

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING

May 14, 2009 -- 7:00 p.m.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Member

Tad Heuer, Member

Thomas Scott, Member

Douglas M. Myers, Member

Sean O'Grady, Zoning Specialist

Ranjit Singanayagam, Commissioner
of Inspectional Services

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Douglas Myers, Thomas Scott.)

CONSTANTINE ALEXANDER: We're going to call this meeting to order. The meeting of the Zoning Board of Appeals on May 14th. And we'll start with our continued cases, and the first continued case we're going to hear is case No. 9761, 120 Rindge Avenue and 25-47 Yerxa Road.

Is there anyone here on that matter? Please come forward. For the record, please state your name and address.

ATTORNEY JAMES RAFFERTY: Surely.

Good evening, Mr. Chairman and members of the Board. For the record, James Rafferty from the law firm of Adams and Rafferty, 130 Bishop Allen Drive appearing on behalf of the applicant. Seated to my left is Mr. Joseph

Peroncello, P-e-r-o-n-c-e-l-l-o. He's the principal of the ownership entity. And to Mr. Peroncello's left is the project architect, Mr. Ted Touloukian, T-o-l-o-u-k-i-a-n.

TED TOULOUKIAN:

T-o-u-l-o-u-k-i-a-n. That's all right.

CONSTANTINE ALEXANDER: Before we start just some procedural matters. Of course this is a continued case. A case not heard. I take it you want to go forward tonight on the merits or are you seeking a further continuance?

ATTORNEY JAMES RAFFERTY: No, I believe we're prepared to go forward.

CONSTANTINE ALEXANDER: Go forward?

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Okay.

The case seeks variances for two different buildings, 120 Rindge and Yerxa. And I think for the Rindge one there's two

type of variances: For the notch addition and for the roof decks. Am I correct about that? It would appear from the revised drawings, which I want to get to in a second.

ATTORNEY JAMES RAFFERTY: The change in the roof decks is less of a variance and more of an allowance to modify a previously approved variance, because it's actually fewer in number and smaller in size.

CONSTANTINE ALEXANDER: You're still seeking relieve on that?

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: It's not technically a variance, it's an amendment of our earlier variance.

ATTORNEY JAMES RAFFERTY: No, it is a variance. I think to be fair, because I don't think there is a mechanism for amending a variance. There's a condition in the original variance that

link the plans to a -- link the relief to the specific plans, and we've -- I think the interpretation correctly is that we're deviating from those plans even though we are deviating in a reduction, it represents a deviation. So we added that to get the Board's input on that gesture as well. And you are correct.

And then the third form of relief would be allow to roof decks on the Yerxa Road.

CONSTANTINE ALEXANDER: Which has not been before us before?

ATTORNEY JAMES RAFFERTY: Have not. And in the original submission were more and larger and in the revised submission, down to three --

CONSTANTINE ALEXANDER: The original submission for this hearing?

ATTORNEY JAMES RAFFERTY: For this hearing. And a revision placed in the file earlier this week as a result of some

communication with neighbors. The Yerxa Road roof decks are now three in number and of a reduced size than before.

CONSTANTINE ALEXANDER: Now, on that the revised plans were put in the file timely. But there was no revised staple of the dimensional requirements. Does that mean the plans don't change any of the numbers that were in the original?

ATTORNEY JAMES RAFFERTY: No, the numbers go down in the case of the roof deck. And the numbers have not changed since the original submission.

CONSTANTINE ALEXANDER: Okay. So we can still use the tabled dimensional forms that we have in the original file?

TED TOULOUKIAN: If I may make a slight addition to that. There is an addition of geotech to Yerxa due to the three roof decks of total gross footage of approximately 300 square feet.

CONSTANTINE ALEXANDER: So you are

increasing the amount of --

TED TOULOUKIAN: GSF due to the three roof decks.

ATTORNEY JAMES RAFFERTY: Right. But was not that square footage always present in our original submission?

TED TOULOUKIAN: No.

CONSTANTINE ALEXANDER: Well, I'd like to see an accurate dimensional form so I know exactly what, again, what relief you're seeking and what we're going to pass on. I thought I was asking an innocent question but obviously I'm not.

ATTORNEY JAMES RAFFERTY: It's totally appropriate. So I guess what I'm learning is that the original GFA increase that was identified in the petition did not include the area of the Yerxa Road roof decks?

TED TOULOUKIAN: They were never a part of the original plan.

ATTORNEY JAMES RAFFERTY: This? I

apologize for having this conversation.

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY JAMES RAFFERTY: We're not talking about the original permit, we're talking about the filing. Were they in the filing that we made a few months ago?

TED TOULOUKIAN: Are we talking about the original --

ATTORNEY JAMES RAFFERTY: The architect is referring to the original variance --

TED TOULOUKIAN: The original one back a few years ago, yes, of course.

CONSTANTINE ALEXANDER: So, this dimensional form -- so this still applies even to the revised plans --

TED TOULOUKIAN: Yes, of course.

CONSTANTINE ALEXANDER: That you've given us.

TED TOULOUKIAN: Yes.

CONSTANTINE ALEXANDER: I just

want to us to be sure about that.

ATTORNEY JAMES RAFFERTY: Yes. And to the extent it's because my understanding, is that the GFA of those roof decks which were larger in the original -- I say original submission, this go-round, for this go-round, actually had more in larger so that number to the extent it's less than accurate, it contains more GFA than what -- the footprint of the proposed -- there's been no change to the notch submission since we submitted it as part of this go-round, and there's been a reduction the size of the Yerxa Road roof decks.

CONSTANTINE ALEXANDER: You made the point several times about the reduction from the original plans. I'm not sure how much credit you're entitled to get for that. Maybe with the neighbors, but not at least from this Board. But we'll deal with that as we go

forward. Yes, okay.

And so we have two properties, I want to sort of proceed in some sort of rational way. Let's talk about Rindge Avenue first. And I'm going to ask for commentary, questions or commentary from the public on the Rindge Avenue relief. Then we'll do Yerxa as part of your procedure, and have comments on the whole project, I'll take comments on that. But that's the most rational way of proceeding.

ATTORNEY JAMES RAFFERTY: I agree. Thank you.

CONSTANTINE ALEXANDER: Let's start with Yerxa Road.

ATTORNEY JAMES RAFFERTY: Sure.

CONSTANTINE ALEXANDER: I'm sorry, with Rindge Avenue.

ATTORNEY JAMES RAFFERTY: As the Chair noted, it is a three-structure site. 120 Rindge is the building, and 120 Rindge

and 45 Yerxa were the subject of a variance years ago. There's a third building, a 124 Rindge, that is not before the Board tonight. That was also a part of this institutional educational religious complex, but there's nothing tonight before the Board regarding that building.

So, with regard to the Rindge -- the 120 Rindge Ave. building, that building received a variance, and like both buildings received a Special Permit allowed for the conversion of these formally non-residential buildings to a residential use. The building when originally approved had, when approved, the Planning Board had this less than perfect rectangle, this open notch. So we came to the Board and we sought a variance to allow for the GFA necessary to in-fill that notch and to put roof decks on the top of that building. And that variance

was granted, although not to the full extent of the original submittal. Because the original submittal at that time contemplated a larger addition associated with the notch. And the Board's determination at that time was that that notch addition should be co-planar with the other walls of the building. And the project has proceeded through construction and renovation. And the Yerxa Road building, if you had an opportunity to see it, is largely complete. The other two buildings remain under construction.

During the course of the construction a new architect was retained, Mr. Touloukian, and there was some added attention to design detail with a particular emphasis on trying to introduce some more domesticity, if you will, into an institutional building to try to give it a certain residential patina. And the architect came up with a bay window

concept that represents an alteration or modification from what had been approved by the Board in the earlier variance, both in design and in GFA. And admittedly if you were to go out there and --

CONSTANTINE ALEXANDER: What I would like to see it at some point in the presentation, Mr. Rafferty, I'd like to see the plans that we approved, the earlier variance, and these plans, and put one against the other and see exactly how you're proposing -- your client is proposing to change the project.

ATTORNEY JAMES RAFFERTY: Okay. We probably can do that.

This was the condition before we started. That was the notch. And then this is the notch as it became in-filled. And what I was going to acknowledge is that if you went out there, you would see that regrettably, now talking about this notch, construction proceeded beyond what

was contained in the relief.

CONSTANTINE ALEXANDER: How did that happen?

ATTORNEY JAMES RAFFERTY: How did that happen? I would say there was a lack of attention to the plan and the restriction and a false belief that what was happening was a design modification, that the footprint hadn't changed and these were, the equivalent of fenestration changes, these were bay windows as opposed to flat windows. So if you look at the design --

CONSTANTINE ALEXANDER: How did it come to the attention of the city that there was a departure from the plans that were approved? Was it -- did neighbors bring it to the Board's attention?

ATTORNEY JAMES RAFFERTY: My speculation is a combination of the building inspector on a routine inspection or perhaps some communication from

abutters or neighbors with -- over the life of the construction. The construction has been going on. But I do want to be clear that as a result of the discovery by the Building Department, work was ordered to stop on the job, and for some time now it has been stopped, and the petitioner was directed to seek a modification relief before they could proceed with that. So if you see the photos today and you go out there, you'll see that the plywood is up and the openings are present and that is a deviation from it.

CONSTANTINE ALEXANDER: And we're still just talking about the notch now?

ATTORNEY JAMES RAFFERTY: Yes.

So that clearly has -- that has been a source of concern for the department, a costly mistake I might suggest to my client who has been eager to resume construction but has been unable to do so

for many, many months. And a lesson learned, but admittedly something that has caused him to have to, I think, restore some credibility at the city level and at the neighborhood level. And there has been some effort undertaken to do that. We have talked with design professionals in the city and I think Mr. Peroncello felt that not with understanding the missteps that landed him in this location, that there is a design benefit to this, that it can be made to work, it has a modest implication of GFA per floor. It's about --

TED TOULOUKIAN: 80 GSF per floor.

ATTORNEY JAMES RAFFERTY: Not to repeat, but 80 square feet per floor. And it does create a certain view.

So, one of the reasons we continued the hearing last time, in addition to addressing some site issues, frankly unrelated to this, but very relevant if

you live near the project, was to also allow an opportunity to allow people to envision what this would look like. Because in its current state for -- and it has been in that condition for quite a while, it is quite unappealing. And the whole goal here has been to improve the appeal and appearance of the building. So it has been a long struggle for about 80 square feet per floor, but it has been an issue that has occupied a great deal of attention and it has resulted in our having to come back here to try to persuade the Board that further relief is warranted, and that's what it's about. The plan, the earlier plan I will look for.

CONSTANTINE ALEXANDER: We have the old file. While we're at it, just for the record, this 80 square foot per floor as a result FAR issue is why you're here -- it's part of the reason why you're

here, not the entire reason. And you're going to go from, I want to confirm this, you're going to go from .74 for the site to .77 in the district that's supposed to have a maximum of either .5 or just a 3.5 that's the relief that's being sought from the variance point of view.

ATTORNEY JAMES RAFFERTY: That's correct.

Now, there is one other change that occurred in the GFA and that's what my -- if you were to plot this in a linear fashion, there is one other change, and that is under the conversion Special Permit there is an opportunity through the Special Permit process at the Planning Board to create inter flooring under the Special Permit conversions for buildings that weren't originally created as part of the -- weren't originally designed as residential buildings. So, what happened here over the life of the construction is

that we returned to the Planning Board, and we did get a further Planning Board relief with regard to an inter flooring into this building. So I remember when I was preparing this, I thought well, the logical place to begin in the GFA calculation was let's pick up from what was approved at the BZA the last time, and this ought to represent the difference. But after the variance there was another increase that didn't require a variance that was done under the conversion. So, the math here -- and this was since Mr. Touloukian came in because admittedly, as the floor plans moved from the concept stage to the construction stage, there was a discovery that there were certain mistakes, things that wouldn't -- that didn't work. So the general plan remains the same. There has been some design changes to the building as a result. What happened is we went back for the third

building -- at the time the original proposal was approved by both the Planning Board and the variance. The third building, the 124 Rindge building had a tenant in it, the Muscular Therapy Institute. They ran a school for massage therapy and they had been there for many years, they were a tenant of the parish that owned the building and they became Mr. Peroncello's tenant when he acquired the property. And they had received a variance years before to allow for their use. So that building lagged in the conversion process. So the initial project was a two building project that then went back to the Planning Board.

Lots of effort and focus at the Planning Board on site issues. I mean, if you go out there today, we really had three established footprints, the form and design of the building was really quite there. It was a question of trying to get

the best possible approach to this, the right mix of open space and parking, lots of concern in the neighborhood about parking, but the flip side is that it was a completely asphalt lot with the exception of the front lot and how do you create the right mix. So, landscaping plans and all that. And a lot of attention to those issues. But over the life of this, the first building is pretty much complete, the Yerxa Road building. This issue, there was a stumble here and there has been a consequence to that, and the attempt here tonight is to hopefully be able to move forward and get the Board's reaction and determination as to this particular challenge.

CONSTANTINE ALEXANDER: The stumble you're only referring to the notch. What about the roof decks? You're changing the design of the roof decks. Were there any issues with regard to that

with the town in which the roof decks you sought to construct different than the roof decks on the plan that we approved?

ATTORNEY JAMES RAFFERTY: But I don't think they've been constructed yet.

CONSTANTINE ALEXANDER: All right. They haven't been constructed yet. That too, I want to see what the roof deck was supposed to look like.

ATTORNEY JAMES RAFFERTY: We have that.

CONSTANTINE ALEXANDER: I know you do.

ATTORNEY JAMES RAFFERTY: Those roof decks, and this represents the new, Mr. Touloukian?

TED TOULOUKIAN: Yes.

ATTORNEY JAMES RAFFERTY: And I bet you're going to pull out the former.

BRENDAN SULLIVAN: I ask that she pick up --

TED TOULOUKIAN: I have the basic

differences between the original BZA roof decks and the new roof decks. There were 14 roof decks in the original BZA case at approximately 16 feet by 12 feet for approximately 2700 gross square foot, and the new adjustment to these now are reduction to 12 roof decks at approximately 13 by 15 feet for a total of approximately 1950 GFA.

CONSTANTINE ALEXANDER: Total gross?

TED TOULOUKIAN: About 700 less and two roof decks left.

CONSTANTINE ALEXANDER: 700 feet less and two roof decks less. You're reducing the size of the roof decks?

TED TOULOUKIAN: Yes, sir.

CONSTANTINE ALEXANDER: Both in number and size?

TED TOULOUKIAN: Both in number and overall size.

CONSTANTINE ALEXANDER: Have you

changed the location of the roof decks on the structure?

TED TOULOUKIAN: They're still centrally located.

ATTORNEY JAMES RAFFERTY: This is the approved roof deck plan in the prior case.

CONSTANTINE ALEXANDER: Right. Okay. Thank you. Which is the roof deck? The whole square is the roof deck?

ATTORNEY JAMES RAFFERTY: No, no.

TED TOULOUKIAN: But essentially they're down in the center of the building which they are down here.

ATTORNEY JAMES RAFFERTY: Anywhere you see that --

TED TOULOUKIAN: And they're staggered versus stacked.

ATTORNEY JAMES RAFFERTY: -- and that's that decking.

TAD HEUER: There seem to be 12 here. You said there were 14?

JOSEPH PERONCELLO: There were two also here.

TED TOULOUKIAN: I'm not sure which was filed. This is the approved?

ATTORNEY JAMES RAFFERTY: That's in the approved file, yes.

JOSEPH PERONCELLO: And two on this.

TED TOULOUKIAN: The previous architect's worked, so I don't have this information.

CONSTANTINE ALEXANDER: You may not, but it's the petitioner's job to educate us and give us the information that we need to have.

ATTORNEY JAMES RAFFERTY: Well, in my experience the plan in the file is generally the plan approved. I'm sure the Board's experience is the same.

CONSTANTINE ALEXANDER: Well, if you look at the old decision, it references a plan. And you can tie into

that plan. I don't have -- the decision's in the file, too.

SEAN O'GRADY: Can I help you with that?

CONSTANTINE ALEXANDER: I know it's in there.

ATTORNEY JAMES RAFFERTY: This would be my file.

CONSTANTINE ALEXANDER: You can look through it anyway.

THOMAS SCOTT: The secret file.

SEAN O'GRADY: March 9, 2004.

CONSTANTINE ALEXANDER: That's the one? That's it?

(Looking through documents.)

ATTORNEY JAMES RAFFERTY: I have August 31, 2004. And that -- that's the 14th.

CONSTANTINE ALEXANDER: I know in the old file, because I looked at it yesterday, there is the plans that are referenced in the decision. It's just a

matter of finding them.

SEAN O'GRADY: Do you think they're stapled in or are they over there?

CONSTANTINE ALEXANDER: No, they're loose.

SEAN O'GRADY: Okay. Then they should be on the table.

(Looking for documents.)

ATTORNEY JAMES RAFFERTY: I do note that at that hearing -- it could be, and I'm not sure when you say the March 9th date. At that hearing there were modifications made to the plans by hand because the notch was not approved as big, and the decks were actually scaled back. So it wouldn't surprise me that the date of the approved plan would be a lag by a month or two of the ultimate hearing.

CONSTANTINE ALEXANDER: You may be right. Does the decision say what the plans are that we adopted as modified by the Chair?

SEAN O'GRADY: No, it simply says Schultz plans March 9, 2004. Entitled date -- entitled addresses.

CONSTANTINE ALEXANDER: This is all your stuff here, right? I don't know what happened to them. All right.

SEAN O'GRADY: But you saw it today?

CONSTANTINE ALEXANDER: Yesterday at the office.

SEAN O'GRADY: And you remember that it's a big folded plan like those?

CONSTANTINE ALEXANDER: Yes, yes. I mean, I put it at the very top of the file I thought it would come up tonight.

JOSEPH PERONCELLO: Well, the permits that were filed with the City of Cambridge has the 14 decks. Has the 14 decks. They've given me back all the information. I've been toting around a duffle bag of floor plans for four years. I didn't just happen to bring them tonight

because I haven't had to go through them.

CONSTANTINE ALEXANDER: We'll at least continue to search for them and we'll go with the facts it's 14 decks down to 12 decks and the representation that the petitioner has made the decks have decreased in size.

ATTORNEY JAMES RAFFERTY: There's no question that the decks have decreased in size. I would say that we could supplement that we'd have to find where these March 9th plans are.

