second level and one at the third level as per

the plans submitted.

The Board finds that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner as it would preclude the petitioner and the occupants of the building to providing much needed outdoor space. The hardship is owing to the fact that the existing building sits on an undersized lot which precludes the existing ordinance that the rear setback is substandard for the present zoning. And that the relief being requested to add some additional outdoor space is a fair and reasonable one, and is consistent with the intent of the ordinance.

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

And which plan are we going by?

This one here, December of 2008?

MATTHEW LEVY: That's correct.

BRENDAN SULLIVAN: Okay.

And that the work be in compliance with the plans submitted to the Board and initialed by the Chair, dated 5, December 2008.

All those in favor of granting relief requested.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

CONSTANTINE ALEXANDER: Good luck.

MATTHEW LEVY: Thank you.

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

(7:05 P.M.)

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

BRENDAN SULLIVAN: The Board will hear case No. 9747, 211/321 Alewife Brook Parkway.

ATTORNEY BRUCE EMBRY: If I can ask that we be taken out of order? Jim Rafferty who represents the landlord is coming to speak --

BRENDAN SULLIVAN: Oh, okay.

ATTORNEY BRUCE EMBRY: -- and provide some information from the

landlord, only he's not here at the moment. If we could wait for him to arrive, that would be great.

BRENDAN SULLIVAN: Yes, that's okay.

ATTORNEY BRUCE EMBRY: Thank you.  
(Whereupon, a discussion was held off the record.)

(7:05 P.M.)

(Sitting members: Brendan Sullivan, Constantine Alexander, Slater Anderson, Tim Hughes, Tad Heuer.)

BRENDAN SULLIVAN: The Board will hear case No. 9738, 704 Huron Avenue.

MAHMOOD FIROUZBAKHT: Mr. Chair, before we proceed I would like to state for the record that I was an intern at Attorney Giaimo's law firm several years ago, but I'm not currently employed by his law firm in case there are any objections.

(Whereupon, a discussion was

held off the record.)

BRENDAN SULLIVAN: If you would introduce yourself for the record.

MICHAEL GIAIMO: Thank you, Mr. Chairman.

Michael Giaimo for Verizon Wireless, which is the petitioner on this application. This is a proposal to place three arrays of four antennas on three sides of the existing building at 704 Huron Avenue. We had been scheduled several months ago when the Planning Board gave us some comments that we thought we should address before we came to see you. We have addressed those. We got a favorable report from the Planning Board last week, and so we're back. I guess we're in for the first time to you to tell you that those antennas will now be screened in a way that the Planning Board has found to be acceptable.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: But the plans that you have submitted to us and have us to approve were not filed until -- you bring them here tonight for the first time?

MICHAEL GIAIMO: No. I believe they were delivered earlier in the week, but, yeah, we had some problems with getting them here from the engineers. The only differences between the plans that were filed and the plans that some of you hopefully got to see, that we would propose to build, are the screening of the antenna arrays and at the suggestion of the Inspectional Services Department, Sean and Ranjit, to move the shelter back abutting the building so there's not a separation between the parking garage and the shelter. It's the same shelter. It's pushed back up against the building. That resolves any question of how do you interpret the separation or the setback

requirements. We believe we comply with all those dimensional standards now.

CONSTANTINE ALEXANDER: Has the Building Department signed off on that?

MICHAEL GIAIMO: The Building Department has not signed off on that, but we didn't go in for a turndown on that particular issue because we believe we comply. We've given them the calculations to determine that, but we don't have a sign off from them on the --

CONSTANTINE ALEXANDER: The only reason I raise that is --

MICHAEL GIAIMO: -- setback.

CONSTANTINE ALEXANDER: -- we don't want to get this into a case heard. So if you have to continue the case, you're going to have to get the same five of us here.

MICHAEL GIAIMO: Right, understood.

CONSTANTINE ALEXANDER: I want to

say at the procedural level, and it seems to me we've got two procedural issues:

One, is our rules or our practice that require any plans that we're going to consider have to be on file at the Zoning office by five o'clock Monday before the hearing.

MICHAEL GIAIMO: And that was our intention and we just couldn't deliver.

CONSTANTINE ALEXANDER: It didn't happen.

MICHAEL GIAIMO: Yeah.

CONSTANTINE ALEXANDER: It didn't happen, okay?

Second, is that if we go forward and if the Building Department finally concludes that you do need some zoning relief, you will either have to challenge that decision or seek the zoning relief. In other words --

MICHAEL GIAIMO: Right, I understand. We would need a variance

or --

CONSTANTINE ALEXANDER: The question, though, is we're going to have to -- and I for one, I only speak for myself, would want to continue this case tonight simply because your plans were not timely filed. It seems to make more sense to continue the case, get your final determination from the Building Department, and either we come back with two cases -- two kinds of relief before us because you -- they make a decision, you agree with --

MICHAEL GIAIMO: Right.

CONSTANTINE ALEXANDER: -- or that's behind you and you still have the one case which is the case we have before us.

MICHAEL GIAIMO: Right.

CONSTANTINE ALEXANDER: I for one do not -- Mr. Chairman, I would recommend that we do not take this case tonight and

continue it simply because of our practices. You didn't comply with them.