CONSTANTINE ALEXANDER: And the reasons why you're changing the deck structure from what we approved, again? We can cover this one more time.

ATTORNEY JAMES RAFFERTY: We didn't cover that.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: So that's a good question.

CONSTANTINE ALEXANDER: So answer

it. Not you. Why are you changing the decks?

TED TOULOUKIAN: Well, I believe that the reason why the decks were changed is that one, there was a change in the team. The interior layout changed significantly enough that the point of entry to the roof would have moved to new locations, and the bearing points inside the building had subsequently changed as well. Because of that, the result in the roof decks, sizes and the orientations for entries had to change. That's pretty much generally the occurrence.

TAD HEUER: What about their setbacks from the edge of the building?

TED TOULOUKIAN: They're approximately the same size.

CONSTANTINE ALEXANDER: It's a very important question. They are the same.

TED TOULOUKIAN: Approximately the

same.

CONSTANTINE ALEXANDER: You say approximately inches in difference or feet difference?

THOMAS SCOTT: Less or more?

TED TOULOUKIAN: We can compare that just for record with the drawings that were in the file and get that information if that's critical, but they're approximate.

CONSTANTINE ALEXANDER: To me it's critical frankly. One of the issues before us -- roof decks are always critical.

TED TOULOUKIAN: Absolutely.

CONSTANTINE ALEXANDER: One of the issues the Planning Board made in its recommendation the last time were the roof decks were setback so it would minimize the intrusion of privacy to the neighbors. I'd like to know whether that setback that the Planning Board liked the last time has

been compromised because you're moving it closer to the neighbors. There are other issues that are very important to me at least. I don't have an answer for them.

JOSEPH PERONCELLO: It's in the front.

ATTORNEY JAMES RAFFERTY: But I think to that issue there's, to the extent that there's a request here, it would not be to in any way increase in size or number the decks. In fact, and the setbacks should be adhered to from the prior approved plan.

CONSTANTINE ALEXANDER: You've made the point clearly about the size and number. But location is also important to me.

ATTORNEY JAMES RAFFERTY: And I'm adding that to the list, to the extent that we're -- while it is a variance, we are seeking a variance to deviate from a prior approved plan, and I would say that

such deviation were to be allowed, should be allowed only on the condition that it doesn't represent any, any change in the setbacks or any increase in the number or area of decks because it has been represented for quite sometime now to me and to others that this represents fewer decks and maybe -- but certainly less square footage and no change in the setbacks which you're quite correct. If you read the Planning Board commentary and the discussions we've had over the years, the whole basis for supporting the decks was a determination that they would not, given the large setbacks on the building, they would not have an adverse impact on the privacy of the abutters. So there's nothing in the plan here that seeks to change that balance.

CONSTANTINE ALEXANDER: And again the reason for the changes you're changing the interior of the building and that

causes structural issues --

TED TOULOUKIAN: Entry points, weight bearing walls, (inaudible) basically all the above, and as a result of that points of entry had to be changed.

ATTORNEY JAMES RAFFERTY: There were interior floor plan changes that went through the Planning Board process. I think it's affair to say they were flats at one point on the third floor and with this inter flooring that became more duplex style, and as a result the layouts, particularly on the floor that you access the roof from, have changed. So you'd have, you'd have deck access coming into bathrooms in some cases under the approved plan and all that stuff. So it was a reshuffling to accommodate the floor plan.

CONSTANTINE ALEXANDER: I don't see the revised plans that were timely filed on Monday in the file.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: Oh, you have them. As long as you have them, okay. Fine. Sorry. These are the revised. Five pages?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: I'm sorry, go ahead.

ATTORNEY JAMES RAFFERTY: So, with regard to that building it is that change. It's a change in material. It's a change in dimension. I'm back on the projecting bay windows, and it does have a GFA implication. It has been the source of conversation with a number of abutters and it has become really an issue where the owner is trying to add a certain quality to the building that he felt was lacking.

CONSTANTINE ALEXANDER: Now, in the file, in connection with the original hearing date there are a number of letters I think are from the abutters in opposition of relief being sought. I

would ordinarily read these into the record, but I want to know whether these are outdated or any other information you want to bring to our attention regarding that.

ATTORNEY JAMES RAFFERTY: I'm told that there are now 15 of the original objectors now have letters in support. So I'm not sure.... I, well, I don't want to speak very much. It seems of the three areas that we focussed on, as you might imagine, people along the Yerxa Road building had the greatest concern about those decks. People that faced this -- they were on Yerxa. They looked over this area, had concerns about that. We didn't hear much comment about the change in the roof decks here, because there seemed to be an acknowledgement that there were fewer and smaller, but there may be a few that I didn't catch. But that was -- generally there were two areas.

So the time that the Board gave us the last time was well spent because there were site issues, and the winter conditions prevented their completion and there were a lot of concern about the impacts of the construction of the building on abutters. And the intervening time has allowed the petitioner to address some of those issues. And I frankly suspect that has a lot to do with some of the change in the support letters you're seeing tonight.

CONSTANTINE ALEXANDER: I don't want to go down the road too far here, it's not necessarily our issue. In addressing the site issues, have you corrected them or are you in the process of correcting them?

JOSEPH PERONCELLO: We have substantially approved most of them, yes. We have lists from certain people. We check off the list as we get it done.

CONSTANTINE ALEXANDER: Questions from members of the Board? I'm sorry, are you through, Mr. Rafferty, on Rindge Avenue?

ATTORNEY JAMES RAFFERTY: Yes. On this building it's those two items, it's the roof deck and the projecting window.

CONSTANTINE ALEXANDER: Questions from members of the Board on Rindge Avenue?

(No response.)

CONSTANTINE ALEXANDER: No questions.

I'll open this up to public testimony. Is there anyone here who wishes to speak to the relief being sought on the Rindge Avenue building? You'll have an opportunity to talk about Yerxa later, not right now. Anyone wishes to be heard?

Sir, come forward.

ATTORNEY KEVIN CRANE: Good

evening, Mr. Chairman. My name is Attorney Kevin P. Crane, 104 Mount Auburn Street, Cambridge, Massachusetts. I represent Suzanne Carlson who is to my left and she is the owner and occupant of 13 Yerxa Road, which is right across the site from the so-called notch area.

When my client was involved with the initial variance decisions, she was not overly pleased with the filling in of the notch, so-called notch, to begin with. But at that time she proceeded and went along on an all things considered basis with her neighbors and I don't think necessarily said she supported the notch, but she wasn't going to object or exercise any of her rights further. But in this instance where the petitioner has built out beyond the -- particularly on the south elevation beyond the plane there, that she would oppose any sort of addition to the so-called notch area whether it be

on the south side or on the east side. The east side would be closer to her residence, but the south side as well would impede her afternoon light as well as her view from her kitchen window.

CONSTANTINE ALEXANDER: So she would like the notch to be as -- in the plans as originally? She doesn't like the new plans. If anything, go back to what we approved before.

ATTORNEY KEVIN CRANE: That's right, Mr. Chairman. She would stand by whatever plans were approved. And if they're off permit for whatever reason, she would definitely object to any furtherance there.

I do have one question and that is it's clear that the -- they've gone -- it's gone beyond the south plane. But I also have a question of whether the proposal includes going on the easterly plane of the notch as well?

ATTORNEY JAMES RAFFERTY: Yes.

ATTORNEY KEVIN CRANE: It does appear -- that makes it even worse for her because that's coming closer to her, her -- to her structure.

CONSTANTINE ALEXANDER: And, again, I'm sorry, I'm a little slow tonight. The reason for the notch change now is aesthetic?

JOSEPH PERONCELLO: Yes.

CONSTANTINE ALEXANDER: Or is it due to the fact that you're looking for more space in the building? I mean, why didn't you comply with the plans that we approved?

JOSEPH PERONCELLO: Again, it's a bay window, net square footage is 155 feet total.

CONSTANTINE ALEXANDER: Yes, but why didn't you comply with the plans that this Board approved?

ATTORNEY JAMES RAFFERTY: You made

a mistake.

JOSEPH PERONCELLO: We made a mistake. We have over a hundred design changes with this project, most of which were dictated by the neighbors. This was something that was a window in the middle of the whole complex. So it's the exact middle as you come in, so it's noticed from all corners of the property. Now the people --

TAD HEUER: But it was dictated by the Board. I mean, this is what I'm having difficulty with. Yes, some things are negotiated with the neighbors, but then you had to come before us and we had a list of things that you had to do. And you go and get your building permit on the list of things that you had to do which we didn't have to give you, and then you didn't do some of them. And now you're coming back and saying we want to do it anyway so we did it. I mean, I, I think

charitably we're in a position of, you know, begging for forgiveness rather than asking for permission, but I'm not sure I'm much in the mood to be benevolent.

JOSEPH PERONCELLO: Well, as I say, it's a window that we thought it was something that we thought would help with the design of the property. It was sat for almost three months.

BRENDAN SULLIVAN: But you never made the inquiry first of all. Or did you make the inquiry of the Building Department first of all?

JOSEPH PERONCELLO: The Building Department had made a number of inspections out there before.

BRENDAN SULLIVAN: No, before you went and built the so-called bay window, did you inquire of the Building Department is this permissible? Or is this allowable?

JOSEPH PERONCELLO: Well, again,

we were building it, it was up for 90 days before they put a stop work on it.

TAD HEUER: But it shouldn't have been built at all, correct?

JOSEPH PERONCELLO: I guess not, no.

ATTORNEY JAMES RAFFERTY: I think we want to make clear, and we've discussed this, that that is correct. It was clearly a mistake. It was a mistake in belief that this represented a design modification, if you will. I think frankly that the petitioner didn't understand that there was a GFA implication, which I later educated him for. That when you're in variance territory and looking to make design changes, it's different than a design modification and a Special Permit where you don't trip over any dimensional issues. There's no question it had been constructed, it wasn't done furtively. It

had been out there for months. I think when it was discovered, it was stopped and as I said there has been a significant price in terms of time and effort because there's been no activity for many, many months. The goal here really frankly in this environment is to try to come up with a win/win situation that allows Mr. Peroncello and his partner in this, the lender, who is as I might imagine has grave concerns about the lack of activity up there to be able to finish this so that the neighbors can at least see. And there is promise, if one were to look closely at the Yerxa Road building you can see what this could be if it were to be followed through to completion. If we take a building, I think, and added open space and green space and come up with some very nice units. But there has been a lot of patience on the part of the neighbors. And in fairness to Mr. Peroncello, lots of

changes. I think he's counted over 75 abutters to the property in an attempt to accommodate a variety of concerns over time. This was seen more benignly by Mr. Peroncello, I would suggest, than the facts warrant and he now finds himself in this situation. Believe me as a lawyer I wonder why months ago he didn't just get chopped off and keep on going. He has felt for a long time now that he wants this building to be done correctly. And as I said, design professionals think it works well. We understand the abutters' concern and they've been fair and honest in expressing their reservations since we filed it. We tried to demonstrate that the impact we believe on their property, in the case of Mr. Crane's client, we can't find any windows on that property that can see this. I imagine there might be one, but that face of the house, the house that faces this and it's about 100

feet from it, doesn't appear to have a window above the fence line that could even view this. But we understand she has been insistent in her objection.

Nonetheless, it's there and Mr. Peroncello is asking for the Board to consider --

JOSEPH PERONCELLO: I screwed up in building it, but it wasn't done on a weekend or over a month period. It was done in a 60 or 75 day period. We started in August, late August of last year of 2008, and they were still working on it in January. And they stopped working on it. So it was nothing that was trying to be in the secretive under the cover of darkness. It was done in the time frame that we were doing the rest of the building.

TAD HEUER: You say that it was stopped. It was stopped because there was a stop work order, right?

ATTORNEY JAMES RAFFERTY: Oh, yes. It was stopped by the city, not

unilaterally.

TAD HEUER: So you would have continued building it in violation of the variance if you didn't get the stop work order?

ATTORNEY JAMES RAFFERTY: Well, if one isn't aware that they're in violation, I think they would continue. So it's kind of like you're going over 55 miles per hour and didn't notice it, you might continue proceeding at that speed. But once he was told to stop, he stopped. And he has been under a stop work order. But until he was stopped, he had the belief that what this amounted to -- as I said and this had been out there for a while, he had the belief, it was a totally incorrect belief, that this was a permissible deviation from the plan. And there had been a series of them around windows and a few other things, none of which triggered the relief. This was a

limited case that the BZA, it was really about the GFA, the vast majority of the number of units, the parking space, the site where we spent a great deal of time, the fencing, the landscaping, that was really all for the Planning Board on the Special Permit for conversion. And we -- and over the life of that they have a design staff and we've gone in and modified and oh, yeah, that's fine and do this and all that. The thinking here was this was something akin to that. And I don't want to dig too big a hole here, it was a mistake, it was wrong --

CONSTANTINE ALEXANDER: Of course it was.

ATTORNEY JAMES RAFFERTY: -- and he has acknowledged that. And he has stopped and has been stopped from working now for several, several months.

THOMAS SCOTT: What is the relevance of the 80 square feet? Can the

design stand on its own without that additional square footage in both directions? Or is there some interior programmatical element that requires this?

TED TOULOUKIAN: The floor plan is such that -- the floor plans are such where the bump out is occurring in either the living space or bedrooms. And the additional square footage is an added benefit to the space and certainly improves the overall flow of the room, but it's not an additional room subject to the corner.

THOMAS SCOTT: Can I see that plan? Does that plan show it?

TED TOULOUKIAN: That's the floor plan that your colleague --

THOMAS SCOTT: I just don't have it here in front of me. Show it to me.

ATTORNEY JAMES RAFFERTY: I have commented in some quarters that it's -- it adds such a benefit to the design of the

building that the petitioner has endured quite a bit of cost and effort. And I have wondered for a while now, well, why not take the simple route out and go? And I think at one level the sense of design integrity that he brought to this was well, I think this is right for the building. I think it will help it and it's, it's a feature that will promote it. And if you had an opportunity to see the Planning Board staff comment, it basically supports that notion.

TED TOULOUKIAN: May I add to that point? Which is I think working over the past period with Mr. Peroncello, he's had a strong interest and passion to transform the image of a more institutional building to a residential building by adding smaller projected balconies, private entries along the front facade, and also minor details along the edges. I think his interest with the bay, if I may speak

for him correctly, is that when you look down the entrance from the site, the building is rather large as an existing piece. And by just squaring off the building, it has a more massive effect. And that by adding a bay window he felt that it helped --

CONSTANTINE ALEXANDER: I accept all that.

TED TOULOUKIAN: -- minimize the scale of the building.

CONSTANTINE ALEXANDER: The trouble is that when you come before our Board, you come before the Board with the plans. You know, it shouldn't be a work in progress. You came before us with plans. It was controversial. We approved them and then you decided well, I want to make even better plans. But you don't do that without coming before us. And when you come before us the second time around, speaking for myself, I don't look upon the

second time around very favorable. So, I look at that as the salami approach. You know, come before us with your whole proposal and go up or down, but I don't like to vote a little bit now and little bit next month and a little bit three years from now. I'm not saying I'm going to vote against it, but that's the problem I have with the arguments you're making. I accept it. Maybe it's an improvement to the building. By, guys, that should have been done in 2005 or '4 whenever we decided the case the first time around. You don't do it unilaterally.

JOSEPH PERONCELLO: May I say something to that effect?

CONSTANTINE ALEXANDER: By all means.

JOSEPH PERONCELLO: If that's the -- I wish it's that simple. The hundreds of changes I speak of were not all part of the building. We're talking about

grounds, we're talking about fencing, we're talking about underground. I literally have thousands of pages of plans on this. And between Peter McLaughlin, David Burns and Ranjit they did not want to see me anymore coming into the Building Department with changes. So we have so many stamped sets of plans and so many drawings that they have both in the files and what you approved, that they said listen, just build what you have now and if you have something substantive, bring it back in to us. Now, I made a mistake whether this was substantive or not. I didn't think it was substantive. So that's my only defense. I screwed up on this one.

CONSTANTINE ALEXANDER: We accept it.

JOSEPH PERONCELLO: And I screwed up and I certainly paid the price for it.

CONSTANTINE ALEXANDER: And one

other point, you talked about, Mr. Rafferty, about the simplest approach to maybe just go back to the original plans. Would that be not more expensive to do from your perspective than continuing forward?

JOSEPH PERONCELLO: Yes.

CONSTANTINE ALEXANDER: I'm trying to say maybe it's not altruism as to why you're pushing these plans. It's a cheaper alternative too, now that you're down the road.

JOSEPH PERONCELLO: Again, it's a design that I really feel strongly about.

CONSTANTINE ALEXANDER: Further questions? We have a number of letters we have to read into the public file.

ATTORNEY KEVIN CANE:

Mr. Chairman, if I may just comment on --

CONSTANTINE ALEXANDER: Yes, one comment and then we'll cut off public discussion.

Go ahead.

ATTORNEY KEVIN CRANE: As far as my client being able to see this notch from her house, she's in her kitchen every day and from her kitchen window she can see the notch.

CONSTANTINE ALEXANDER: Well, I assume that from your earlier testimony.

ATTORNEY KEVIN CRANE: The fence is there, but it's not totally constructed.

The second thing I want to say is that there's a lot of history here, and I'm not going to make comment on it other than to say that if these plans had been presented with the initial request for relief, my client would have registered her objection vociferously and would not have seen it in a positive way to the notch.

CONSTANTINE ALEXANDER: Thank you.
I'm going to end public testimony

unless there's anyone else here who wishes to speak on this matter.

(No response.)

CONSTANTINE ALEXANDER: No one wishes to speak.

MALE AUDIENCE MEMBER: You're ending on just this one building?

CONSTANTINE ALEXANDER: I'm going to finish the letters and go on to Yerxa Road. I'm going to try to move this along.

TAD HEUER: They're all the same.

CONSTANTINE ALEXANDER: They're all the same, yes.

We have letters I'll read. It's a form letter. It says -- addressed to the Board: I wish to express my support for the variance being sought by 120 Cambridge Realty Trust to construct roof decks on the building at 45 Yerxa Road and modify the notch addition at 120 Rindge Avenue. The proposed work seems quite reasonable

and I urge the Board to grant this variance. Thank you for considering my views on this matter.

And I'll note -- I'll say who sent these letters. But there's no reference here to the roof decks on 120 Rindge Avenue. Just the notch and the Yerxa Road. Okay. You don't disagree with that? I don't know who prepared these letters. Someone prepared the letter, but there's no -- it doesn't address the roof decks on Rindge Avenue. That being the case, the letter is signed by the -- someone Hoover residing at Three Wilson Avenue. A Peter Blake.

JOSEPH PERONCELLO: Mumma.

CONSTANTINE ALEXANDER: Excuse me?

JOSEPH PERONCELLO: Mumma,
M-u-m-m-a Eleanor.

CONSTANTINE ALEXANDER: Thank you.

Peter Blake, Three Wilson Avenue;
Francis M. Hudson and Lois T. Hudson, at 8

Van Orden Street; Paul E., looks like Goodwin, Three Wilson Avenue; Debra Harris, 10 Van Orden Street; Diane Zyling at 12 Van Orden Street; Francis Joseph Powers at 12 Van Orden Street; Bill Zylicz, Z-y-l-i-c-z, 12 Van Orden. This is testing my -- somebody Pasquale, Pascarello.

JOSEPH PERONCELLO: David Pascarello.

CONSTANTINE ALEXANDER: Thank you. 132 Rindge Avenue; Nasif Pascarello at 132 Rindge Avenue; James T. Travins at 114 Rindge Avenue; Lorraine -- could be Powers, no address; and Norman R. Boucher, B-o-u-c-h-e-r, at Four Van Orden Street. And Stephanie Tourngs, T-o-u-r-n-g-s it appears, 36 Middlesex Street.

There's also a letter in the file from the Community Development Department. It's addressed to Mr. Singanayagam from Lester Barber regarding the proposed

revisions to the plans at 120 Rindge Avenue, Planning Board Special Permit No. 203. The staff of the Community Development Department has reviewed amended elevations for the building at 120 Rindge Avenue as illustrated on sheet A.20 dated March 6, 2009, entitled Cambridge Residences Rindge/Yerxa Avenue, Cambridge Mass. 120 Rindge Avenue building elevations by W-A-N Architects. Those are the ones over here? Additional window opening were noted in the eastern north elevations. These changes do not materially change the appearance of the building and are consistent with the plans as approved by the Planning Board. While a more significant change, the bay addition at the southeast corner of the building is consistent with the character of the original design of the building facade. Should the variance necessary to allow this addition to be granted, we

would find it consistent with the plans as approved by the Planning Board. We will confirm this with the Planning Board at its April 7, 2009 regular meeting.

They don't have any correspondence from the Planning Board. Did they confirm that.

ATTORNEY JAMES RAFFERTY: I'm not aware of any.

CONSTANTINE ALEXANDER: We don't know what action if any the Planning Board took?

SEAN O'GRADY: I'm not aware of any.

CONSTANTINE ALEXANDER: Okay.

Then the other letters. We have a letter dated March 30, 2009 from a Joseph or Joe Ruggiero, R-u-g-g-i-e-r-o, 37 Yerxa Road, Unit No. 3. It says: I would like to submit to the Inspectional Services Department the attached five-page document to be considered and read into the minutes

of the April 16, 2009 Zoning hearing, etcetera, etcetera. I don't propose -- I move that this letter in its entirety be incorporated into the record, but I'm not going to read it. We don't have time tonight. I would point out that the letter for the most part deals with site issues as Mr. Rafferty described. Some issues that are certainly very important but not issues that are relevant to our Board's jurisdiction. The one area that is relevant deals with the roof decks at 37 Yerxa Road which we haven't dealt with yet.

There's also a letter from Peter Costanza, 37 Sargent Street. I'm writing to urge you to oppose a petition for a variance to add roof decks to Yerxa Road and to modify the addition on Rindge Avenue. The suggested variance is disruptive to the neighborhood. It would decrease the quality of life for many

homeowners that live next to the development, care about the neighborhood and pay taxes. The developer himself does not live next-door, across from or in the vicinity of the St. John property. Roof decks in addition, however, are things that will plague the neighborhood long after the construction has stopped. Roof decks and patio additions generate noise which is disruptive and diminishes the value of property nearby as well the quality of life of the people in the neighborhood. I urge the Board to deny the variance.

We have a letter from a Barbara Zimbel, Z-i-m-b-e-l, 37 Sargent Street. I am writing to oppose the petition for a variance to add roof decks to Yerxa Road and modify the addition on Rindge Avenue. These changes will be bad for the neighborhood which is already crowded. Roof decks and patios are venues that

invite congregation and noise. The developer has not offered to pay for soundproof windows and there is no solution for the noise problem. The suggested variance might generate more profit for the developer but it will lead to a decline in property values and a quality of life for many homeowners who have lived here and paid taxes to the City of Cambridge for many years. The developer's goal of generating profit for himself should not trump the public good or the welfare of homeowners in the neighborhood. Thus I urge the Board to deny the variance.

A letter from Pauline Quirion, Q-u-i-r-i-o-n, who lives at 125 Rindge Avenue, No. 2. I'm writing to express opposition to the petition for a variance to add roof decks to Yerxa Road and modify the addition on Rindge Avenue. It is bad enough that the developer got approval for

roof decks on Rindge Avenue without making it worse. This development, even as previously proposed with roof decks on Rindge Avenue, will be a horrible nuisance to all of us who live in the vicinity. Long time residents will have to think twice about opening a window to let in fresh air in warmer weather. When summer comes the noise from tenants and students having parties, playing music or even talking will range from bad to unbearable given that this is a very densely populated area. In addition to expansion of roof decks will do great harm to blocks of neighbors. A conversation on a roof deck can mean the difference between falling asleep or staying awake during a summer night. Roof deck or back porch parties often are anything but quiet conversations. People string lights, host parties or play music late at night in these outdoor venues. The developer has

not offered to pay for soundproof windows for any of us either. Roof decks and party side patio additions will make the St. John property more valuable and generate more profit for the developer, but will lead to a decline in property values and the quality of life for the many homeowner such as myself who have lived here and paid taxes to the City of Cambridge for many years. The developer's goal of generating profit for himself should not trump the public good or the welfare of homeowners such as myself. Thus I urge the Board to deny the variance.

There's a footnote in the letter but I'm not going to read that.

There is also more letters that I will get to.

There is an e-mail from Mark Jaquith, J-a-q-u-i-t-h who doesn't give -- he's at 213 Hurley Street in Cambridge,

Massachusetts. Not exactly in the neighborhood. Dear Mr. Singanayagam: I am writing to ask the members of the Board of Zoning Appeals to reject the requested variance for this property. The neighbors have had their property rights violated enough here. They should not have to endure the further intrusion that that addition of roof decks would impose. I fail to see any hardship that could justify this request.

I do want to read a letter in here from Councillor Kelly. I know it's in here. It's an e-mail actually. Here it is. From Commissioner Kelly. This is a letter to Zoning dealing with the roof decks at Yerxa Road so I will not read it at this point.

There may be other letters in the file. I thought I -- I'm not going to try to go through all of them now. I think the tenure of the letters is quite clear,

both pro and con.

I would, unless there's comments now, I would propose we go on to Yerxa Road. We've heard everything about Rindge Avenue. And then do the same drill and then we can talk about the relief as a whole. Is that good for everybody? Okay.

Mr. Rafferty, you want to speak to Yerxa Road?

ATTORNEY JAMES RAFFERTY: Surely.

Just briefly, Yerxa Road represents -- and Mr. Touloukian will pull out a roof plan -- a GFA variance to allow for the construction of three roof decks onto that building. It was a source of concern with the Van Orden abutters, and that's why several of the letters tonight are from Van Orden abutters. The building had been a challenge to try to create an amenity for outdoor space. It's nice that the setting is up. So these represent a modest attempt to try to permit an open

space opportunity for the residents of the building, and I think that the increase in GFA --

TED TOULOUKIAN: Was approximately three decks. Approximately 8 by 12 each for approximately 300 GFA.

CONSTANTINE ALEXANDER: This is completely new?

ATTORNEY JAMES RAFFERTY: Yes.

So it kind of goes the issue about those earlier letters. I think the earlier letters, all our discussions have been about the notch. And these letters, we have in our conversation with neighbors, everyone has acknowledged that the other decks are already there, so I think that might explain why the focus of the commentary has been largely on the notch and on these decks. The other decks are there. And how much less they are with this plan, but these are new -- not in the building originally and

therefore --

CONSTANTINE ALEXANDER: How big are the decks?

TED TOULOUKIAN: Approximately -- they're on the drawings. But they're approximately 8 by 12, some variation in sizes. There was a meeting -- Jim, you want to discuss that? Where we met with the abutters on-site. The -- when we came before last time or the previous plans two months ago, they were larger. They've since reduced to a maximum of eight feet on the short dimension to approximately 12 feet. So they were reduced in size and scale on previous.

CONSTANTINE ALEXANDER: Anybody who is interested in seeing the plan, please come forward. It's not a secret society here. You want to look at the plans?

FEMALE AUDIENCE MEMBER: Yes.

CONSTANTINE ALEXANDER: While

they're looking at that, any questions from members of the Board with regard to the roof decks?

DOUGLAS MYERS: I would like to hear the petitioner's decision about the distance of these decks from the nearest habited building of the abutters.

ATTORNEY JAMES RAFFERTY: Do you have a site plan?

TED TOULOUKIAN: You're looking on the north face on this side.

CONSTANTINE ALEXANDER: So this is Yerxa Road here?

TED TOULOUKIAN: No, Yerxa Road, that's here. So, if you're looking at this site plan here, the orientation of the site plan is relative to this deck. North face, north face, Yerxa Road.

FEMALE AUDIENCE MEMBER: Van Orden Street.

DOUGLAS MYERS: Is this an abutter?

TED TOULOUKIAN: Yes, that is your house.

MALE AUDIENCE MEMBER: Yes, it is.

ATTORNEY JAMES RAFFERTY: There's been new fencing installed along the Van Orden.

FEMALE AUDIENCE MEMBER: Some new fencing.

CONSTANTINE ALEXANDER: Excuse me, one at a time. She's taking a transcript. And if anyone speaks who haven't identified themselves before, you'll need to give your name -- you'll have an opportunity to speak, give your name to the stenographer. Okay?

TAD HEUER: What's the distance between the closest roof deck has now created proposed and the nearest residential lot line not within the site?

TED TOULOUKIAN: For instance, like this distance here?

TAD HEUER: That's it.

TED TOULOUKIAN: That's approximately 80 plus feet.

TAD HEUER: And what's the distance between the proposed roof deck on the Rindge Avenue building and the nearest residential lot line?

TED TOULOUKIAN: That's over 100 feet.

TAD HEUER: All right. What about over here?

TED TOULOUKIAN: On Wilson Avenue? It decreases to about 20 feet at the northwest side.

CONSTANTINE ALEXANDER: I'll open it up to public testimony.

Is there anyone here who wishes to speak with regard to the Yerxa Road roof decks?

BARBARA STEIN: Yes.

CONSTANTINE ALEXANDER: One at a time.

BARBARA STEIN: Barbara Stein, 6

Van Orden Street. And this is my house right here (indicating).

TAD HEUER: This is on the --

BARBARA STEIN: Van Orden Street.

TAD HEUER: Which side? Is that the south side?

TED TOULOUKIAN: Yes.

BARBARA STEIN: South side of the convent.

TED TOULOUKIAN: This is --

BARBARA STEIN: This is my house here (indicating).

TED TOULOUKIAN: So you're looking at it relative to this plan?

TAD HEUER: I'm just assisting the stenographer who has no way of denoting what "this" and "that" means.

BARBARA STEIN: My objection to the roof decks on the convent are that we -- originally Mr. Peroncello asked for roof decks on the convent four years ago and we said no. And they were taken out.

And we agreed to different things that went on. And in fact, these staircases were built without the approval of the roof decks. They're already in the units, the staircases up to the roof decks. So, I feel that this is not a hardship, that he had no right to do it, and that we had already said no.

CONSTANTINE ALEXANDER: That's a very important point. I want to pursue that. The project came before us before four years ago. There were no, no relief for Yerxa Road and you're telling us --

BARBARA STEIN: In the meetings.

CONSTANTINE ALEXANDER: No, no. Before the Board I'm saying. You're saying because in meetings that you held with the neighbors before that was an issue that was dropped, and that's why it was not brought before us then. Now all of a sudden it's coming before us now.

BARBARA STEIN: That's right.

CONSTANTINE ALEXANDER: Thank you.

BARBARA STEIN: I object to them.

CONSTANTINE ALEXANDER: Sir.

JOE RUGGIERO: My name is Joe Ruggiero, R-u-g-g-i-e-r-o, that's my letter. And then I also represent the two other owners. It's a three unit building, and I also represent Steve House and Sarah Coleman who are the other two owners. And I object to the roof decks for reasons that I showed in my -- talked about in my letter. And in particular to emphasize, too, that four years ago we went -- I thought we had gone through this whole process, and I thought everything was settled. And we had made compromises back then, you know, in lieu of the roof decks. The balconies on our side of the building, we agreed to have balconies on that side of the building. The residents on the other side did not agree. And I wish I could take that back now. I wish I had

the opportunity to change my mind on that. In regards to the distance, I estimated it's closer to 50 feet.

CONSTANTINE ALEXANDER: I'm going to read into the record your letter with regard to the Yerxa Road so you don't need to cover all that unless you want to emphasize some points.

JOE RUGGIERO: I don't think I put this in my letter. But these are the three bedroom windows. There are three bedroom units.

TAD HEUER: On this plan where is it?

JOE RUGGIERO: It's on Yerxa Road and I guess that's north, north of here?

TAD HEUER: Right.

DOUGLAS MYERS: The house that's marked Joe.

JOE RUGGIERO: Yeah, okay. Yeah, I just want to point out two bedroom units, those three windows face the --

what we still refer to as the convent. And I just want to emphasize, too, that this is the view from my bedroom window, and I talk about that in my letter as well. And this is the first time that I've seen these drawings. And as it looks to me, I will be able to see people standing from my bedroom window, and I -- with my bedroom window open. And with all of the bedroom windows open, it will be a severe annoyance. And, you know, the rest of that letter, too, I talk about how fragile our neighborhood is.

CONSTANTINE ALEXANDER: I'm going to read your letter into the file. You don't need to cover it right now. I'll cover it for you.

JOE RUGGIERO: All right. It's a very stressful area as it is. And this is just -- this whole experience has added to that stress.

CONSTANTINE ALEXANDER:

Understood.

JOE RUGGIERO: And also, one further thing. I know that a lot of people signed those -- and, again, I haven't seen the letters, but I guess they're form letters or whatever.

CONSTANTINE ALEXANDER: Right.

JOE RUGGIERO: But I had an e-mail exchange with one of the people, one of the neighbors on Van Orden Street, Debbie Harris. She's been one of the more outspoken critics of the Yerxa Road building, particularly the roof decks. And I guess she gave up. And I'll give you this letter, this e-mail, but I'll just read a couple of sentences.

It says: I'm not fighting anymore. My blood pressure has been off the charts for the past three months and I have a bad stomach. My doctor told me to relieve stress and not get worked up anymore. I signed a paper today to telling Joe to go

ahead. I feel bad about this whole situation but he is going to keep on going until he gets what he wants and I am just sick of the whole thing. Thank you.

CONSTANTINE ALEXANDER: Thank you.

FEMALE AUDIENCE MEMBER: And if I could add one thing, too? From my third floor I can also see -- can I use this for a second? I can see on to the roof. And originally we didn't think we were going to see the air conditioning units, they were going to be in the center of the building and they were going to be covered. But they're not. And we can see the air conditioning units just from standing on the street you can see them. So with roof decks, I feel like we're really going to see it.

CONSTANTINE ALEXANDER: Thank you.

Sir?

CHARLES GIACOBBE: My name is Charles Giacobbe, G-i-a-c-o-b-b-e. I'm

here to support my neighbors. I live at 12 Van Orden Street. I've been the street for 43 years and I oppose the roof decks on Yerxa Road. I think they would be detrimental to the neighborhood. It has been a very wholesome neighborhood and a very quiet neighborhood, and I think this will radically change if they're approved.

CONSTANTINE ALEXANDER: Thank you.

CHARLES GIACOBBE: Thank you.

CONSTANTINE ALEXANDER: Let me say for the record, and I'm at least speaking for myself, I'm impressed by the neighborhood involvement in this project both in written form and taking the time to come down here more than once now. And we appreciate that as a member of the Board for your input. Thank you.

I'm going to read Mr. Ruggiero's letter as it deals with the roof decks and then Mr. Craig Kelly's e-mail which is only on the roof decks at Yerxa Road.

Mr. Ruggiero, it is my filing that 37 Yerxa Road has been most affected by the changing neighborhood and has been most impacted by Mr. Peroncello's development. To the west directly across Yerxa Road sits the Peabody School and playground. To the southwest it's Rindge Field and the Pemberton Street basketball courts. Our building is bordered on the south by 45-47 Yerxa Road and the west by the development's parking lot and other buildings under construction. All of the bedrooms of the 37 Yerxa Road are located on the south side of the building facing 45-47 Yerxa Road. Approximately 50 feet of open space separates our bedroom windows from the front door of the 45-47 Yerxa Road. People talking and entering 45-47 Yerxa Road can be clearly heard from within our bedrooms. Sunday morning, February 22nd at around three a.m. Sarah Coleman was awakened by people entering

45-47 Yerxa Road. I have a direct and unobstructed view of the roof of 45-47 Yerxa Road from my top floor bedroom window. As a result, I feel that my condo will be the most adversely affected if Mr. Peroncello is permitted to alter the originally approved plans and install roof top decks. I go to bed early on mild summer evenings and I prefer to sleep with my air conditioning off and my bedroom windows open. I will not be able to do that if there are people conversing 50 feet away. I'll have to pull down my storm windows, shut my windows and turn on my AC. As I have demonstrated, I have serious concerns about Mr. Peroncello's ability to manage. I'm especially concerned with the lack of active landlord supervision of what appears to be a high percent student populated building. I do not want to have to deal with the aggravation of roof deck parties 50 feet

from my bedroom window. From Mr. Peroncello's past actions I know that the burden of supervising the use of his proposed roof decks will fall on the owners of 37 Yerxa Road and the Cambridge Police Department. I strongly believe that roof decks on 45-47 Yerxa Road will adversely affect the quality of my life and the value of my property. Under the circumstances, roof decks will be an added burden to an already stressful environment.