MICHAEL GIAIMO: Yeah -- no, I understand. I understand it's from a procedural standpoint a more efficient way to do it.

I'm in a little bit of a bind because my client has asked me to at least open the hearing and proceed tonight. Now, I understand we might not get through it tonight, and that's -- I don't think he's -- George has shown up? So, George, have you heard all this? What do you want to do? Do you want to come back and continue?

Let me just --

CONSTANTINE ALEXANDER: You have to come forward and you have to --

GEORGE EVSIOUK: I mean, if you guys are going to render a decision because we didn't have adequate time to read the plans.

MICHAEL GIAIMO: So that sounds like it makes sense to everybody then.

It's a question of we can continue now or we request to continue later. We might as well save everybody some time.

BRENDAN SULLIVAN: I would continue to a later --

MICHAEL GIAIMO: What would the date be?

SEAN O'GRADY: I can give you March 12th if you like.

MICHAEL GIAIMO: Very good, thank you.

CONSTANTINE ALEXANDER: Sean, if you determine that they need other zoning relief because of this shelter building, would they have time to advertise -- they wouldn't have time to advertise?

SEAN O'GRADY: They would never make March. If that were to occur, I think you have to continue it.

BRENDAN SULLIVAN: Kick this over

to --

CONSTANTINE ALEXANDER: Or have two cases. We have one case on March 12th, the Special Permit. And the one later which would be the variance or appeal from your decision.

BRENDAN SULLIVAN: Well, yes.

MICHAEL GIAIMO: We've looked at those dimensionals every which way at this point, though, and --

BRENDAN SULLIVAN: Again, I think it's, you know, prudent to do it in a less stressful, less hurried manner.

MICHAEL GIAIMO: I appreciate that.

BRENDAN SULLIVAN: It makes more sense to all of us.

MICHAEL GIAIMO: Yeah.

BRENDAN SULLIVAN: Whatever decision we render, we want it to be a proper one and you do, too.

MICHAEL GIAIMO: Yeah -- no.

Thank you.

BRENDAN SULLIVAN: At any time rate, so, I think a hear a motion then to continue this matter until March 12, 2009 at seven p.m. on the condition that you change the posting sign to reflect the new date of March 12th at the time of seven p.m. In the interim you will confer with the Building Department, go over the latest plans which have been submitted on February 25th and determine whether or not they comply with the ordinance or that may be additional relief.

MICHAEL GIAIMO: Understood.

BRENDAN SULLIVAN: And then that's a procedural thing, and however that flushes out and then you can do whatever.

MICHAEL GIAIMO: And I think -- I believe Ranjit has all that information he needs for that conversation at this point. I believe he does.

SEAN O'GRADY: Yes, but do not

rely on -- you do want to definitely prompt this issue because March 12th is --

MICHAEL GIAIMO: I understand.

BRENDAN SULLIVAN: Have a sit down.

CONSTANTINE ALEXANDER: And understand you have to revise those plans again, make sure those revised plans are in --

MICHAEL GIAIMO: Yeah -- no, I wish our engineers were here to hear that as well, but they're not, so we'll follow up with them. Thank you.

BRENDAN SULLIVAN: So, on the motion then to continue this matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

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

(7:15 P.M.)

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

BRENDAN SULLIVAN: Do we have all the players, Mr. Embry?

ATTORNEY BRUCE EMBRY: Yes, we do.

BRENDAN SULLIVAN: The Board will hear case No. 9747, 211/321 Alewife Brook Parkway. And if you would please reintroduce yourself for the record.

ATTORNEY BRUCE EMBRY: Good evening. I am Bruce Embry, attorney in Cambridge. Clark, Hunt and Embry, 55 Cambridge Parkway. I'm here with Brad Toothman who is the general manager for Chipolte. And I'm joined tonight by the hardest working man in show business, someone who needs no introduction, Mr. James Rafferty. Mr. Rafferty represents the landlord in the project. Mr. Toothman

is the representative of the tenant.

When last we parted, our task -- Brad's and mine -- was to go back to the landlord and revisit the notion of designating parking, the intention of which would be to designate parking closer to the entry point of the Chipolte store location. That engendered very serious and in-depth conversation with the landlord who revisited likewise their, their project plan and the voluminous work that they had done with the Traffic Department to come up with a parking plan, a pedestrian plan, a bicycling plan, plans of rather substantive volume. And it was the landlord's opinion and why we brought Mr. Rafferty here tonight to answer questions about how the landlord and the Traffic Department evolved the plan that they did. And it was the landlord's opinion from all of those negotiations and the final plan derived from those with the

Traffic Department that in fact the Traffic Department was not favorably disposed to designated parking to this kind of an environment. And they had a variety of reasons why they thought that it was not a good thing to do in this circumstance having to do with blocking out dead parking areas preferenced to tenants, things of all sorts of natures that would lead for the landlord and the parking department to conclude that in fact designated parking for any of the tenants in fact was not a particularly good idea in this circumstance.