And lastly, we have the e-mail from Councillor Kelly. I wish to express my concern about application 9761, an application for a variance, too, among other things, construct roof decks on 45-47 Yerxa Road. As you know, Cambridge is a very dense city with virtually every resident having multiple neighbors. 120 Rindge Avenue/45-47 Yerxa Road is no different in that there are many other

residences in a short distance of these buildings. As a result, an addition or expansion of roof decks will have an impact on a fairly significant number of people. I know both in personal experience and from having attended countless meetings all over town that the noise of patios and roof decks is something that bothers a lot of people. Even acquired conversation from a roof deck 60 feet away could mean the difference between falling asleep or staying awake during a summer night. And many roof decks or back porch events are anything but quiet conversations. Given the lack of a legal requirement to allow the new roof deck or to modify the ones currently in the project, I hope that the Board will consider carefully neighborhood testimony on the matter and acting clear unequivocal support for the variance request will deny the application. Once

the buildings are completed and the unit occupied neighbors will have to live with whatever happens on the property. In my experience roof decks and party side patios while making the properties with these amenities more attractive and more valuable thus creating more wealth for developers, generally leads to a decline in the quality of life for other neighbors as people string lights, host parties or practice music late at night in these outdoor venues.

That's the sum and substance of what's in the file of a written sort. Public testimony has been closed. We can have a comment period or we can go directly to motions. What's the preference of the Board?

TAD HEUER: I have a question.

CONSTANTINE ALEXANDER: Go ahead.

TAD HEUER: One of the neighbor's who just commented here mentioned that the

staircase are in the building leading up to where the roof decks will be. Can you comment on that?

ATTORNEY JAMES RAFFERTY: I haven't been in the building. Mr. Peroncello can probably comment on that.

JOSEPH PERONCELLO: They're spiral stairs that go to a hatch. The hatches are pinned in two locations. They're very difficult to open. The spiral stairs can be removed easily. They are not stairs that are typical riser and tread stairs, they're spiral stairs.

CONSTANTINE ALEXANDER: Any other questions, comments?

DOUGLAS MYERS: Would those staircases be the egress to the proposed decks?

JOSEPH PERONCELLO: Yes, they would.

CONSTANTINE ALEXANDER: Ready for

a vote? Or votes?

I'm going to propose we take three votes. First vote would be on the notch. Second vote would be on the roof deck on Rindge Avenue. And the third vote would be the roof decks on Yerxa. Can I have the plans, the revised plans so we can make reference to them?

THOMAS SCOTT: (Handing document.)

CONSTANTINE ALEXANDER: Thank you.

The Chair moves that a variance be granted to the petitioner with regard to the revised notch addition at 120 Rindge Avenue. Such variance would be granted on the basis that a literal enforcement of the ordinance would involve a substantial hardship to the petitioner. Such hardship being given where the status of the project is now, it would cause a financial hardship to have to revert to the plans that were originally approved by this Board.

That the hardship is owing to circumstances relating to the structure themselves. This isn't a structure that was not originally built as a residence, and has unusual features with respect to converting it to a residence, and that desirable relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this ordinance.

Such variance be granted on the condition that the work proceed in accordance with the revised notch addition plans dated A2.1, A2.0, those two, and initialed by the Chair and prepared by Whitney Atwood Norcross Architects, Inc. And bearing a date, it would appear of 23 April, 2009.

All those in favor of granting the variance on the basis of the motion made, please say "Aye."

(No response).

CONSTANTINE ALEXANDER: No one says aye. The variance request is denied for the notch addition.

The Chair moves that a variance be granted to the petitioner to allow the petitioner to modify the roof decks on the structure at 120 Rindge Avenue from those shown on the plans that were approved in a previous decision variance granted by this Board.

Such variance would be granted on the basis that a literal enforcement of the provision of the ordinance would involve a substantial hardship to the petitioner. Such hardship would be that the project would not be as aesthetically pleasing as the proposed modified roof decks, and therefore would affect the economic value of the structure.

That the hardship is relating to circumstances especially involving the

structure. Again, this structure is not a structure that was built for residential purposes, and that relief may be granted without substantial detriment to the public good or derogating from the intent of the --

Such variance be granted on subject to several conditions. One, that the work be done in accordance with the plans prepared by WAN, W-a-n Whitney, Atwood, Norcross Associates Architects. Again, bearing a date of April 23, 2009, initialed by the Chair. And they are plans marked A1.5 and A1.5-a.

And on the further condition that the plans -- the number of roof decks -- this is a modification?

BRENDAN SULLIVAN: I believe it's 10 in number.

CONSTANTINE ALEXANDER: Ten in number. I thought it was 12.

THOMAS SCOTT: 12.

BRENDAN SULLIVAN: Unless we're off on a different drawing again.

TAD HEUER: There are two extended.

CONSTANTINE ALEXANDER: Two pages.

BRENDAN SULLIVAN: Sorry. Twelve then.

CONSTANTINE ALEXANDER: That the proposed roof deck not to exceed 12 in number, not to exceed the size and form as shown on the drawings as previously referred to. And not to be any closer to any front, side or rear parapet walls as was originally approved in the relief granted by way of the variance we granted for case No. 9054 and the drawings submitted for same dated March 9, 2004.

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

(Show of hands.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Sullivan, Myers,
Heuer.)

Opposed?

(Show of hand.)

THOMAS SCOTT: Opposed.

CONSTANTINE ALEXANDER: One
opposed.

(Scott.)

CONSTANTINE ALEXANDER: The
variance is granted for the modification
of the roof decks on Rindge Avenue.

The last variance is a variance be
granted to allow roof decks to be
constructed on the structure at 45-47
Yerxa Road. Such relief be on the basis
for the variance would be that a literal
enforcement of the provisions of the
ordinance would involve a substantial
hardship to the petitioner. Such hardship
being in connection with the conversion of
a convent to a residence that the addition
of these roof decks are essential to

provide a sufficient financial return to the petitioner.

That the hardship is owed to the nature of the structure itself; namely, it's former convent status, and that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating the intent or purpose of this ordinance.

Such variance would be granted on the condition that the work proceed in accordance with plans submitted by the petitioner and prepared by W-A-N Whitney, Atwood, Norcross Associates Architects, dated April 23, 2009, numbered A1.5 and A.20 and initialed by the Chair.

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

(No response.)

CONSTANTINE ALEXANDER: No one says aye. The motion for that variance does not carry.

ATTORNEY JAMES RAFFERTY: Thank
you very much.

CONSTANTINE ALEXANDER: Thank you.
(Whereupon, a discussion was
held off the record.)

(8:20 p.m.)

(Sitting members: Constantine Alexander,
Brendan Sullivan, Douglas Myers, Tad
Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair

calls case No. 9763, 628 Green Street.

Is there anyone here wishes to be heard on this matter? Please come forward.

Again, for the record, please state your name, address for the purpose of the stenographer.

ATTORNEY GARETH ORSMOND: Sure. My name is Gareth Orsmond. I'm an attorney with Wackerman, Sawyer and Brewster, 165 Federal Street in Boston. I have with me Nancy O'Connell one of the owners at 628 Green Street. Michael O'Connell, another owner at 628 Green Street, and Michael's son Michael who lives at 628 Green Street with his wife and two kids. Correct?

MICHAEL O'CONNELL, JR.: Correct.

CONSTANTINE ALEXANDER:
Procedurally, let me just before you start, the case is really in two parts. We're taking an appeal from a decision

from Mr. Singanayagam. And I take it that appeal -- if your appeal of that decision is unsuccessful, i.e., we uphold his decision you're then seeking a Special Permit to allow the relief to allow the shed to remain. Is that correct?

ATTORNEY GARETH ORSMOND: Special Permit there's a step before that that we can talk about.

CONSTANTINE ALEXANDER: You mean Chapter 40-A?

ATTORNEY GARETH ORSMOND: The second except clause of Chapter 40-A.

CONSTANTINE ALEXANDER: That's a second step only if the first step goes the other way. Let's start with just the first step, and we'll go right through to that. We'll take a vote on that because that tells us whether we need to deal with the second step.

ATTORNEY GARETH ORSMOND: Okay. Well, there's one other matter. So can I

do a little introductory here --

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY GARETH ORSMOND: -- and ask you about this? Because our original approach was very practical, and so what I'm going to ask, maybe that you would want to vote on even before we even get there, is that this matter be continued pending the resolution of the Land Court case that we are all eagerly waiting to be decided at this point. Let me just give you the background.

CONSTANTINE ALEXANDER: Just wait, wait, wait --

TAD HEUER: You brought the case, right?

CONSTANTINE ALEXANDER: -- if we're going to continue the case -- if you're asking us to continue it, we should discuss that and vote on that now for no other reason than if we start to get into the merits of the case and we decide to

continue it, it's going to be what we call a case heard and we'd have to reassemble the same five members for the Board to hear the case when it's reheard. So it's easier from our perspective if we don't hear any of the merits of the case tonight, assuming we want to vote for a continuance, so that it's easier for us to schedule a hearing when we've resumed.

ATTORNEY GARETH ORSMOND: And everyone has read the letter I put together so you understand the relevance?

CONSTANTINE ALEXANDER: We understand the issues. But on the -- I'm going to ask public comment on the -- simply on whether we should continue the case. But you want to continue it until the Land Court decision is made regarding the adverse decision?

ATTORNEY GARETH ORSMOND: Yes. So I can't explain why? You're going to ask for public comment to explain why?

CONSTANTINE ALEXANDER: You can explain why you want that, of course why you want a continuance. I don't want to get into the merits of the case.

ATTORNEY GARETH ORSMOND: That's all I want to talk about is the reason for the continuance.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY GARETH ORSMOND: Because what this was, it's a 18.4 square foot shed that exists in a five yard setback area allegedly unlawfully. And back in -- I'll just give you a background in 1998, the O'Connells bought this property and the shed exists -- there was a shed existing in the same, what I call a foundation, it's concrete sonar tubes with a wood standing out of it, but it's on the same area where there's an existing shed. And so that existed when the O'Connells bought the property in 1998. It was damaged in 2002. They replaced it.

Restored it with a shed that looks a little different, but it's the same dimensions. We all think it's a little bit taller, but it's the same dimensions. And so they did that in 2002. In 2004 new neighbors moved in, and those are the Knights. The Knights after living there a year and a half or so --

CONSTANTINE ALEXANDER: What's the relevance? Let's get to the point about the continuance.

ATTORNEY GARETH ORSMOND: I'm trying to explain the Land Court --

CONSTANTINE ALEXANDER: You've got to get to the issues of the case. We've read the file we know all that.

ATTORNEY GARETH ORSMOND: Okay.

Well, then as you know there was a dispute over the property boundary. The shed is within the disputed area. So, you know, the one relevance of the Land Court case is if it's decided against us, then

the shed is encroaching on their property and it obviously has to move. And that pretty much moves this whole question of whether we need any relief or whether as a zoning matter it should be removed because as a matter of property rights we would have to take it away, right?

CONSTANTINE ALEXANDER: But if the Land Court votes in your favor, you still have a zoning issue because you're too close to the lot line.

ATTORNEY GARETH ORSMOND: Well, we'd have the zoning issue. And I think, you know, if that were the case we can come back and deal with it at that time. But I think it would conserve everyone's resources --

BRENDAN SULLIVAN: So, Counsel, is it safe to say that no matter what action this Board takes tonight, that one side or the other is going to push it up to a higher authority?

ATTORNEY GARETH ORSMOND: I think that's one of the reasons. So we're all going to be spending a lot of money and time because it's so bound up in that Land Court case, you know, that people can't, they can't let go of their rights right now. So, we're pretty much forced to --

TAD HEUER: You brought the Land Court case; is that correct?

ATTORNEY GARETH ORSMOND: We did. We brought the Land Court case because we were told that -- we were told by the Knights that they wanted us to remove the fence and the vegetation, the landscaping. Interestingly enough they didn't ask that we remove the shed at that time. And when we said we thought we owned the property -- but nonetheless we offered to buy it, at purchase -- at full purchase value or buy an easement over it to avoid a dispute, they rejected those two offers and told us that, you know, we needed to

move this stuff off what they saw as their property within the next month. And it was at that point that we took the Land Court action to establish our property rights over the property we believe we owned to avoid having remove our property. And that's where it stands right now.

BRENDAN SULLIVAN: So that's probably pleadings --

CONSTANTINE ALEXANDER: Excuse me?

BRENDAN SULLIVAN: That's probably pleadings for another venue.

CONSTANTINE ALEXANDER: Right.

I'm going to ask for any public commentary on the motion or the request for a continuance. Only the continuance, not the merits of the case.

ATTORNEY DIANE TILLOTSON: Sure.

CONSTANTINE ALEXANDER: Please come forward and give your name.

ATTORNEY DIANE TILLOTSON: I'm Diane Tillotson. I'm at the firm of

Hemingway and Barns in Boston and I represent Patrick and Nisa Knight who are the immediate abutters and live the 624 Green Street which is immediately adjacent. And we strongly oppose the continuance of this matter, because as you've already heard, it's hard to find a basis for a continuance without getting into the merits. And basically on two grounds; first of all, the Commissioner has issued an enforcement order which is -- which our position is, is a valid enforcement order. And that enforcement order has not been stayed and is basically out there and we don't have any -- and there's really no basis for not compelling enforcement of that enforcement order, particularly in this case. Because regardless of how the Land Court comes out on the property dispute, if -- even if they find completely in favor of the O'Connells, this shed is going to have to

be moved. And we're not -- we're talking about a shed. We're not -- that's the other thing. Equitably we're not talking about a portion of the house. We're not talking about something that's going to cost thousands and thousands of dollars to move. This is a small gardening shed that sits right under my client's kitchen window. And, therefore, we would respectfully urge -- the bottom is rotting out. Every winter it causes -- it's caused hardship for them. The Land Court, I mean, I would love to think that Judge Sand would rule on this in the text two or three months. He might not. He might not rule until a year from now. My clients will have to go through another winter, and it's our view that there's no real reason that justifies the Board not hearing it now. Because, again, it's going to have to be moved even if they win their case in the Land Court. Thank you.

CONSTANTINE ALEXANDER: Thank you.
Anyone else wish to be heard?

(No response.)

CONSTANTINE ALEXANDER: Speaking for myself, and certainly other members of the Board, it seems to me the appeal should be heard tonight, because that's not before the Land Court. The Land Court's going to decide who owns the land on which this shed now sits. And I am very sympathetic to the notion that every day that we don't decide this case, the shed stays there and it could be there for a very long period of time. There's no statute of limitations when a judge must issue an order on a case that's before him or her. So I for one would continue the case -- well, depends on how we just come out on the appeal. But I would deny the request for a continuance, hear the appeal, and then depending on how that comes out, deciding what to do next.

Other members of the Board wish to be heard?

ATTORNEY GARETH ORSMOND: Could I maybe make a suggestion? It's completely up to you, that you know, what we just heard from Ms. Tillotson and a little bit from me, which already speaking to the merits, particularly she made some allegations about there being some harm arising from the shed which I honestly don't see how you can believe that to be the case.

CONSTANTINE ALEXANDER: That goes all the merits, she talked to the merits of the continuance, not the merits of whether the relief should be granted.

ATTORNEY GARETH ORSMOND: And what I'm trying to say we're funding out that we're pretty well bound up. So, we may want to defer the continuance vote until the end accepting what that would mean with respect to your Board Constitution.

Just something to think about.

CONSTANTINE ALEXANDER: Any members of the Board wish to be heard? So we can go to a vote and the motion to continuance.

DOUGLAS MYERS: I don't know about the propriety of voting now or the voting of the continuance to the end of the hearing, I would be guided by the Chair on that. But I would just like to say that I agree with the Chair that there's a fundamental dynamic here that our failure, refusal to hear the enforcement motion tonight really favors one side over the other, because it perpetuates the status quo for an substantially indefinite period. And I'm also impressed with the argument that there's an order of the inspector pending, and I think that in the absence of compelling reasons for a continuance, I think that order is entitled to respect and determination.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard? Ready for a motion.

The Chair moves that this case, the appeal of the determination made by the Inspectional Services Department, that portion of the case be continued until a time set in the future. You'll give me a skeptical look, Sean.

SEAN O'GRADY: I thought you said you were continuing the appeal.

CONSTANTINE ALEXANDER: The appeal. There's a motion -- I'm going to make a motion to continue the appeal. The decision on the appeal.

SEAN O'GRADY: Okay.

CONSTANTINE ALEXANDER: I need a date and then we'll vote on whether we're going to actually continue it.

SEAN O'GRADY: Well.

CONSTANTINE ALEXANDER: You want to continue it to the date after the Land

Court decision, that was your request.
I'm sorry, go ahead.

SEAN O'GRADY: Well, do you
have -- how do we do this?

ATTORNEY GARETH ORSMOND: I think
I know what the answer is here anyway, but
I mean you could just choose a date and we
can report and we can tell you at that
point whether or not --

CONSTANTINE ALEXANDER: That's
exactly what we want to do. Let's pick a
date for purposes of the motion.

SEAN O'GRADY: We don't have dates
all the way out, so we'll think of this a
little bit looser saying the first meeting
of whatever month you choose.

CONSTANTINE ALEXANDER: Well,
that's not say --

SEAN O'GRADY: They'll have to
re-advertise then.

CONSTANTINE ALEXANDER: Say again,
please?

SEAN O'GRADY: I think unless we hit a date, we don't have dates out a year. We have dates --

CONSTANTINE ALEXANDER: Can't we pick a date the first session in August?

SEAN O'GRADY: Is that helpful?

CONSTANTINE ALEXANDER: Yes.

SEAN O'GRADY: Okay, great.

RANJIT SINGANAYAGAM: You want that to be advertised?

CONSTANTINE ALEXANDER: No.

SEAN O'GRADY: Actually, we can go as far as October 22nd.

CONSTANTINE ALEXANDER: Well, let's do August.

SEAN O'GRADY: Okay. August 27th.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: August 27th?

The Chair moves that the appeal of the determination made by the Special Services Department be continued to seven

o'clock p.m. on August 27th.

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

(No Response.)

CONSTANTINE ALEXANDER: Motion does not carry. The case will be heard tonight. We'll take it one at a time. We'll talk about the appeal.

ATTORNEY GARETH ORSMOND:
Absolutely. All right.

So backing up a little. This really started in about 2004 when the neighbors, the Knights moved in. And the Knights notified the O'Connells that they intended to remove the O'Connells' fence and landscaping. But as I said, not the shed. They said the shed could stay for the time being. And the O'Connells who believed they owned the property and the fence and it was their landscaping, so their shed, disagreed. But nonetheless I think made two very reasonable settlement offers,

which we would buy the disputed area or we would buy the easement. The Knights did not agree to those settlements, as is their right. And so this matter went to a Land Court action to determine who owns that property right.

That trial, which I think is the basis for a lot of stuff we have and can put in the record because it was quite detailed, that trial ended in December of 2008 when the two parties put in their arguments. And later in December of 2008 we had the enforcement request by the Knights that, at issue here. At that time --

ATTORNEY DIANE TILLOTSON: Can we move up a little?

CONSTANTINE ALEXANDER: By all means.

By the way this applies -- if I may address the audience, in any case you can't hear or want to hear better, feel

free to come to the front of the room to view plans or whatever.

The floor is yours again.

ATTORNEY GARETH ORSMOND: And I will do my best to talk louder yet, all right?

So we got the Land Court action. Following the Land Court action the same month we had the enforcement request. I think we responded quite practically by saying we think this can wait until everything is resolved in the Land Court. And that's an argument we made to the Building Commissioner. He didn't listen to it. You're not listening to it so we're moving forward. And I can understand your reasons for doing that. So we also made a couple other points which is, the by-law requires, in order for someone to bring an enforcement action, that they be aggrieved. And we did not feel that they were actually being

aggrieved.

TAD HEUER: Counsel, I see you say that in your remarks. That seems to me to be actually incorrect. Can you read to me the section of the by-law? Maybe I'm misunderstanding it. But you're quoting Section 9.15; is that right?

CONSTANTINE ALEXANDER: The only person aggrieved is the Commissioner. I mean, you know, you don't need a petitioner, or someone in the community to bring something to the attention of the Building Department before an action can be taken. If Mr. Singanayagam again was walking down the street and sees a violation of the zoning law in some fashion, he's free to bring an action on behalf of the city.

TAD HEUER: I'll read it -- spare you the requirement. "The superintendent of buildings upon accurate information in writing from any citizen or upon his own

initiative shall institute, shall institute, any appropriate action or proceeding in the name of the City of Cambridge to then correct, restrain or abate violations of this ordinance."

Next sentence: "Any person aggrieved by a violation of any portions of the ordinance may request in writing that the superintendent of building enforce the ordinance." That seems to me to be a separate clause entirely. Is that "the superintendent shall notify in writing the party requesting such enforcement of any action or violation as set forth in the 14 days of receiving such request."

The building inspector, in my interpretation of 9.15, in the plain language said that no aggrievement of abutters is all required. He can enforce on his own and any citizen may ask him to enforce. And that seems to be exactly

what we have here.

ATTORNEY GARETH ORSMOND: Well, and I, you know, I can accept it. Rather than get upset about that. If that's your reading of the by-law, I accept that and we'll move on.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Move on.

ATTORNEY GARETH ORSMOND: I don't have a problem with that. My reading of the by-law was different. But I accept what you say. Okay?

CONSTANTINE ALEXANDER: Okay.
Let's move on.

ATTORNEY GARETH ORSMOND: And, please, by all means, we may have our different interpretations of the by-law, but I can listen to you and you can listen to me.

TAD HEUER: It seems to be, I mean, I'll say right now, that there are many points that we'll get to, but your

claims here, many of them seem to be declarative that don't match with at least the plain language of the ordinance. And this is just one of them. So I mean, Counselor, just to make you aware that there are many places where I've found where I was hoping I could rely upon what you stated in the letter, when I go to the ordinance, I find something different, and that troubles me because that means that I can't rely on other things. So....

ATTORNEY GARETH ORSMOND: Okay. Feel free to bring those up if we have disagreements. I understand where you're coming from. You know, I'm not necessarily going to agree with some of these things you're going to say. I think I quoted things accurately. You know, in that provision it did say person aggrieved. That was my reading of it. You disagreed. I accept that, okay? And we will move beyond the aggrieved

argument.

CONSTANTINE ALEXANDER: Let's move on.

ATTORNEY GARETH ORSMOND: Okay?

TAD HEUER: Okay.

ATTORNEY GARETH ORSMOND: So, one of the other things that we maintain in response to the enforcement request was that this shed, albeit although it's a reconstruction of the existing shed, is a -- protected by the ten year statute of limitations.

CONSTANTINE ALEXANDER: Can we -- I want to spend sometime on the word reconstruction of the shed, because that's very key obviously.

ATTORNEY GARETH ORSMOND: Sure.

CONSTANTINE ALEXANDER: If the shed -- you're saying the shed was only reconstructed in 2002 and therefore you have the benefit of a ten year statute of limitations.

ATTORNEY GARETH ORSMOND: Yes.

CONSTANTINE ALEXANDER: But I really want to understand exactly what you mean by reconstruction.

ATTORNEY GARETH ORSMOND: Fair question.

CONSTANTINE ALEXANDER: Let's sit down. The shed, did you leave the walls up and just replace the roof?

ATTORNEY GARETH ORSMOND: No, no. It's an entirely new shed.

CONSTANTINE ALEXANDER: Entirely new shed. Okay.

ATTORNEY GARETH ORSMOND: When I say new construction, I meant the old one was damaged beyond repair.

CONSTANTINE ALEXANDER: Might you use the word demolish rather than reconstruct or maybe let's say moved in its entirety?

ATTORNEY GARETH ORSMOND: That would fine. You can say the old one was

removed and the new one was brought in. However, the foundation, which I described as the tubes, they stayed the same. And, you know, it's a prefabricated shed, as are most of the sheds. And so, you know, if you want to use reconstruction, if you want to use replace. You know, my experience in Zoning By-Law and zoning cases and the point is when a foundation is the only thing that remains and something new is built or brought in in this case, I've seen that referred to as a reconstruction, so.... And it's my term. But I don't think the term particularly matters. I think everybody understands exactly what happened here. You had damage to the shed, it was on the footings, we brought it off, and we put on a new prefabricated shed.

TAD HEUER: Can you describe the foundation itself?

ATTORNEY GARETH ORSMOND: Yeah.

It's, there are sonar tubes surrounded in concrete. Coming out of the concrete are 8-by-8 wood that stand about two inches above the ground, and there's four of them and the shed goes above that. But in the ground itself we have concrete footings let's say.

TAD HEUER: But there's no flooring?

ATTORNEY GARETH ORSMOND: No, no.

TAD HEUER: There's no poured --

ATTORNEY GARETH ORSMOND: Concrete foundation.

TAD HEUER: -- Concrete foundation?

ATTORNEY GARETH ORSMOND: No. You mean like a slab?

TAD HEUER: Right.

ATTORNEY GARETH ORSMOND: No, no, there's no slab.

TAD HEUER: So, when the shed was down, so between the damaged shed that was

taken away and then the new shed that was placed in its place, there was for a period of time only these four concrete tubes at the corners; is that right?

ATTORNEY GARETH ORSMOND: I think they, it just, you know, happened at the same time.

NANCY O'CONNELL: Yes. Exactly.

ATTORNEY GARETH ORSMOND: One came in and one came out.

TAD HEUER: There was literally an instant at which there was nothing physically on that site except for the four corners?

ATTORNEY GARETH ORSMOND: Except for the four corners absolutely.

TAD HEUER: Okay.

ATTORNEY GARETH ORSMOND: I think it would have to be done that way.

NANCY O'CONNELL: Yes, it is.

MICHAEL O'CONNELL: How do you replace a shed?

ATTORNEY GARETH ORSMOND: Putting aside what the legal, you know, ramifications might be, it would be awfully awkward to put --

TAD HEUER: I just wanted to make it clear.

ATTORNEY GARETH ORSMOND: So, the ten year statute of limitations protects our structure that's been in existence ten years from the date of the violation. My view is that it's really a violation that is at issue, not so much the structure, and that as a logical and practical matter we have to read into that statutory protection the right of a person to repair, to maintain, or if necessary, replace that structure with something similar or substantially similar. Because if you don't, then that statute really doesn't serve its purpose to protect a structure that's been there for ten years.

If you can't do anything to it, you can't protect it, and I don't think -- it's eventually just going to fall apart. It doesn't make sense.

TAD HEUER: But you demolished it, correct, Counselor?

ATTORNEY GARETH ORSMOND: We took it off site, yes. There's no question about that.

NANCY O'CONNELL: Well, I think -- can I clarify something?

ATTORNEY GARETH ORSMOND: Sure.

CONSTANTINE ALEXANDER: Well, you have to identify yourself.

NANCY O'CONNELL: Oh, I'm sorry. I'm Nancy O'Connell. The shed had been damaged and was not functional of -- doors didn't swing properly anymore. So, yeah, what was left of it was replaced, yeah.

CONSTANTINE ALEXANDER: That is the essential issue here.

NANCY O'CONNELL: Yeah, I know.

CONSTANTINE ALEXANDER: And it's only with the basis of Mr. Singanayagam's decision and I'm going to read into the record at appropriate point.

Go ahead.

ATTORNEY GARETH ORSMOND: And, you know, just to let you know that my view is, I'm not only the only one that believes this, I have an excerpt from the Zoning manual by Robert Fishman who is a well respected attorney. Which he also opines. However, for the Section 7 protection to be meaningful, and logical, minor changes can be made to a structure if changes do not trigger any of the powers attest, right?

DOUGLAS MYERS: Could you read the last part? Your voice fell off there.

CONSTANTINE ALEXANDER: I had trouble hearing you.

TAD HEUER: "However, for the Section 7 provisions to be meaningful, it

would be seem logical that certain minor changes can be made to structures, such changes do not trigger any of the powers attest. The municipality may have the authority to allow certainly more substantial changes and alterations upon a Section 6 finding."

CONSTANTINE ALEXANDER: It seems to me that's a hearing. You're talking about minor changes to a shed. We're talking about a shed that's been demolished.

ATTORNEY GARETH ORSMOND: You know, it was replaced. But, you know, the dimensions are the same. I mean, I think the structure is essentially the same.

CONSTANTINE ALEXANDER: There's no question. I mean I think it's undisputed that you haven't changed the external dimensions of the shed. What was there before you built on the same foundation.

ATTORNEY GARETH ORSMOND: Yeah.

CONSTANTINE ALEXANDER: The question is whether that's relevant. In other words, Mr. Singanayagam doesn't deny that either.

ATTORNEY GARETH ORSMOND: Sure.

CONSTANTINE ALEXANDER: The fact of the matter is he said the structure was constructed illegally, not a non-conforming structure. And then when it was demolished, you don't have the benefit for whatever so-called grandfathering a non-conforming structure would have. You rebuilt -- you once again built almost a venishio an illegal structure that was done within less than ten years, therefore, the ten year statute of limitations doesn't run. Therefore, he decided and you're appealing that decision, that the structure must be removed.

ATTORNEY GARETH ORSMOND: Yeah, I understand --

CONSTANTINE ALEXANDER: And it strikes me the logic -- I must say it's somewhat compelling, you demolish a structure, particularly a structure that's sitting on a some sort of flimsy foundation, a structure that was illegally built, you don't get the benefit of any grandfathering or any past experience. It's all over again. And you did it in two-thousand -- if you built it and ten years it passed, you would still have the benefit of it, but ten years haven't past. And, therefore, it strikes me that Mr. Singanayagam has reached the right decision.

MICHAEL O'CONNELL: Mr. Chairman, may I --

CONSTANTINE ALEXANDER: State your name for the record.

MICHAEL O'CONNELL: My name is Michael O'Connell. I'm one of the owners. What happens then if I may ask --

CONSTANTINE ALEXANDER: You have to speak a little louder.

MICHAEL O'CONNELL: What happens then if in a storm, as was in this case, an illegal structure that's been up for 15 years, in this case, is substantially damaged to the extent that it cannot be used again? You're saying then, that if you take it away because of safety purposes or for other reasons, you cannot build on that except, except in the case where you're subject to starting of a statute of limitations running again?

CONSTANTINE ALEXANDER: I think that's exactly it. The point is that you have an illegal building and that building comes down, you get no benefit of the fact that you once had an illegal building there even if it's there 15 years in your example. It's all over again. It's not -- the big difference between an illegally building and a legal non-conforming use or

non-conforming structure. There the statute, the law and our Zoning Ordinance is much more sympathetic to the land owner. But here you're starting with an illegal structure and you tear it down, that's for starters. It's like you never had a structure there at all.

MICHAEL O'CONNELL: So we keep it up as an eye sore? I mean that would be one solution. It would be a silly impractical solution. I'm not saying we shoot ourselves in the foot.

CONSTANTINE ALEXANDER: If you as the land owner want to keep the eye sore on your property, that's your -- subject to the order to remove it by the --

ATTORNEY GARETH ORSMOND:

Mr. Chairman, I understand what you're saying. And, you know, in many instances I would agree, but I think the problem is really a two-fold problem in this case. When you're dealing with these kind of

tool sheds, you know, it's pretty routine and it's usually much more affordable and makes more common sense just to replace them. Particularly if they're poorly damaged. I mean we're not talking about demolition of a house, which is a significant event. So if what you're saying is well, because of this legal reading of the grandfather protection, you have to preserve a few, you know, wood shingles of the shed, you know, it just seems to me that substantively is pretty much just little too little emphasis on that particular view of your reading. Because I think, you know, the reality is this is how we deal with sheds. This is what makes sense. And so you have to construe it, the statute in terms of these circumstances.

CONSTANTINE ALEXANDER: But this argument you're making is an argument that would be best addressed to

Mr. Singanayagam and he might have accepted it or denied it. Maybe he made it or maybe he didn't. The fact of the matter is, our decision is whether Mr. Singanayagam was correct in his decision. And that's a factor that could produce a different decision, but that doesn't mean we should reverse it.

TAD HEUER: I'm also a bit confused because it seems to me the purpose of the Zoning Ordinance in this case is the intent of zoning is to reduce and eventually eliminate non-conforming. So here what we have a situation in which you are saying that we should read the Zoning Ordinance and Chapter 40-A to preserve non-conformance which I have to say I don't think -- can you point me to case law that says that's what the Zoning Ordinance is supposed to do?

ATTORNEY GARETH ORSMOND: To preserve non-conformities? Well, I think

it's sort of inherent in both the six-year statute of limitations for a building permit and the ten-year statute of limitations for an unlawful structure, that those structures are to be maintained and preserved. And I don't think the solution for what you have are two, two competing goals, which, yes, there's plenty of case law that says let's get rid of non-conformities, right, once they fall apart. But you also have this competing goal saying certain structures are protected. And I don't think you want to read into that. They're protected but you can't do anything. You just have to let them delipidate but they can't be removed, you know, because they're protected from an order of the building inspector compelling their removal. You know, I think you have to read into common sense that people should be able to maintain their property in good order and that's

also in the interest of --

TAD HEUER: Well, I don't think there's any dispute that you can maintain your property. The issue that we have here, I think, and I speak for myself, is the difference between repairing and maintaining and demolishing. You have not repaired it. You demolished it. I mean, I understand your argument is that --

ATTORNEY GARETH ORSMOND: It's a shed. It's different. I mean, you can't apply the same rules.

TAD HEUER: No.

CONSTANTINE ALEXANDER: It's a structure that was built in violation of our Zoning Law. Whether it's a shed or the Taj Mahal, it's the same thing.

TAD HEUER: Isn't it?

ATTORNEY GARETH ORSMOND: I don't see it the same because, you know, sheds are rotting put on platforms. And so I think you have to construe the Zoning

By-Law.

TAD HEUER: But our Zoning By-Law calls for accessory uses. We treat them as structures. They're not on wheels to be rolled around. You even say yourself, there's this foundation, something that's been dropped on. It's affixed to the land. If you were to sell the house, I don't think you could say it was a shadow and you were about to take it away with you. Someone would say I have a right to that property --

ATTORNEY GARETH ORSMOND: It's a good question as to whether it would be a fixture that you can take with -- I don't know the answer to that. But I just think there's -- you have to look at it differently for a prefabricated shed.

TAD HEUER: Can you tell me your interpretation of Section 8.23?

CONSTANTINE ALEXANDER: I was reading the same thing, right.

ATTORNEY GARETH ORSMOND:

Non-conformance.

TAD HEUER: It's a non-conforming structure. And it says here that the non-conforming structure or use shall have been destroyed or damaged by fire, explosion or other catastrophe. I presume no storm would qualify. To such an extent the cost of restoration be less than 50 percent of the replacement value of the building at the time of the catastrophe such buildings or use may be rebuilt or stored and used as a --

ATTORNEY GARETH ORSMOND: I know what it says. Is this one of the provisions you were --

CONSTANTINE ALEXANDER: That's the less than 50 percent.

TAD HEUER: No, not necessarily. I'm not sure this was addressed fully at all. I just don't like your interpretation of it.

Then it goes on to say: If destroyed to such an extent that the cost of renovation would exceed 50 percent of such value, such building or use shall not be restored and may be replaced only by a conforming building or use. Why isn't that what we have here?

ATTORNEY GARETH ORSMOND: Because in Mr. Singanayagam --

CONSTANTINE ALEXANDER:
Singanayagam.

ATTORNEY GARETH ORSMOND:
Singanayagam. I have a problem with that name.

CONSTANTINE ALEXANDER: So do i.

ATTORNEY GARETH ORSMOND: Can I say Ranjit? Ranjit that works fine more me.

He made the determination that this was not a pre-existing non-conforming use. And if you look in the by-law, they say non-conforming use, it's specifically

defined as preexisting lawfully non-conforming use. So that's not really what we have here by his own determination. What I am talking about are protections afforded by the zoning end, which, you know, gives you this base range of protection that you can't deviate from the Zoning By-Law. And one of those protections is the statute of limitations and you can't -- no town can say well, very well, the Zoning By-Law such and such ten year statute of limitations, we're going to say eight. You can't do that, right? And all I'm saying is inherent from that same statutory protection you have to read, and others believe you have to read, the right to maintain, restore, do whatever it takes to keep this unlawful structure in good order.

TAD HEUER: But you don't have a right to demolish it and bring it back --

ATTORNEY GARETH ORSMOND: And

normally I would agree with you. But this is a shed --

TAD HEUER: Why is the fact that it's a shed --

CONSTANTINE ALEXANDER: I think it's same. I think we're just going over the same territory over and over.

ATTORNEY GARETH ORSMOND: I agree.