Mr. Rafferty can give you the history of how the plan was evolved. We were simply the beneficiaries of that plan. We didn't understand the history of that. And it was only until we actually started to lift up the rocks of the plan to look underneath and find how the plan was evolved, that it became clear that

there was some conflict between the intention of designating the parking spaces and what the landlord and the parking department had essentially agreed upon as their plan.

BRENDAN SULLIVAN: Will the business have takeout food?

BRAD TOOTHMAN: It will. You have the ability.

BRENDAN SULLIVAN: So in other words, it's yes to that. If I were to call up and say I want an order to go, pick-up -- you obviously do that. I mean, at lunchtime I would think that would be a huge plus. And I think that's where I'm coming at with this parking being close to the establishment and not being way over in the corner by where Trader Joe's is, because anybody who comes at lunchtime, supertime, whenever it is for a pick-up, I would think would want to be close to the establishment because it's going to be

a short walk. If you're going to come in, you're going to run in, you're going to pick up, whatever, your bag of goodies and then you're going to leave. And it makes sense to me -- as it is, if you go to TGIFridays, if you go to Cheesecake -- you go to any of those places, their parking is sort of like right there because that's the function and that's the way it works. That's what my intent was was to have parking spaces near the establishment so that it would work. And not to have it pushed way over to the side -- I mean, I found, to be quite honest with you, what you presented last week somewhat insulting to have it way over in the corner. And that's what sort of got my back up.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Oh, I don't have much to add, Mr. Chairman, to what Mr. Embry said. I did have an opportunity to review the transcript, and

what I included in the file today, because I was unaware of the nature of these proceedings, a copy of the determination that was made as part of the design consultation review which is a public hearing process conducted by Community Development, and the attachments in the Traffic Department as well as the Pedestrian Committee. We spent months in review over this particular layout. We have -- the landlord has closed three curb cuts, added all types of landscaping, and we're being continually pushed in a direction to constrain the parking supply which is actually the policy of the department. They want to see better efficiency in the parking lot. They want to see a promotion of pedestrian access. There's a requirement that these stores have front doors -- two front doors on the parkway side and on this side. And the notion of dedicating parking for any one

tenant is contrary to the City's policy around a multiple retail plaza. There are altering peak demand times. There's uses that see greater demand in the evening, some in the morning. And this is going to -- at the end of the day this plaza will have in the back building there's going to be two tenants. It's going to be a Trader Joe's and a CVS. It will be a two-tenant plaza. You can run into Trader Joe's to get a cup of coffee and you can run anywhere else to get a pack of razor blades in CVS. But you'll park like retail parkers do all over Cambridge, you'll park in the parking lot and go to that use. And frankly, the landlord wasn't prepared and didn't think the City, and we confirmed this much with the Traffic Department today, think that setting aside designated spaces, that would then may be used -- may be unused for certain portions of the day or would

suggest that other users would have to go elsewhere is just a level of parking lot management that really cuts down on the efficiency of the parking lot, is very hard to manage, and for which frankly there's little in the way of precedent. I'm thinking of Starbucks that was approved here last year on the plaza on Memorial Drive where Trader Joe's is now. There's no particular designation of the parking in those locations.

CONSTANTINE ALEXANDER: I think the precedent -- and in that case I didn't sit on. The precedent is when you have a building with multiple occupants, as you will on this building, and parking requirements for each of their uses by the Zoning By-Law, and the problem is that by the time you get to the last tenant, I guess the problem with Porter Square with Planet Fitness, you get to the last tenant, it becomes an issue is there

sufficient parking for that tenant or for the whole building, because if you parcel it out --

ATTORNEY JAMES RAFFERTY: No, that's not a problem because we've done the parking analysis here both ways. The parking lot, it's an entirely retail plaza. So all of the retail space is done by square footage. The only exception to that is to the restaurant use. And the restaurant use is based on tables. In this case the table requirement here is actually lower than what the percentage is. So we're over by 38 parking spaces today. Every other tenant is subject to the retail requirement. This is the only restaurant in the plaza. If that use were to change, then that person would need to come in and demonstrate to the Building Department that the parking is there. But there isn't any special parking requirements associated for the

restaurant, so it is in this case, it's designated by the number of seats in the establishment. So it turns out that this, I think from my review of the record, appears to have a six parking space requirement, and those six parking spaces on any given time there could be 20 parkers in there associated with that use. And to set aside six for this use would suggest we would then -- there's just no easy way to do that or frankly, it doesn't seem to create the type of efficiency and shared use of this parking facility that was envisioned. We, we eliminated parking spaces at an alarming rate. The landlord, as you might imagine in a plaza of this nature was -- his perspective tenants want to see as much parking as possible. The City pushed us in a direction given the proximity to the bike trail in front of us, the reservation, the new housing that's been built on Wheeler Street, the

expansion of the hotel across the street, the new pedestrian connections that five years ago you couldn't cross to the other plaza. You can today.

The challenge of this lot frankly will involve the abutting property for which there currently is little distinction. If you were to drive there today and go to the Dunkin' Donuts, you might be tempted to park in an area that actually isn't under this control. And we've been working with that owner in trying to figure out who to manage that. But the D'Angelo's that has been there for longstanding, that's also a takeout establishment confirmed by this Board many years ago. There's never been any designated parking for the D'Angelo's.