CONSTANTINE ALEXANDER: Have you concluded your remarks? I do want to read into the record Mr. Singanayagam's letter for which your determination was made.

ATTORNEY GARETH ORSMOND: May I ask my clients if they wish to add any remarks? I think we know we're concluded.

CONSTANTINE ALEXANDER: Maybe I should have done this at the outset, but let me just read into the record Mr. Singanayagam's -- the determination that's the subject of this appeal. It's letter dated January 29, 2009 from Ranjit Singanayagam, Commissioner of Inspectional

Services Department. It's addressed to the O'Connells, Re: 628 Green Street. It has come to my attention via a letter from Attorney Diane C. Tillotson that you have constructed a storage shed in the year 2002 in alleged violation of the Cambridge Zoning Ordinance, Article 4, Section 4.21. Based on the document presented by your attorney Gareth I. Orsmond, it is clear that in 2002 the shed was constructed on a foundation where a shed had previously been illegally constructed in the mid to late 1980s. The previous structure remained an illegal structure until it was demolished and removed against which enforcement was prohibited under General Laws Chapter 40-A. That enforcement limitation did not in any way make the previous shed a preexisting non-conforming structure, and it did not in any way protect a subsequently constructed shed on the same foundation from being an illegal

structure. Pursuant to Article 8, Section 8.21 when a non-conforming structure is removed, it may not be replaced or reconstructed in a non-conforming matter. From the drawings submitted and photographs submitted, it appears clear that the shed violates a Cambridge Zoning Ordinance. You are hereby notified to remove the shed immediately.

That was the determination.

Mr. Singanayagam, do you want to add anything?

RANJIT SINGANAYAGAM: No. If you want, I can answer any questions.

CONSTANTINE ALEXANDER: Okay.

Any questions at this point or should I open it to public testimony? Or Tom?

THOMAS SCOTT: They can relocate it, right, within the proper setbacks?

CONSTANTINE ALEXANDER: Oh, sure.

THOMAS SCOTT: Okay.

ATTORNEY GARETH ORSMOND: Can I just comment on that? We don't actually right now what the proper setback is because the property dispute is, you know, that's one of the things I made, it's a practical matter.

CONSTANTINE ALEXANDER: There are other parts of the lot I assume where there's no property dispute where you can relocate the shed. This isn't the only place on the lot where a shed can go.

We'll take public testimony. Ms. Tillotson, do you want to --

ATTORNEY DIANE TILLOTSON: Just very briefly --

CONSTANTINE ALEXANDER: Please.

ATTORNEY DIANE TILLOTSON: And I know you're running behind, and I don't want to belabor this point, but again I represent the Knights. First of all, just as to the timing, we tried very hard and I think both sides will attest to this, to

really settle this matter before the Land Court trial. And the reason we didn't try to bring the enforcement action is because we truly hoped that that would be the case. It didn't happen. So, as part or immediately after the trial almost, we did request enforcement because this has been an issue for my clients. And I agree I don't think that we're required to show aggrievement, but I think we can show aggrievement, and I think this has been -- and I have photographs of both the ice and the storm build up against their foundation that the shed has essentially prohibited them from removing that we submitted to the Commissioner in connection with the request for zoning enforcement. The only other comment I'd make is that there is a real difference between a non-conforming use, which this is not in an illegal use. Section 7 which Mr. Orsmond has highlighted is essentially

a tolerance statute. It says basically if your structure has been there for ten years, the city can't force you to take it down. It doesn't protect it. It doesn't give it a rebuilding protection. It doesn't say that if it's destroyed, in fact, the notion is that if it is destroyed and you have to rebuild it, you'll do it right when you do rebuild it. And that's the whole sort of justification for Section 7, is it's a statute of limitations. If you're going to rebuild, you rebuild in accordance with the Zoning Ordinance. And I, again, I think that your own ordinance essentially supplements what's already in Section 7 because you have that provision that's been quoted previously and was cited by the Commissioner in his letter Article 8, Section 8.2.1. And again, I don't think I need to belabor the point. We essentially ask that you uphold the Commissioner's

decision enforcing the Zoning By-Law.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wish to be heard on this matter? We'll close public testimony.

There's plenty of correspondence, but it's all been covered by the petitioner and Ms. Tillotson in the hearing.

Questions, comments from members of the Board? Are you ready for a motion?

The Chair moves that the petitioner be granted -- the petitioner's appeal of the determination made by the Inspectional Services Department to the effect that the shed at 628 Green Street must be removed, be granted, i.e. that the decision of the Mr. Singanayagam be overturned. And that's it.

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

(No response.)

CONSTANTINE ALEXANDER: No votes in favor. The motion does not carry. The

appeal has been denied. So that part of the case is over.

We can go on now, the second part of the case is the Special Permit Chapter 40-A issue. And, again, there's question that seems to me, but I think it's a different question about whether we should continue the case at this point.

TAD HEUER: Do you want to address the 40-A, Section 6 separately from the Special Permit?

CONSTANTINE ALEXANDER: That would continue the case.

ATTORNEY GARETH ORSMOND: I think they go together. Because they're sort of two steps you understand?

TAD HEUER: Yes.

ATTORNEY GARETH ORSMOND: I think they go together.

CONSTANTINE ALEXANDER: I take it you still want to continue the second half of the case?

ATTORNEY GARETH ORSMOND: Oh, yes.

CONSTANTINE ALEXANDER: I just want to make sure.

ATTORNEY GARETH ORSMOND: Maybe you can clarify.

CONSTANTINE ALEXANDER: I'm sorry?

ATTORNEY GARETH ORSMOND: I mean, at this point if you believe that the enforcement order has enforce in effect, I think we don't want to continue the case because we will ask for the relief to alleviate the hardship of the enforcement order.

TAD HEUER: I think you want to go ahead at this point.

CONSTANTINE ALEXANDER: Okay. You withdraw your motion to continue that part of the case?

ATTORNEY GARETH ORSMOND: Yes.

CONSTANTINE ALEXANDER: Proceed.

ATTORNEY GARETH ORSMOND: So the second part of our request was if as it

turns out to be the case, you disagreed with our arguments against the enforcement order, that we be allowed to seek what is called a Section 6 finding, and if you don't grant that -- well, actually I won't call it Section 6. I'll call it a finding of no intensification because there's some confusion with those terms. And if you don't grant that, then we actually seek a Special Permit. Now, the Board understands that we're asking for these things retroactively for, largely for what a prior owner did in 1984 to change what was a preexisting lawfully non-conforming structure in the same side yard setback area. And then subsequently for our action which was simply to replace the shed, the new shed. Okay?

To go back to the history, and I won't belabor this because I trust you have read this, but these two properties were owned in common in 1873. No, they

weren't owned in common. They were built upon in 1873. They were owned by a pair of brothers, John Sullivan and James Sullivan. In 1924 when these houses were in existence, Cambridge had a Zoning by-law that provided for no setback from the principal structures and no setback from accessory structures. And in 1939 these two properties came into common ownership of John Sullivan's daughter Mary Sullivan, also known as Madi Sullivan. And three years later Madi rented out the property where the Greens live, 624 Green Street to the Rider family. And one of the members of the Rider family was John Rider who was 21 years old at the time, and lived there briefly and moved in in 1942. And in 1942 -- well, John Rider testified in the Land Court case in 1942, the project looked like -- the property looked like this picture that is in your package. I know it looks familiar.

TAD HEUER: Does it have identifying number?

ATTORNEY GARETH ORSMOND: This is -- I do actually. I have it here. It's Exhibit H.

TAD HEUER: H as in house?

ATTORNEY GARETH ORSMOND: House, yes.

And I think you can conclude simply by looking at this picture that this trellis structure, it's attached to the house, goes very close to the greenhouse. And you can see here the gutter of the greenhouse.

CONSTANTINE ALEXANDER: That's a structure in that picture is no longer there. That's what was demolished in 2002.

ATTORNEY GARETH ORSMOND: No, actually that is demolished in 1984.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY GARETH ORSMOND: Which is

why I'm seeking retroactive finding. That that was not intensification or if so, for a Special Permit. The reason being I think this is a different situation to say that you went into an area and you built a structure there that was never, never should have been there. And it was a non -- it was not a lawfully non-conforming structure. It was a true unlawful structure. I think you can see what happened here quite differently, because the alleged improprieties weren't going into an area that wasn't previously incurred, you know, encroached upon. They were that these structures got changed all the time. First in 1984 it got changed to this (indicating), by the then owner Tom Franklin. And I can make some observations of these two pictures. And then subsequently when that came down, really all you had left was this (indicating). So I think over time, over

the last 60 plus years you've had de-intensification of the encroachment into this area.

Do we have any questions at this point?

TAD HEUER: How is there a de-intensification of the encroachment -- I mean into that area, you're talking about the trellis not being there for the trellis which was arguably at least as it came up the house and approached the setback lawfully, right?

ATTORNEY GARETH ORSMOND: It was pre-existing lawfully non-conforming.

TAD HEUER: But even if it were not non-conforming, it was within the setback, right?

ATTORNEY GARETH ORSMOND: No, it was clearly encroaching within the --

TAD HEUER: The whole thing or just part of it?

ATTORNEY GARETH ORSMOND: Part of

it. You can probably look at this picture and say that it was, you know, let's say that these are four by fours.

TAD HEUER: Yes.

ATTORNEY GARETH ORSMOND: Measured out you're probably going to say it's about 18 to 21 inches away from the Knight house. And then you have some circumstantial evidence which is in your package. John Rider saying he tried to paint the house, the Knight house, and how difficult it was because there wasn't much space there.

TAD HEUER: So this is their house?

ATTORNEY GARETH ORSMOND: That is our house, yes.

TAD HEUER: And this is the Knight house.

ATTORNEY GARETH ORSMOND: That's the Knight house.

TAD HEUER: So what I see on this

is a trellis that is well within the setback as it approaches the O'Connell house, and then arguably and clearly intrudes into some setback as it encroaches the Knight house --

ATTORNEY GARETH ORSMOND: Yes.

TAD HEUER: -- and it's a trellis.

ATTORNEY GARETH ORSMOND: Yes.

TAD HEUER: And you're saying that the gradual introduction of a walled shed where the beams of this trellis is constitutes de-intensification of the intrusion into that setback?

ATTORNEY GARETH ORSMOND: I think it does because well -- yeah, the shed first came out in '84, and that's the one that we replaced. That became part of this.

TAD HEUER: Right.

ATTORNEY GARETH ORSMOND: But, you know, the shed I would say is actually less imposing than that structure. It's

certainly shorter. It's certainly smaller in area and for those reasons I would say it's less intense.

TAD HEUER: But the intensity -- I guess my problem is the intensity is the same in the contested area. You have less stuff in the non-contested area, i.e. the distance between the O'Connell house and the setback. But you have pretty much the exact same amount of stuff in the setback which is what we're talking about here, right?

ATTORNEY GARETH ORSMOND: Well, if it's the exact same, then it doesn't intensify.

TAD HEUER: But we have -- I mean, I think the shed does create more bulk in that area. But we have stuff continually in that setback, right? You're saying there's a deescalation. I'm saying as per that setback, I'm not sure that's your case.

ATTORNEY GARETH ORSMOND: I understand your point. I think the thing to keep in mind is that this is clearly higher than the shed, it's also clearly longer than the shed. And those aspects certainly have been within the setback area, changed and un-intensified -- de-intensified, whatever.

TAD HEUER: But it's also transparent, right? We're talking about a frame, not about mass bulk, correct.

ATTORNEY GARETH ORSMOND: Yes, it's transferring, right.

Now, I mean I think the -- I don't even know if it's even clear what this was, you know, you can take a couple observations with this thing. I mean --

NANCY O'CONNELL: I pointed out that is 624 Green Street that you can see on the other side. Exhibit No. A, page two.

ATTORNEY GARETH ORSMOND: Now, you

can get a sense for the height of the new trellis that the 1984 owner put in by counting the clapboards, and they're both going to work out in this picture and that picture to about 15 or 16. So, it's about the same height. It's very radically different looking, but it was actually lower as it got toward the Knight's property as you can see from the picture. So, it was higher up here and they actually decreased the height as it got closer to the Knight's property. And then within that trellis structure they put the first shed. And then that is what was changed in 2004. We just replaced the shed. The rest of the stuff --

MICHAEL O'CONNELL: 2002.

ATTORNEY GARETH ORSMOND: 2002.

The rest of the stuff follows down. So, clearly if you look over the scheme of time, there has continually, since the 1942, if not earlier, been accessory

structures or principal residential structures occupying the setback. That's never not been the fact. They have changed over time, but if you compare what's there now to what was there in 1942 and even more so in 1984, I believe that it's less intense. And that you could make a finding that as you know, it's a single-family structure, they get special protection for non-conforming uses. And under that protection they don't need substantially detrimental to the neighborhood finding, if you can find they do not intensify the non-conforming.

TAD HEUER: Can you explain that to me, because I'm having trouble?

ATTORNEY GARETH ORSMOND: Sure.

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: Let's even grant for the purpose of argument here that it's, you know, we have intensification. Why does intensification matter?

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: Because it doesn't seem to me that again a plain reading of the statutory language allows you to use the second accept clause. You were not the residential structure of the one or two, you are an accessory use. That clause is allowable only to residential structures. You don't have a residential structure here.

ATTORNEY GARETH ORSMOND: You think a shed is not an accessory residential structure?

TAD HEUER: Residential --

CONSTANTINE ALEXANDER: The second exception says, it says, except where alteration, reconstruction or extension or structural change to a single or two-family residential structure does not increase in non-conforming.

ATTORNEY GARETH ORSMOND: And you would agree that it doesn't say principal

structure?

CONSTANTINE ALEXANDER: It says two-family -- one or two-family residential structure.

ATTORNEY GARETH ORSMOND: It doesn't say principal and it doesn't say accessory. Why differentiate the two?

TAD HEUER: Why differentiate commercial and industrial and residential? I mean, if you went to the building inspector and said, can you certified this shed is a residential structure? He would say does it have bathrooms? Does it have two means of egress? Does it have a bedroom? Does it have kitchen? And I mean you say, well, no, it's a three by five.

ATTORNEY GARETH ORSMOND: That's a dwelling.

TAD HEUER: And you say -- that's not a residential structure.

ATTORNEY GARETH ORSMOND: It says

residential structure. It does not say dwelling. And I think everybody would agree that a shed or a garage is probably -- garage is probably the primary case, that would be considered a residential structure if it's used in conjunction with a single-family residence.

CONSTANTINE ALEXANDER: We made our point, or we've asked the question, you responded. Why don't you keep going? Move on, let's finish this case.

ATTORNEY GARETH ORSMOND: Okay.

CONSTANTINE ALEXANDER: Is that it for the Chapter 40-A? Are you ready to turn to 8.22.2?

ATTORNEY GARETH ORSMOND: So, yeah, I would argue on the basis of these photographs that you can find that it's not intensification of a residential structure, and that residential structures under Section 6 I believe are accessory structures. Particularly things that

migrate over time, in this case, is part of the principal structure and it becomes detached over time due to largely weather. And at one time all part of the principal a structure.

TAD HEUER: Do you have any case law that supports that?

ATTORNEY GARETH ORSMOND: I can take a look. I think in fact, you know, if you read, you know -- it's in my letter. Turn to page --

RANJIT SINGANAYAGAM: Mr. Chair, can I speak?

CONSTANTINE ALEXANDER: Yes, sir.

RANJIT SINGANAYAGAM: I have been listening to this end. As far as I know, trellis, it doesn't have a roof. And current ordinance does not require setbacks. So there was a change in '84, at that time they should have acquired a building permit which was not taken for the roof structure. That requires the

five foot minimum as an accessory for a five foot setback. That was not done. As they mentioned before, it was demolished in 2002, so the new structure has to be complying with Section 4.

ATTORNEY GARETH ORSMOND: I'm sorry, I don't quite understand. You said --

RANJIT SINGANAYAGAM: Further --

CONSTANTINE ALEXANDER: Excuse me, sir, let him finish. Let him finish.

RANJIT SINGANAYAGAM: Further, I see that I don't know how we can -- somebody can get a variance or a Special Permit at somebody else's property.

CONSTANTINE ALEXANDER: Whether it's someone else's property, of course, has not been finally decided by a Court.

RANJIT SINGANAYAGAM: Yes. I think it's a variance rather than a Special Permit.

CONSTANTINE ALEXANDER: I want to

cut to the chase on this. Thank you, Mr. Singanayagam.

I think that's exactly the point, the section you cite in the Zoning Code, 8.22.2 deals with legal non-conforming structures. Mr. Singanayagam has made a determination that this is an illegal structure, and we've upheld that decision. So given the fact that we're dealing with an illegal structure by definition, 8.22.2 doesn't apply. Therefore, I don't see what basis you have for a Special Permit.

ATTORNEY GARETH ORSMOND: Just my request is that you make the finding that this is an alteration over the time of a lawfully non-conforming structure.

CONSTANTINE ALEXANDER: But we've already determined that it's not a lawful non-conforming structure. That was a determination that Mr. Singanayagam made and you took an appeal from him, which we denied your appeal. We start in this part

of the case with the premise that it's a given that we're dealing with an illegal structure. Therefore, you can't -- you can't argue that again. We've argued that and we've decided that. If it's an illegal structure, 8.22.2 doesn't apply.

ATTORNEY GARETH ORSMOND: You see what I'm asking is different from what you're taking it as. I think that the background in this case were let's say Mr. Franklin were to come in 1984, he clearly at that point had a pre-existing lawfully non-conforming structure in the setback. He could have sought a determination that, you know, his changes, which we see on this picture, do not intensify that non-conformity or they're allowed by Special Permit. He could have done that. He didn't. But that's not our fault. I am saying in the event that you found that this is not a lawful structure, then you can also make it a lawfully

non-conforming structure by dealing with that permit after the fact. Because the facts were there to support it. The fact that the procedures weren't followed, is true but we didn't do that. And that's why I'm asking you to recognize retroactively --

BRENDAN SULLIVAN: But, Counsel, it's your premise that we should -- you're asking us to grant a Special Permit to legalize a Zoning, the structure in its present location?

ATTORNEY GARETH ORSMOND: Yes.

BRENDAN SULLIVAN: And yet the question was asked by Mr. Scott a little while ago is can that, can you not comply with the five foot setback? And the answer was we're not sure where the lot line is.

ATTORNEY GARETH ORSMOND: Yes.

BRENDAN SULLIVAN: And yet in effect you're asking us to legalize by

Zoning the structure which may or may not be on your property.

ATTORNEY GARETH ORSMOND: Well, I think you have to separate Zoning and property. Whatever you grant by way of Zoning relief --

BRENDAN SULLIVAN: Again, if you can't define where the property line is, you can't in the affirmative say that it is entirely on our property. And if you can't say it is that it is entirely on our property, then it would be a terrible and a tragic dereliction of our duty to grant any relief to a structure that is not entirely on the subject property unless I'm missing something.

ATTORNEY GARETH ORSMOND: No, I understand what you're saying. If you make your determination on that basis, then it just gives us -- it's sort of undoes itself if in fact the Land Court later determines this is our property. So

my statement in my letter and my reason for the request, you're really getting to the reason for my request for the continuance in the first place, which, you know, you decided against that. So if we're going ahead, we have to go ahead on the assumption that we own that property, otherwise none of this really makes any sense.

BRENDAN SULLIVAN: I think you're asking us to assume and to overlook an awful lot.

CONSTANTINE ALEXANDER: If the Land Court were to find that the property does belong to your client by virtue of adverse possession, you still would have to come get relief from us. It's a variance. It's not a Special Permit. The variance would be a variance from the side lot to locate a structure on your property less than five feet from a side lot line which is -- you have a setback issue.

It's a variance issue. And that issue is not before us. You are not entitled to a Special Permit because the Special Permit provisions of our Zoning by-laws don't apply to an illegal structure. It applies to a legal non-conforming structure.

ATTORNEY GARETH ORSMOND: But it's only illegal because it doesn't have that Section 6 finding. And if you made that finding, it would not be -- I think you understand that, right?

BRENDAN SULLIVAN: Yes. And I'm bewildering -- it's --

TAD HEUER: You agree that we didn't make the Section 6 finding? I mean --

ATTORNEY GARETH ORSMOND: No, no, no, you haven't voted it.

TAD HEUER: Right.

ATTORNEY GARETH ORSMOND: I'm not suggesting it.

BRENDAN SULLIVAN: I think you're

trying to put the best possible light on it, but believe me it's a very, very dim light. Very dim. Very dim.

THOMAS SCOTT: Very dim.

CONSTANTINE ALEXANDER: I'm sorry, did you conclude your remarks?

ATTORNEY GARETH ORSMOND: No, I don't think there's any reason to -- I think we've talked about this. And I understand where you're coming from. You know, I appreciate the opportunity to be here and talk to you.

CONSTANTINE ALEXANDER: Thank you.

Any public commentary? Noting that the hour is late and we've spent an awful lot of time asking all the question. So do you have something new to add to what's been given?

ATTORNEY DIANE TILLOTSON: I would only make one comment. I think I understand perfectly and I think all the arguments that I would have made or most

of them have already been made. I think the only thing I would add is that in addition to not being eligible for Special Permit relief, I think he's not eligible for a Section 6 finding for exactly the same reason. That applies to legal non-conforming structures, not illegal structures. That's all I have to say.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wish to be heard?

Mercifully no.

I think, again, there's nothing in the file beyond what we've talked about that needs to be put into public record. I can probably, I think we should probably take two votes. One vote as to whether Section 6 and Chapter 40-A applies so to grant relief to the petitioner. And the second vote would be to whether to grant the Special Permit under our Zoning Ordinance to allow this -- to permit the structure to be where it's located.

So, the Chair moves that a relief be granted to the petitioner pursuant to Section 6 of Chapter 40-A on the grounds that such section applies and would therefore permit the shed to continue to be located where it is now located.

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

(No response.)

CONSTANTINE ALEXANDER: There no ayes. The motion does not carry.

The second motion is whether to grant a Special Permit pursuant to Section 8.22.2 of our Zoning By-Law to permit the shed to continue to be located where it is now located.

Such Special Permit be granted on the basis that the requirements of Section 10.43 of our Zoning By-Law are complied with. That the shed will not generate traffic or patterns of access or egress that would cause congestion, hazard or

substantial change in established neighborhood character.

That the continued operation of the adjacent uses would not be adversely affected by the nature of the shed.

That the shed would not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this ordinance.

Such motion is made on the basis that Section 8.22.2 applies, which pursuant to which would grant the Special Permit, applies to the relief being sought. And further, that if the Board determines that that section does not apply, then before us there is no basis for granting a Special Permit under our Zoning Ordinance.

To all those in favor of granting a Special Permit on that basis, so moved, say "Aye."

(No response.)

CONSTANTINE ALEXANDER: No one votes in favor. The motion is denied.

ATTORNEY GARETH ORSMOND: Thank you.

CONSTANTINE ALEXANDER: We're going to move on. We're still on the continued cases agenda. But there are two cases on the agenda for tonight, they're both regularly scheduled cases. One is case No. 9781, 279 Huron Avenue, and the other is case 9783, 10 Trowbridge Street, both of those cases are going to be continued. Is there anyone here for those cases and would like to be heard or have any discussion? I don't want to keep anybody here just for the purpose of finding out we're going to continue this case an hour from now. So, everybody knows that those cases are not going to be heard tonight. You had your chance to leave and do something more constructive than sitting here.

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

(9:25 p.m.)

(Sitting members: Constantine Alexander,
Brendan Sullivan, Douglas Myers, Tad
Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair
will call continued case 9775, Four Forest
Street.

Is there anyone here wishes to be
heard on that case?

(No response).

CONSTANTINE ALEXANDER: Sean, can
I have the file?

SEAN O'GRADY: Oh, I'm sorry.

CONSTANTINE ALEXANDER: There is a
letter in the file I believe. It's

addressed from David A. Kinsella, AIA President -- architect, he's the president of his firm. It's addressed to Mr. O'Grady. "Please continue our hearing scheduled for May 14, 2009, to the next available Board hearing. I will reissue the application for relief so that your Board can look at the whole application at one hearing."

So we have a motion to continue. What day would we continue the case to?

SEAN O'GRADY: June 25th.

CONSTANTINE ALEXANDER: The Chair moves that this case at Four Forest Street be continued to June 25th at seven p.m. We have a waiver of notice. So on the condition that the sign advertising the case be modified so as to indicate the new hearing date.

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

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Continuance granted, case not heard.

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

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

(9:25 p.m.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: 133 Pearl Street. Case No. 9768.

Is there anyone here wishes to be heard on that? I know there's someone here wishing to be heard. Please come forward. We're talking about the Special Permit case that you asked to be continued. It's my understanding that

you're going to want to withdraw that because later in the evening we're going to hear your variance case.

SEAN O'GRADY: Could we delay that?

CONSTANTINE ALEXANDER: Yes, I think we should. I'm going to suggest that. Let me make a suggestion.

We continue your Special Permit case until after we hear your variance case. If we grant you the variance, you can withdraw the Special Permit. It's irrelevant. If we deny the variance, you still have the opportunity to seek a Special Permit. So I think we should just continue the Special Permit case, and in due course we'll get to the case on its merits on the variance, okay? Is that all right with you?

MALE AUDIENCE MEMBER: When does that happen?

CONSTANTINE ALEXANDER: You tell

me. It's how quickly we go. We have two other cases. You'll be the third case. So, we'll see how long those cases go. I would think 15, 20 minutes, maybe half hour at the most. Thank you.

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

(9:30 p.m.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: We are now going to finally get to the regular cases.

The Chair calls case No. 9778, Three Greenough Avenue.

Is anyone here wishing to be heard

on this case? Please come forward.

Please state your name and address for the record.

SCOTT SIMPSON: My name is Scott Simpson. I'm an architect. I live in Carlisle, Massachusetts at 117 Judy Farm Road. And this is.

JOHN MICHAEL SPENCE: John Michael Spence. I'm a builder. I live 73 Jay Street, Cambridge.

CONSTANTINE ALEXANDER: Okay. Thank you.

SCOTT SIMPSON: We're here representing Doctor Stephen Freidberg. He's a retired physician who owns a house -- actually, condominium at the conner of Greenough and Highland. That's the house right there. That's the actual survey. He's renovating the interior of the house. He'd like the opportunity to add a small entrance vestibule which is marked in green on this document right here

(indicating), by about nine by five feet. The actual plan shows that right there (indicating). Nine feet by five-six, it's an entranceway with a small closet. Doctor Freidberg is an elderly gentleman and he'd like to have a little place to hang his coat, take off his boots and stash his umbrella before he gets into the house. It's a convenience for him.

The actual plot plan is there. The proposed addition is there. It doesn't project any further towards the Highland Avenue in that direction nor does it project any further in this direction (indicating). If we go through some design review, that was the original proposed design at the previous meeting. And it was suggested at that meeting that we modify the design slightly to make it look a little bit more --

CONSTANTINE ALEXANDER: Are those plans different than the plans in the

file?

SCOTT SIMPSON: I believe the plans you've got in the file are exactly the same as these.

CONSTANTINE ALEXANDER: Can you just take a look, because these are the ones that are in our file.

SCOTT SIMPSON: Yes.

CONSTANTINE ALEXANDER: Those are the ones we're going to vote on. Just for the record, the reason you're before us because you have an FAR issue.

SCOTT SIMPSON: That's correct.

CONSTANTINE ALEXANDER: And the FAR issue is that you're in a district that has max of .75. The structure currently is non-conforming. It's at 1.08. And you want to go to modify the vestibule to 1.09?

SCOTT SIMPSON: That's correct.

CONSTANTINE ALEXANDER: So a slight increase in your FAR?

SCOTT SIMPSON: That's correct.

TAD HEUER: And then what happens to the -- is there a window currently?

SCOTT SIMPSON: Currently in the building right now, there was right there, a sliding glass door, six feet wide. That sliding glass door would be removed and then this, there's an existing window that stays, does not change, and that door is replaced by a swinging door and a window.

CONSTANTINE ALEXANDER: It's my understanding that the reason your client wishes this relief is for safety issues?

SCOTT SIMPSON: That's correct.

CONSTANTINE ALEXANDER: Snow and ice coming off the building which creates a safety hazard for people walking in and out of the building.

SCOTT SIMPSON: That's correct.

TAD HEUER: And this is purely aesthetic horizontally and the rest of the building is vertical?

SCOTT SIMPSON: Well, the current siding is T-111 plywood. It's not in great shape. It looks pretty ugly. Eventually I think the house needs to be re-sided. That was an aesthetic issue that was brought up before. As a gesture in that direction, we're proposing that we --

TAD HEUER: This is the first stage?

SCOTT SIMPSON: Yeah, you might say that. We'd like to get it in better shape, but not all at once. That's why it was done that way.

CONSTANTINE ALEXANDER: This is an old Victorian that someone modernized.

SCOTT SIMPSON: Yes.

CONSTANTINE ALEXANDER: Were you the one that --

SCOTT SIMPSON: No, no, no, sir. I'm doing this as a favor to my friend Doctor Freidberg. I'm not taking money

for this. I'm here on a charity case.

CONSTANTINE ALEXANDER: Not one of the more noteworthy renovations in the City of Cambridge in my personal and unprofessional opinion.

SCOTT SIMPSON: I agree with your judgment.

JOHN MICHAEL SPENCE: I agree, it's awful.

SCOTT SIMPSON: Could you be more clear about that?

CONSTANTINE ALEXANDER: Questions from members of the Board?

THOMAS SCOTT: What's the proposed roof material?

SCOTT SIMPSON: The proposed roof material is basically asphalt shingles to match the existing roof.

CONSTANTINE ALEXANDER: Anyone here wishes to be heard on the matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair

notes none. There don't appear to be any letters in the file on this. So, comments or are we ready for a vote?

BRENDAN SULLIVAN: Fine.

CONSTANTINE ALEXANDER: We're ready for a vote.

The Chair moves that a variance be granted to petitioner to proceed with the construction of a small entry vestibule to the property at Three Greenough Avenue.

Such variance be granted on the basis that a literal enforcement of the Zoning Ordinance would involve a substantial hardship to the petitioner. Such hardship being that the safety with regard to entering and leaving the building is in danger and this would correct a safety issue.

That the hardship is owing to circumstances relating to the shape of the structure. It's a non-conforming structure already over the FAR. So any

modifications to the structure requires Zoning relief.

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 that regard the entrance is minor in nature. It certainly improves the ability to inhabit the structure, and it's consistent with what the intent of our Zoning By-Law is.

Such variance would be granted on the condition that the work proceed in accordance with the plans initialed by the Chairman, No. 1, 2, 3, 4, 5, and 6 and 7 I believe. Seven. Seven pages.

Understood --

SCOTT SIMPSON: Yes.

CONSTANTINE ALEXANDER: -- no variations from this. We've had problems before. This is what you live and die

with.

SCOTT SIMPSON: That's fine.

CONSTANTINE ALEXANDER: Okay.

So on that basis, the Chair moves that the variance be granted. All those in favor, say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Motion granted.

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

SCOTT SIMPSON: One small informational question.

CONSTANTINE ALEXANDER: Sure.

SCOTT SIMPSON: We did attend an earlier meeting with the Historic folks. They did make a suggestion of improving the aesthetics. We're happy to go ahead and build exactly what's on these plans, no question whatsoever. But we want to help -- we want to accommodate them as well. What's the proper procedure for

slicing that?

CONSTANTINE ALEXANDER: When you say improve the aesthetics, I think we need to know more about what you're saying.

SCOTT SIMPSON: I'll tell you exactly. The plan you just saw in front of you is this one right here. They've suggested that we make a slight change in the roof line in order to make it more consistent with the house. We're happy to do exactly what's drawn, no problems. We'll do it tomorrow. We want to be accommodating obviously to previous advice, it was advice given to us. We're looking for some guidance here. What's the best way to proceed?

TAD HEUER: That's rare. We can incorporate it as a condition of the grant that we just made and that way it would be binding.

SCOTT SIMPSON: Can I just give

that to you?

CONSTANTINE ALEXANDER: This is going to build --

SCOTT SIMPSON: Approved as modified and just staple it and initial it.

CONSTANTINE ALEXANDER: This will be the plan?

SCOTT SIMPSON: That's it.

THOMAS SCOTT: What's that element on the roof?

SCOTT SIMPSON: It's an optional sky light which probably won't go in.

CONSTANTINE ALEXANDER: Well, I don't think -- if you did want to build it --

TAD HEUER: It's on the main plan.

SCOTT SIMPSON: It's on the main plan. We're just trying to be accommodating with the advice we've been given that's all.

CONSTANTINE ALEXANDER: Can you

work with that, Sean, if we add this to the plans?

SEAN O'GRADY: The footprint is the same?

SCOTT SIMPSON: The plans are the same.

SEAN O'GRADY: And what are the other two elevations? I only need one other elevation because the other is against the house.

SCOTT SIMPSON: Well, here's the existing, the original. It's the front and the side.

SEAN O'GRADY: Yes.

SCOTT SIMPSON: That's the front and the side.

SEAN O'GRADY: Oh, this is in the corner? So there is no -- I'm sorry.

SCOTT SIMPSON: Yes.

THOMAS SCOTT: And that, again, that looks like a tin roof to me not a shingle.

SCOTT SIMPSON: Well, it will be asphalt. That's a graphic invention differentiating siding material from what's the graphic invention.

THOMAS SCOTT: Well, we want to note it so that you know what is approved is what gets built.

TAD HEUER: So note the materials as approved --

SCOTT SIMPSON: In other words, we're happy to follow the plans as submitted. We're just trying to be --

CONSTANTINE ALEXANDER: You have to tell us what you want. I mean, we can go either way. Let's be clear.

SCOTT SIMPSON: The owner is fine with the plans as submitted.

JOHN MICHAEL SPENCE: He did want -- he insisted on the sky light.

SCOTT SIMPSON: Okay. In that case let's do this, just play it safe and let's go with this with no modification

and we'll go back and beg forgiveness from
the Historic folks and tell them we just

--

CONSTANTINE ALEXANDER: No change.

SCOTT SIMPSON: Fair enough.

Thank you. Appreciate your guidance.

Appreciate your help.

BRENDAN SULLIVAN: No change?

CONSTANTINE ALEXANDER: No,
apparently not.

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

(9:35 p.m.)

(Sitting members: Constantine Alexander,
Brendan Scott, Douglas Myers, Tad Heuer,
Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 1164 Cambridge Street
-- I'm sorry, case No. 9779, 1164
Cambridge Street.

Is there anyone here who wishes to

be heard in that case? Please come forward and give your name and address.

ATTORNEY JAMES RAFFERTY: Thank you. Good evening, Mr. Chair, members of the Board. For the record, James Rafferty on behalf of the applicant. Seated to my left Moshen M-o-s-h-e-n Rezaei R-e-z-a-e-i.

This case is a variance case brought about by the result of an exceptionally deep lot on Cambridge Street that contains a commercial building, but extends nearly the full length of the lot but into the residential district at the rear. I'm sure the Board knows Cambridge Street for nearly its entire length is a business zone district. This building was formerly the home of the Portuguese social club, an active use, 400 plus members, not always enjoying the strongest relationship with its near abutters given the level of activity. Mr. Rezaei purchased the

building a year or two ago. This is how it appeared at the time he acquired it from the club. I think it's fair to say that the club sold -- the club sold the building somewhat under duress. They had been undergoing a series of disciplinary proceedings at the License Commission with regard to the way the business was being operated. Mr. Rezaei has gone through the City's facade improvement program working with the Community Development Department on the guidelines for retail uses along Cambridge Street. As you can see, he's added new lighting. He's put in new windows. He's gutted the place and he is attempting to find a commercial tenant. And what the difficulty that has emerged is really two fold.

One is that as tenants consider the proposed use, they learn that there's a point in the building in which the zoning line changes, right in the large portion

of the building.

CONSTANTINE ALEXANDER: Give us a sense, this is the building, roughly where the line is. You said in your application 85 percent of the building is in the business district.

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: And 15 is in the residential which is the issue before us. Give us a sense of the where the line is.

ATTORNEY JAMES RAFFERTY: The zoning line is 100 feet in from the sidewalk line. So if one were to look at the two sides of the building, it's 111 feet here and 129 feet here (indicating).

CONSTANTINE ALEXANDER: Something like this.

ATTORNEY JAMES RAFFERTY: Yes, roughly. Yes, I -- I think it's in that range. And I did that by looking at the

zoning map. And in fact, I think I submitted in the assessor's plot, I tried to blow up the relevant section of the zoning map and include it with my filing so that the Board could really hone in on that section of the zoning law.