So, I respect and understand the issue, but I think as a practical matter the whole approach to this plaza, and I knew there was some concern that this was

being done piece meal or one off, and one of the things I wanted to provide the Board with was the complete history of this which involved the Public Works Department. We're doing the entire sidewalks over. New street trees. There is going to be on-street parking on Wheeler Street.. All new stonewall separation. Huge infrastructure changes been going on out there for months. So, we're changing the whole character out there to try to reflect not the 1950s auto orientation that it's had, but to try to bring it -- and the design of this building, we spent a lot of time on issues -- they sent us to Harvard Square to find precedents of brick buildings. They had us add modulation to the facades. A lot of attention paid to the types of issues that I saw were in the record here, but unfortunately I didn't have the benefit of sharing with the Board and I

just appreciate the chance to do that.

BRENDAN SULLIVAN: So it's been worked over?

ATTORNEY JAMES RAFFERTY: Long and hard. And we've got the scars in the plan to show it.

BRENDAN SULLIVAN: So, your position is that if you have run the tape and that for the proposed retail space, the proposed and existing that you're in excess of how many spaces?

ATTORNEY JAMES RAFFERTY: 38 spaces over the minimum requirement. And we started with more than 60 over. We were told that's too many. And so every time you see we had to introduce pervious areas which didn't exist, introduce landscaping, create pedestrian lanes, sidewalks, crossing tables. Every time you're doing that, adding bike racks covered by -- three times required by the bicycle parking --

BRENDAN SULLIVAN: And you had to remind them that this was Cambridge not Lexington?

ATTORNEY JAMES RAFFERTY: Thank you. And every time we do that, guess what we're losing? We're losing parking spaces.

BRENDAN SULLIVAN: I think it was two attempts: No. 1, to make this particular establishment efficient use of the parking, make it available to the parking. Also, to chart the number of spots. And I guess, I was -- I did not hear that we were over --

CONSTANTINE ALEXANDER: That's right.

BRENDAN SULLIVAN: -- that 38. That probably would have changed --

ATTORNEY BRUCE EMBRY: I didn't know that. I'm sorry if I was sparse on that.

BRENDAN SULLIVAN: And that was

probably not information that was not available to you until we, again, we started lifting up the rocks.

TAD HEUER: Given your familiarity with the how-it-works situation, could you just compare that situation, the park situation we had there at Porter Square with this situation we have here? I think part of what the Chairman says, that the issue we had up at Porter Square was a changing number of retail entities requiring different amounts of parking based on what they were, and their square footage meant that at the end of the day when a final big tenant came in -- Planet Fitness, when Planet Fitness came in as a large tenant in that space, there was all of a sudden a question of whether there was adequate parking available and there seemed like there wasn't. I think the concern here was that even though the current mix of tenants may come under the

parking number, a future mix of tenants might not. And we've had some situations over the last tenant in would be told there's no parking for the kind of use you want to have. And then we'd be in a position to having to grant a variance again.

ATTORNEY JAMES RAFFERTY: Well, you wouldn't have to and it would be Special Permit. And that's frankly a case where the system worked the way it's supposed to. And that is that when that tenant went in -- what happened there frankly, is that it was permitted as a retail establishment and the introduction of office uses, particularly medical uses really skewed the parking. But there's a lot of uses in the district as they are here. But when that tenant then came in to get his building permit, they had to demonstrate that there was adequate parking within the lot. We did the

analysis and indeed there wasn't. So the applicant in that case had to come before the Board, make a case for a Special Permit, point to the criteria chiefly the proximity to transit and the Board made a determination. So I wouldn't be, I wouldn't be troubled by that. I think in fact, I would be heartened by that. I think that's the way the process works. And anytime you have a multi -- I mean, it's just -- you have a multi-retail tenant -- if you go down the Cambridge Side Galleria Mall, there's a food court and I think I probably got eight out of the 14 fast food Special Permits for those uses. But you can ride around that garage all day and you won't find "Park here for Dunkin' Donuts, park here for Sabarro's and park there for Starbucks." You have collective pool parking in a retail -- in a multi-tenant retail complex. It really is the -- (inaudible) the way this type of

parking -- what we spent so much effort on was trying to create ways to reduce cars even coming into the site through bicycles and pedestrians and taking a look at the environment. We are significantly over and we -- if that were to change, and I think it could only change in one of two ways.

One, if the ordinance were to change, and the parking requirements were to increase, which I would offer again would be an unlikely scenario given the current thinking of Cambridge's transportation policy makers. But everything is restricted parking supply. Or if there was a use mix change where an office went in there, well, that office, if they were to get a building permit to convert office or get a CO, would have to run the numbers to satisfy ISD that they could meet the parking demand.

CONSTANTINE ALEXANDER: Okay.

Further question, you mentioned for our own information and education, that the City of Cambridge had a policy against dedicated parking. Where is that policy from? Is it written down somewhere or has it been expressed?

ATTORNEY JAMES RAFFERTY: No, no, I want to be clear. In this, in a multiple-retail use environment with varying peak uses of demand, the policy and practice of the Transportation Department is that these -- the dedicated parking is not, is not favored in a retail setting like this. And I called today to ask -- to confirm that. And if I called sooner, I would have had that reduced to writing, because I thought well, you know, just because I say it's so, there might be someone that would say well, maybe someone else --

CONSTANTINE ALEXANDER: But it's the Traffic Department policy --

ATTORNEY JAMES RAFFERTY: Yes. Well, transportation -- they've changed their name now. They're now the Transportation Department. I think they see themselves as a broader mission. Traffic is a little too pedestrian. If you try to mix metaphors, they are transportation planners, and they have a pedestrian committee. They have all types of great ideas. So, and that plan actually represents --

BRENDAN SULLIVAN: Not all that I agree with. But at any time.

ATTORNEY JAMES RAFFERTY: Well, you wouldn't find yourself alone in that thinking, Mr. Chairman.

BRENDAN SULLIVAN: So it would be fair to say that the reason that the town dedicated spaces in that they become somewhat dead spaces.

ATTORNEY JAMES RAFFERTY: Exactly. And particularly, and I'm not overly

familiar with this use, but you have particularly food oriented places that maybe don't do a breakfast business, I'm not aware that you do.

BRAD TOOTHMAN: Right.

ATTORNEY JAMES RAFFERTY: So before eleven in the morning they're not even open.

BRENDAN SULLIVAN: Now you know where to go.

ATTORNEY JAMES RAFFERTY: What's that?

BRENDAN SULLIVAN: You know where to go now.

ATTORNEY JAMES RAFFERTY: But before eleven in the morning you get someone circling around the plaza trying to find a parking space, and you've got six spaces that technically you're not supposed to park in, so why should someone go into CVS be sent further away?

BRENDAN SULLIVAN: All right. We

talked it out.

Mahmood?

MAHMOOD FIROUZBAKHT: I appreciate this new information. I think it's very helpful in sort of getting the background on the overall picture. I'm confused by why it is that -- if this is the sort of the policy and reasoning for not wanting dedicated spaces, why on the second cut we were presented with a plan where there were dedicated spaces but much further away as opposed to what you're presenting tonight, which is very sensible.. But if the landlord was okay with that, then why would they not be okay with spots being dedicated closer?

ATTORNEY JAMES RAFFERTY: That was a strategic -- if I may, Mr. Chairman. That was a strategic error on the part of the landlord. When I learned about all this this week, I said that's where you should have -- I wasn't brought into it.

Sometimes the path of least resistance appears attractive. And the message they got back with, just give me six spaces on a plan and these five guys will approve us and we can get going. There's a certain appeal to that. I think the Board wisely rejected --

BRENDAN SULLIVAN: They don't know us.

ATTORNEY JAMES RAFFERTY: So, they rejected that. And then it raised a bigger question. And that's when I heard from Mr. Embry.

BRENDAN SULLIVAN: And then you got to the races with that.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: I think it was just probably to give us an answer.

ATTORNEY JAMES RAFFERTY: What do you hear? This is what they want? And you'll be amazed how many people go through life just wanting to make people

like you happy. If that's what it takes to make you happy, I bet they'd have given you seven spaces out the back of the building.

BRENDAN SULLIVAN: Anything?

CONSTANTINE ALEXANDER: No, the new information makes a difference and I'm fine with it.

BRENDAN SULLIVAN: Tad?

TAD HEUER: I'm fine with it, and I appreciate, for the record, that the distinction between this and the situation we had in Porter Square because I think it would be helpful going forward for other cases. So thank you for that.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I agree. I'm satisfied as well.

BRENDAN SULLIVAN: Okay. Do we need to talk any more with that?

BRAD TOOTHMAN: No.

ATTORNEY JAMES RAFFERTY: I always

enjoy your comments. So, if I got to vote, I would want to stay here longer, but I think Mr. Embry probably wants to move on.

BRENDAN SULLIVAN: What we were asked to do is to grant a Special Permit to operate a fast food restaurant.

I make a motion then to grant the Special Permit to Chipolte Mexican Grille to operate a fast food restaurant at 211 Alewife Brook Parkway with the outdoor seating, which you don't really need from us anyhow. And under the fast food --

CONSTANTINE ALEXANDER: Yes, 11.31.

BRENDAN SULLIVAN: 11.30 in consideration of Special Permits and automobile orientated fast food service establishment, the following requirements must be met:

The operation of the establishment shall not create traffic problems.

The Board finds that it has gone through -- this particular site has gone through extensive review by the Traffic Department?

CONSTANTINE ALEXANDER:

Transportation Department.

ATTORNEY JAMES RAFFERTY:

Transportation.

BRENDAN SULLIVAN: Transportation Department. The newly created Transportation Department, and with great input, the plan is accepted as presented.

The Board finds that the establishment shall not reduce available parking, shall not threaten the public safety in the streets and sidewalks or encourage or produce double parking on the adjacent public streets. That would be hazardous.

The Board finds that the physical design, including use of the materials of the establishment shall be compatible with

-- is compatible with and sensitive to the visual and the physical characteristics of the other buildings in the plaza.

The Board finds that this particular establishment fulfills a need for such a service in the neighborhood.

The Board finds that the establishment will attract patrons, some from walk-in trade but also from traffic -- I'm sorry. That there will be vehicular traffic.

The Board finds that the establishment shall use biodegradable materials in packaging for your takeout and utensils and other items provided for consumption thereon. And the establishment shall provide convenient, suitable and well-marked waste receptacles. So that at each entrance, especially out at the outdoor seating, there will be a couple receptacles there.

That the establishment complies with

all state and local requirements applicable to the ingress and egress of all the facilities.

The Board shall issue a Special Permit for the fast food establishment which may be utilized only by the owner or operator of such establishment granting a Special Permit under Section 11.30.

The Board shall specifically detail the kind of fast food order -- fast order food which is a Mexican Grille. And that the Special Permit is being given to the Chipolte Mexican Grille of Colorado, LLC.

So that if there is a change of ownership, then the new owner would have to come back before us.

CONSTANTINE ALEXANDER: Excuse me, Mr. Chairman, before we take a vote, there was, as I recall, there was a letter in our file from the Planning Board that expressed some reservations or some problems. It's been so long since we

considered that. Could you just read that into the record and see if there's --

BRENDAN SULLIVAN: Well, I think that had to do with Harvard Square.

CONSTANTINE ALEXANDER: Well, it was based on Harvard Square that they had some concerns about this project as I recall.

BRENDAN SULLIVAN: Let me read the correspondence from the Planning Board dated January 8th. The Planning Board reviewed this order fast food establishment Special Permit request and supports the use of this location and the newly constructed building that conforms to the Parkway Overlay District with the following reservations:

The plans for this establishment at the Harvard Square location were reviewed and approved by the Planning Board. However, the project fell short of the Board's expectations in particular with

regard to the outdoor seating that was not built in accordance with the approved plans. Therefore, the Planning Board recommends that if the Board of Zoning Appeal grants the Special Permit, that the conditions be worded to make clear that the construction must be completely consistent with the approved plans.

ATTORNEY JAMES RAFFERTY:

Preaching to the choir on that.

BRAD TOOTHMAN: Can I just clarify?

ATTORNEY BRUCE EMBRY: There's been a specific design for that purpose.

CONSTANTINE ALEXANDER: I know you don't have to respond to Harvard Square. The point though being that we're going to approve this on the base that you're going to concede with the plans. It's nothing new. I didn't remember what the issue was.

BRENDAN SULLIVAN: So we're saying

yes to that.

Okay.

Also in granting the Special Permit the Board finds that the requirements of the ordinance can be met by traffic generated, patterns of access or egress would not cause congestion, hazard or substantial change in the established neighborhood character.

The continued use or the development of adjacent uses as permitted to the zoning ordinance would not be adversely affected by the nature of the proposed use. There would be no nuisance or hazard created to the detriment of the health, safety or welfare of the occupant of the proposed use or to the citizens of the city, and that the proposed use would not impair the integrity of the district or the adjoining district or otherwise derogate from the intended purpose of the ordinance.

And the Board notes again the letter of Planning Board in full support.

Anything else?

CONSTANTINE ALEXANDER: Well, they have to proceed in accordance with those plans.

BRENDAN SULLIVAN: And that the Special Permit is granted under the condition that the --

ATTORNEY JAMES RAFFERTY: Are those the plans of the plaza?

BRENDAN SULLIVAN: It's really this here.

CONSTANTINE ALEXANDER: Yes, you're right.

BRENDAN SULLIVAN: That the work be done in conformance with the plans as submitted, entitled 211/321 Alewife Brook Parkway, initialed by the Chair.

Just to make a note that we are not granting any relief on any signage.

BRAD TOOTHMAN: That's correct.

BRENDAN SULLIVAN: Because none has been asked for. And so we understand that it probably is in compliance. So advised --

All those in favor.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

ATTORNEY BRUCE EMBRY: Thank you. Appreciate your patience with this.

BRAD TOOTHMAN: Thank you again.

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

(7:40 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Mahmood Firouzbakht, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9756, 216 Lakeview Avenue.

Anyone here wishes to be heard on this case?

Please come forward.

JOELLE FLYNN: Hi.

CONSTANTINE ALEXANDER: Hello.

TAD HEUER: Hello.

CONSTANTINE ALEXANDER: For the record, we keep a transcript. Give your name, address and please spell your name for the stenographer.

THOMAS FLYNN: Good evening.

Thank you. My name is Tom Flynn,  
F-l-y-n-n. My wife Joelle Flynn and my  
mother Barbara Flynn.

CONSTANTINE ALEXANDER: Go ahead.

THOMAS FLYNN: We are here in  
hopes that the Zoning Board will approve  
our efforts to update our home at 214-216  
Lakeview Avenue. My sister Kelly and I  
were blessed to have the opportunity to  
grow up in this home.. And it is Joelle's  
and my wish to raise our family here as  
well.

Furthermore, as a Cambridge Police  
Officer, I feel it is important and a  
privilege to live in the city that I help  
to protect. I was blessed to grow up  
next-door to my grandparents, Gus and  
Alice Flynn who lived at 208/210 Lakeview  
Ave. This is where my father, aunt and  
uncle were also raised.

Joelle and I hope to continue our  
own piece of the family history here, and

intend to remain in the house in anticipation that one day soon we will start our own family here in Cambridge.

There have not been any significant renovations to our home since before my parents purchased it in September of 1977. The house is in need of a major makeover to provide more usable living space and needed structural work. We have hired an architect and a contractor to come up with a plan that provides adequate space requirements, yet minimizes the visual impact to the neighborhood. Initially the plan called for two, 15-foot dormers, one on either side of the house. We felt this looked cumbersome, bulky and out of character with the neighborhood. And also resulted in an unusual small, triangular shaped area in the middle of the third floor space. This did not work well so we examined other options.

A structural engineer was retained

by the architect, and we were told that the existing floor joists on the third floor of -- and the roof rafters were very much undersized. And so the problem involved having to increase the floor joists from 2-by-6 to 2-by-8 and the rafters from 2-by-6 to 2-by-12. As a result, the raised floor line and the lowering of the ceiling line rendered the resulting space useless.

Over the years the house has also settled due to poor soil conditions, and it is our desire to straighten the walls, floors and doorways out as much as possible. Our solution to these conditions is in the proposal before you. All other requirements of the ordinance have been met, including lot size to dwelling units, floor area ratio, height of the building and open space.

Our request to the Zoning Board requires some relief because the right

side setback is only four feet, an existing non-conforming condition which we cannot change. We are requesting relief from the ordinance to construct one, 13-foot dormer, raise the ridge line approximately four feet, and build a small deck at the third floor level, approximately 4-by-6-by-10 feet.

Regarding the need for a Special Permit, we would like to relocate the location of two windows as shown in sheet A06 to accommodate the -- an interior reconfiguration. The violation lies in the fact that they are within the side yard setback requirement.

Joelle and I are not completely sold on the type of siding chosen by the architect for the upper level of the house as shown in sheet A09, and ask that if the Board were to look favorably on and grant the requested relief, that the siding material not be a requirement of that

decision.

We thank you for your time.

CONSTANTINE ALEXANDER: On that last point, we don't get into siding issues. So, that wouldn't be a zoning issue for us anyway.

THOMAS FLYNN: Okay.

CONSTANTINE ALEXANDER: But if we were to grant you relief and you wanted to change the siding, you're free to do that.

THOMAS FLYNN: Great.

CONSTANTINE ALEXANDER: A question about the -- you mentioned there's going to be a small deck on the third floor?

THOMAS FLYNN: Yes. That would be in the rear, the rear deck third floor porch.

CONSTANTINE ALEXANDER: And what would the function of the deck, the purpose of the deck?

THOMAS FLYNN: A third floor porch.

CONSTANTINE ALEXANDER: Third floor porch.

THOMAS FLYNN: It would come off the bedroom, that's correct.

CONSTANTINE ALEXANDER: And that's shown on the plans?

THOMAS FLYNN: Yes, it is.

CONSTANTINE ALEXANDER: One other question. As I understand, that your dormers comply with our dormer guidelines?

THOMAS FLYNN: That's correct.

CONSTANTINE ALEXANDER: So the issue is really just simply right yard setback?

THOMAS FLYNN: Yes, that's correct.

CONSTANTINE ALEXANDER: Where you were already a non-conforming structure in that right yard --

THOMAS FLYNN: Correct.

CONSTANTINE ALEXANDER: -- and architecturally as I recall, the dormer is

actually somewhat consistent with the dormer next-door to you?

THOMAS FLYNN: Yes.

CONSTANTINE ALEXANDER: On the right side as a matter of fact -- or maybe left side, left side.

THOMAS FLYNN: Left side. Two houses down, yes.

CONSTANTINE ALEXANDER: Before I open it for public testimony, any questions from the Board at this point?

Mahmood?

MAHMOOD FIROUZBAKHT: Not at this point.

CONSTANTINE ALEXANDER: Slater?  
Tim?

TIM HUGHES: No.

CONSTANTINE ALEXANDER: Tad, or do you want to look at that first?

TAD HEUER: They can continue and I'll look.

CONSTANTINE ALEXANDER: Okay.

I'll open it to public testimony first.

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

(No response.)

CONSTANTINE ALEXANDER: All came down just for the hell of it?

WOMAN AUDIENCE MEMBER: Only in favor.

MALE AUDIENCE MEMBER: Just came in support.

CONSTANTINE ALEXANDER: Okay.

If you want to speak, you have to come forward and give your name and address again like these folks did for the purpose of the record.

ROGER BOOTHE: I'm Roger Boothe, I live at 206 Lakeview Avenue which is two doors down.

CONSTANTINE ALEXANDER: Right.

ROGER BOOTHE: And I'm here with my wife Claudia Thompson and I are in

support. We submitted a letter which I hope you have.

CONSTANTINE ALEXANDER: Yes.

ROGER BOOTHE: And basically we just noted that so many houses in our little section were built in the twenties, and the attic space was just never big enough to do much with. And we think that their proposal makes all the sense in the world. It's a lot like what other people have done on the block.

CONSTANTINE ALEXANDER: Would you like me to read your letter into the record, or have you just covered your letter in your comments right now?

ROGER BOOTHE: Your pleasure. I feel like I covered it with maybe just a little more detail there.

CONSTANTINE ALEXANDER: Okay. I'll read the letter.

It's a letter addressed to our Board signed by J. Roger Boothe and Claudia G.

Thompson. And they seem to reside at 206 Lakeview Avenue which is two doors down.

ROGER BOOTHE: Right.

CONSTANTINE ALEXANDER: Dear Board Members: We are writing in support of the petition by Thomas J. Flynn and Barbara J. Flynn to allow them to expand into the attic of their property at 216 Lakeview Avenue. Several of the two-family structures on our street were built at about the same time in the late 1920s. The attics in these houses are a little too constrained to use as living space without raising the roof or the addition of some kind of dormer. We live in a very similar house two doors down the street and we've renovated our home several years ago to make the attic usable. Thus we understand the need for these kinds of architectural modifications to make the best use of the existing space for current needs.

Their architect has done a good job of figuring out how to make the space work for their particular requirements without changing the fundamental character of the building. And the changes will actually enhance the appearance of the structure. We think it is good policy to support the ability of families to grow gracefully into their homes. And this is just such a case. Thus we urge the Board to approve this petition.

I'll close public testimony at this point since no one else wishes to express any views on this.

Mahmood, what's your view based on the merits?

MAHMOOD FIROUZBAKHT: I think it seems like a very reasonable proposal. And the -- dimensionally it seems appropriate for the lot and the neighborhood. So I would be favor in granting the relief required to make this

house more usable in the space that is not currently usable.

CONSTANTINE ALEXANDER: Slater?

SLATER ANDERSON: I concur.

CONSTANTINE ALEXANDER: Tim?

TIM HUGHES: I agree with it.

CONSTANTINE ALEXANDER: Tad?

TAD HEUER: I'm fine. I agree with the notion that the shakes may not be the most appropriate cladding material.

THOMAS FLYNN: Yes, thank you.

TAD HEUER: If that carries any extra weight with your architect.

CONSTANTINE ALEXANDER: I have nothing to add to what everyone else has said as well. So I think we're ready for a vote.

We need two votes. As you pointed out, you need a variance because of the side yard setback issue, and because you're relocating windows, you need a Special Permit.

THOMAS FLYNN: Right.

CONSTANTINE ALEXANDER: So I'll take the variance motion first.

The Chair moves to grant a variance to the petitioner to proceed with a proposed dormer, the variance would be granted on the grounds that a literal enforcement of the provisions of this ordinance would involve a substantial hardship to the petitioner. Such hardship being is that you have an unusable attic space now and a need for additional living space within the structure that the dormer will provide.

That the hardship is owing to circumstances relating to the -- basically the location of the structure. It's a non-conforming structure, and therefore any modification requires a variance. And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating

from the intent or purpose of the ordinance. In fact, the proposed dormer is consistent with the architectural character of the street in which you're located, Lakeview Avenue. That does not have any impact on the neighborhood.

In fact, the Chair notes that there is substantial support for your project. Certainly no opposition has been expressed. We have one written letter and many others sitting in the audience who are glaring at us unless we grant you the relief.

So, this motion to grant a variance would be on the condition that the work proceed in accordance with the plans submitted by the petitioner. They are plans bearing the seal of an architect's -- Salvatore Devola (phonetic), and they're numbered, not including the cover page, A01, A02 through A14. And I'm just going to initial the first page.

Is there a motion to approve the variance on that basis? All those in favor, please say, "Aye."

(Aye, show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Variance has been granted.

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

CONSTANTINE ALEXANDER: Now the Special Permit.

The Chair moves that a Special Permit be granted to allow the relocation of windows in the side yard setback on the grounds that -- we have to find certain conditions -- that granting or relocating these windows will not impact the traffic of the neighborhood or patterns of egress or ingress; will not cause any congestion, hazard or substantial change in the established neighborhood character. That this will not impact the development of adjacent uses as witnessed by the fact

that the persons most affected by this, your neighbors to whatever that side, have not objected to what you want to do.

That no nuisance or hazard would be created to the detriment of the health, safety or welfare of you or the proposed use of the citizens of the city. And that which you wish to do would not impair the integrity of the district or adjoining district for the reasons we talked about earlier; namely, that which you're planning to do is consistent with the architectural character of your neighborhood.

This Special Permit would be granted on the condition that the work proceed in accordance with the plans I previously identified. The plans -- and submitted by the petitioner. The plans submitted by the architect Salvatore Devola and numbered A1 through A14 and initialed by the Chair.

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

(Aye, show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Motion carried. Good luck.

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

THOMAS FLYNN: Thank you, Mr. Chairman. Thank you, Board members.

JOELLE FLYNN: Thank you.

(Whereupon, at 7:50 p.m., the meeting concluded.)

**C E R T I F I C A T E****COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

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

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

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

**IN WITNESS WHEREOF**, I have hereunto  
set my hand this 2nd day of March 2009.

---

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

My Commission Expires:  
April 23, 2015

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