CONSTANTINE ALEXANDER: I don't think it's here. Maybe I missed it. I don't remember seeing it.

ATTORNEY JAMES RAFFERTY: Okay.

TAD HEUER: It's maybe in the Yerxa Road file.

ATTORNEY JAMES RAFFERTY: At any rate, that is the issue. It presents two challenges. The most significant challenge it presents is in addition to not being able to use the rear portion of the building and having to use that as residential, the building -- the egress, the rear door of the building is in the residential district. And the grandfathered use of the building is as a

private social club which Mr. Rezaei does not wish to have that as a tenant. I don't think it would be particularly compatible with the residential uses.

But because the egress, the second means of egress out of the building is in the residential district, the Building Department informs me that it wouldn't be sufficient to simply wall off the back portion of the building, because one of the things we talked about whereas perspective tenants have looked at the building as well, you could put up a wall and say you can only lease this portion or that. They said, no, you'll need a second means of egress. And the egress for a commercial district can't be located in a residential district. I confess I hadn't confronted that issue before, but it has the effect of making the building unusable for a business purpose, because you'd have to lop- off the portion of the building

until you got into the residential district. So you'd have to tear down a portion of the building, and then you'd end up with your egress -- I mean, if you brought the building back -- to the rear wall of the building to mirror the zoning boundary line, you'd then have to go a bit further back and have your egress on that side of the zoning line. The conversations I've had to date with the Building Department would say as long as the egress is on that side of the line, then you can egress into the rear and that would be okay, but the way the egress is now it's in the residential district.

BRENDAN SULLIVAN: In other words, the first step out of the building has to be in the business zone?

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: Even though you're going to have to continue on the residential --

ATTORNEY JAMES RAFFERTY: Correct. And a somewhat illogical outcome but seemingly based on precedent that I'm not familiar with. But at any rate, at a minimum they couldn't use the back portion for the commercial purposes that are otherwise permitted in the business district out front. In a more conservative or aggressive view, you couldn't even -- it's not that you couldn't use the building, since you can't create the egress, and the building has no side yard setback so you couldn't create egress anywhere else except out of the front of the building. So it has the effect of literally rendering the building unusable for commercial purposes. And the building was clearly constructed for commercial purposes. It has been used historically. I'm not certain what the use was before the social club, but I don't imagine it was constructed

originally for that purpose.

MOSHEN REZAEI: It used to be used as a bakery. And they used to -- and, you know --

CONSTANTINE ALEXANDER: That makes sense.

MOSHEN REZAEI: Yeah. And the portion of this back comes the land in the back, the portion comes with the deed.

CONSTANTINE ALEXANDER: One of the issues I think the neighbors, the residential neighbors have a problem with is that means of egress in the residential area goes on to a narrow right of way.

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: It's not a full city street. And if that were used as a way in and out of the building on a constant basis, that could cause noise to the residential neighbors. I was wondering, and maybe it's a question for

you, Mr. O'Grady, if we chose to grant relief to allow this business use in a residential district but condition it on the basis that this means of access and egress on the rear of the building only be used for emergency purposes so that there can't be a lot of traffic going through there. Would that be permissible?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: I think that might address, I think otherwise or sympathetic it might address the issues of the neighbors.

ATTORNEY JAMES RAFFERTY: They're legitimate issues, and I -- frankly we had anticipated that. And I discussed it with the petitioner, the fact that the Board might very well in granting the relief, limit that egress to secondary means of egress necessarily to satisfy the building code. And that would suggest no deliveries, no trash removal can go out

that door.

CONSTANTINE ALEXANDER: I'd go even further, just an emergency exit which means you only can use it for emergency, fire or whatever, and no other uses.

ATTORNEY JAMES RAFFERTY: Right. And I'm just -- I'm not certain that emergency, a limitation of emergency would satisfy the building code requirement for a second -- is an emergency egress the same as a second means of egress? I just wouldn't want to get -- are those terms used interchangeably?

CONSTANTINE ALEXANDER: I don't know.

SEAN O'GRADY: Well, that's a building code issue. But I -- I mean, the other thing, too, is while emergency seems more -- to cover more, it's also -- it was an emergency trash removal or it was an emergency delivery. So I wonder whether, you know, knocking the big ones out by

name

might --

CONSTANTINE ALEXANDER: The trouble is the other problem though is if you try to define what you can't do there, we might leave some things out.

SEAN O'GRADY: Exactly.

CONSTANTINE ALEXANDER: I don't know.

DOUGLAS MYERS: Non-reoccurring emergencies such as fire.

ATTORNEY JAMES RAFFERTY: Right. And I -- emergency was fine. My understanding of the building code is that there's a primary means of egress, and given a certain size, there's a requirement for secondary means of egress. And given the depth of the building, I know that the secondary means of egress can't be, you couldn't have both means of egress at the front is my point. So you need that -- so if the relief were limited

to emergency, is that the same as secondary or could we find ourselves in a situation where the relief doesn't meet what the building code requires and thus the building is not occupiable?

CONSTANTINE ALEXANDER: Maybe not.

BRENDAN SULLIVAN: I think a secondary means of egress is exactly that, is a second means to exit the building, not being in the same close proximity to the main entry/exit. The fact that we limit it to emergency use only does not negate the fact that it is a second means of egress under the building code. The purpose of it under the building code is to get out of the building in an emergency. So that if there is a fire in the front or whatever that you at least --

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: And so, that would satisfy the building code, I believe. So to satisfy our wishes might

be to limit it only and not be a second means of entrance into the building. It's an exit out of the building. Again, it's a classical case here of fear of the unknown I think with the neighbors.

CONSTANTINE ALEXANDER: When we get to the motion, you'll help me frame it in a way that hopefully works.

I'm sorry, go ahead, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: No, I mean that is the issue. And it generally, the hardship is related to the two relevant areas. It's the structure. It's the length of the structure, and it's the size of the lot and the lot extends. It literally it's somewhat unique although not completely unique that we have a zoning boundary line going through a structure. It does create a hardship, and because of the building code requirements, this building that hopefully will contribute to the street's -- Cambridge

Street with some viable businesses and that will appreciate the effort that's been put into the facade and the improvements, can't be leased at the moment given this problem. And it's not, as I said, simply because you can't lease at all, it's because you can't satisfy the egress requirement given that the egress is currently located in this zoning district. So, the relief would only be for the purpose of allowing the building to be functional and be used.

I should note that there was an earlier application to some reference in some of the correspondence. At one point there was a restaurant use, and there were concerns expressed in -- there will be other forums and venues. At the moment there is no tenant. There is not even a perspective tenant, but to really even get this matter with whether it's a dry goods retailer or other retailer. So what I did

in the application was to simply allow those uses that are currently allowed in the Business A District to be allowed here. And I tried to frankly eliminate a few that seemed totally inappropriate; labs and a few other things. I don't know if I did a precise enough job. But if you look in the table uses, there are the dominant uses that are allowed in the Business A District, and they're largely retail and office style uses and that's all that's being sought here. But the issues that might arise with the future use as to how -- whether there's noise, whether there's odors, whether there's sound and all that, those would have to be addressed in the appropriate forum. We're not looking today to do anything beyond position the building so that that type of operational discussion could occur at a future day.

CONSTANTINE ALEXANDER: I'm sorry,

I'm just looking, Mr. Rafferty, to the reference you made to -- okay, there it is. Okay, I found what you're referring to.

Questions from members of the Board or shall I open it to public discussion?

Is there anyone wishes to be heard on this matter? Please come forward. There are two letters in the file. Please come forward. Please come forward. I will read these letters into the file. If you are the author of these letters, I would ask that unless you're going to add something that's not in the letters, that you not speak tonight just so we can move on.

DAVID BROWN: That's fine. I'll just point out that in listening to the defense --

CONSTANTINE ALEXANDER: Your name?

DAVID BROWN: I'm David Brown. My wife Michelle Genova submitted this letter

that represents 16 neighbors and several abutters.

STEVEN MICHAELS: I'm Steven Michaels. I'm also an abutter at 82 Tremont Street, Unit 2.

MAURA KILCOMMONS: I'm Maura Kilcommons. M-a-u-r-a K-i-l-c-o-m-m-o-n-s. I'm at 24 Norfolk Street. I'm a distant abutter, not very close. Not as close as him.

STEVEN MICHAELS: We're cosigners of that letter.

CONSTANTINE ALEXANDER: Now, having looked at your letter a little bit, I'm going to have it incorporated into the record.

DAVID BROWN: That's fine.

CONSTANTINE ALEXANDER: But I don't propose to read the letter in its entirety right now. Why don't you hit the high spots from your perspective in this letter.

DAVID BROWN: Actually, even without addressing the letter since you said it's on record and understood by the committee I understand, the point that there is no opportunity to have emergency egress in a non-residential area doesn't seem true to me because there is a public business district alley available to this property, the next block, the next property unit up. And this would fall entirely --

CONSTANTINE ALEXANDER: The white area? The area that's marked in white there? Is that the alley you're referring to?

DAVID BROWN: That's right.

CONSTANTINE ALEXANDER: Is there a doorway or an entranceway?

DAVID BROWN: There is no doorway there now. There is no doorway.

CONSTANTINE ALEXANDER: You're saying we should deny the petitioner the

relief and require him to construct a doorway on that public alley, assuming otherwise that's available --

MOSHEN REZAEI: There's no public alleyway.

ATTORNEY JAMES RAFFERTY: What's the basis for the assertion that it's a public alley?

DAVID BROWN: I don't assert it's public. I just assert it's in a business --

ATTORNEY JAMES RAFFERTY: It's the abutting property.

TAD HEUER: You would need an easement over the property.

ATTORNEY JAMES RAFFERTY: Right. And you couldn't put an opening on a building with a zero lot line.

DAVID BROWN: But by the same token the alley that's available that you're suggesting to make an emergency egress is only partly owned by this

property as well.

ATTORNEY JAMES RAFFERTY: But we own the fee and we have rights to cross it, correct. That is not the case in the abutting lot.

DAVID BROWN: So then it extends to the ordinance requirement that any residential or non-residential zoning be setback 20 feet from the residential, and this would not be the case if we were to allow the emergency use of that door. Furthermore, I submit the act of policing or governing the use of that door for emergency purposes would be very difficult if not impossible. And I think there's evidence within the neighborhood that even for more --

CONSTANTINE ALEXANDER: Well, I would assume, sir, that if there was -- this rear entrance were not used for emergency purposes that persons like yourself, vigilant and law abiding

neighbors, would bring that to the attention of the Building Department.

DAVID BROWN: We already have. I mean, there's been materials stored there and we've brought this up --

CONSTANTINE ALEXANDER: We're not talking about now, in the future.

DAVID BROWN: That's true. I mean, there's a continual abuse of the alley just two -- that next alley I was pointing out for trash storage and it not being properly stored there.

TAD HEUER: The building right now is abandoned, there's no tenant, is that right?

ATTORNEY JAMES RAFFERTY: That's correct. It's unoccupied.

TAD HEUER: Unoccupied. I presume that -- well, I don't know, I'll ask. The trash accumulation you've referenced into your letter, did that accumulate while there was a tenant in the structure?

DAVID BROWN: No. There was a potential tenant there that came and stored his materials and I gather there was some construction waste or others stored there as well.

Furthermore, there's a shed at the end of this alley that's part of that property that has had trash stored in it in the past, and I do not know what the intention is for the use of that shed now with the new proposal.

BRENDAN SULLIVAN: I think that you need to differentiate it. Right now there are no controls on this particular property. And that so whatever has gone on in the past has gone on sort of out of control authority. Should the Board grant the variance with some conditions put into it, now there would be some controls to govern the code of conduct if you will, for the use of the building, some of the exits far as the alleyway is concerned, as

far as the shed is concerned and stuff like that. Right now there are no controls. This is an opportunity to put something forward.

DAVID BROWN: I do have a hard time believing that any sort of controls could be enforced or even observed over the long run.

TAD HEUER: But part of that is the nature of the alley, not the nature of the tenant, am I right? Because I mean --

DAVID BROWN: It has nothing to do with the tenant or the owner. It's all about the nature of this structure and what I observe about the --

TAD HEUER: What if someone in the structure or no one in the structure, you mentioned the other, you know, people are in the alley and there's trash in the alley and use -- all those things, it seems to me, will continue to occur regardless of whether or not there is a

tenant. And the problem is the fact that what you have is an alley that is very narrow running behind the building off a main street which is, you know, very attractive to, you know, people who want to hide stuff, leave stuff, escape from things, etcetera. And largely the problem with the physical layout of the lot, in fact, it's a narrow alley, not necessarily the fact that it is or isn't a business district tenant.

DAVID BROWN: I disagree with that. Actually, there really has been no problem now and the prior year when there has been no tenant there. It's been when there are tenants, or in the past it was the social club and during the initial construction phases of this building that people did tend to go down that alley and take up residence in the shed or do whatever. And I think any sort of use of that door, you can claim it would be

emergencies only, but only time will tell, would invite more traffic of that nature down that alley.

BRENDAN SULLIVAN: That becomes the question as to then what do you do with the building? What do you do with it?

DAVID BROWN: The building was purchased with the knowledge of its current status and situation.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: What we're doing is not necessarily increasing the value, we're very sensitive, at least I am, to situations where people buy property and they're priced on the current zoning and then run to see us and say change the zoning and make my property more valuable. That's not our role in life. But this is not that kind of situation. This is a building that has a commercial use. It can't be used for

commercial purposes at all because of this technical zoning issue. And what we're trying -- what the petitioner is seeking and we're trying to work with is to allow this building to be used but putting such restrictions on it so that the impact of the nearby residential residents like yourself will not be affected. The alternative is to have a derelict building there that I don't think with trash perhaps accumulating. I'm not sure as Mr. Sullivan has been trying to point out that at the end of the day you're better served by that. I think you're better served by having a reasoned decision, a considered decision by us putting meaningful restrictions that protect you as well as allow this building to be used for some purpose. I'm sorry.

MAURA KILCOMMONS: I was going to say I think we're all very eager to see a proper tenant in that building. It would

be an asset to the neighborhood.

CONSTANTINE ALEXANDER: But we've heard tonight is that there can't be any tenant in the building unless we give some relief.

MAURA KILCOMMONS: My question of what you just said, isn't it possible to shorten the building? It's only a one story. It has a beautiful facade. It's a flat brick one-story building. One story, is it possible to shorten it back to the --

CONSTANTINE ALEXANDER: I suppose the petitioner could shorten the building so that the building entirely sits in the business district.

MAURA KILCOMMONS: I think that's --

CONSTANTINE ALEXANDER: That's a possibility on paper, but I mean you're talking a substantial expense to do that. I'm not sure whether it's feasible from a

construction point of view. And for what purpose? If at the end of the day if we can get there without having this expense and protecting the neighbors. Because if we do that, and you have this building that's now a business use, you could have all kinds of noxious odors, a restaurant with a lot of noise and you have no protection. We're talking about some sort of protections here being proposed by the petitioner that I think at the end of the day it serves you better than what you're seeking.

BRENDAN SULLIVAN: Even if the building were to be shortened and the door were put into a conforming status, then there could be all kinds of comings and goings.

MAURA KILCOMMONS: Right. Like a courtyard there.

BRENDAN SULLIVAN: And so all we're doing is shortening up a space from

here to there. And the effect would be the same without any controls on it.

MAURA KILCOMMONS: It's just a thought because I didn't realize that the building would be unusable as in business use if this was not --

DOUGLAS MYERS: Where is the shed in the alley?

ATTORNEY JAMES RAFFERTY: It's marked on the plan.

STEVEN MICHAELS: The shed abuts our property.

DOUGLAS MYERS: Who is the owner of the shed?

ATTORNEY JAMES RAFFERTY: It's on our property.

To Mr. Sullivan's point, the effect of the restriction on the door would have the effect of restricting the use of the alley which would accrue to the benefit of the abutters. If the door was made compliant then the Board wouldn't have the

ability to, there wouldn't be the jurisdictional opportunity for the Board to oppose the condition. So the as of right solution here as costly and burdensome as it is, could result in an unfettered use of the right of way in a matter that is very inconsistent with the interest of the abutters.

STEVEN MICHAELS: We understand. I'd like to make an observation.

CONSTANTINE ALEXANDER: Your name again.

STEVEN MICHAELS: My name is Steven Michaels, 82 Tremont, Unit 2. Two issues here, just for consideration in determining what conditions you may put on the variance if you go forward in that direction, and that is the part of the building currently in the residential zone is surrounded by residences in close proximity on three sides, on both sides of the building they are literally butt to

butt, wall against wall. And then in back we are eight and a half feet from the back of their building to Mr. Brown's condominium and his upstairs neighbors.

MAURA KILCOMMONS: And above his wall.

MICHAEL STEVENS: Yeah, the buildings on both sides have condos or apartments, leased apartments above the building as well. So in considering what uses may go into the variance area, please consider that you have residents on all sides that will be adversely impacted by a range of uses that may be allowed in the commercial district.

The other item is, again, is just to reinforce the condition of the shed in the alley. By virtue of having a shed in the alley, one assumes that it has a potential for some use for storage. Which would mean that given that its access is by the egress of the back of the building, having

the shed there which is itself non-conforming by virtue, butt up against our property line, I think that it poses a question as to whether it should be allowed to remain in the alley given that it complies a use that they would use the back door for something other than emergency egress.

BRENDAN SULLIVAN: I would think the shed would probably be the first to lose its head.

STEVEN MICHAELS: We've had concerns with vermin in the area.

BRENDAN SULLIVAN: And, again, I'm not, you know, judging the disposition of the case but this is an opportunity to impose this.

CONSTANTINE ALEXANDER:
Mr. Rafferty, did I understand your suggestion and maybe I misunderstood it, that a condition that would be acceptable if we were to grant relief was to limit

the business and office uses to those sections you cited in your application?

ATTORNEY JAMES RAFFERTY: That was my intention. Now, I'm getting nervous. I hope I cited the right one.

CONSTANTINE ALEXANDER: I'm looking at them right now. They seem quite reasonable from the point of view of protecting the residents.

ATTORNEY JAMES RAFFERTY: It sounds like me, Mr. Chairman.

CONSTANTINE ALEXANDER: It doesn't include dry cleaning establishments. I know some people have objected to that. Well, I mean, you live near a business district. To say that people can't put a dry cleaning establishment nearby is farther than I would like to go.

DAVID BROWN: Is it a hardship though? I don't see that as a hardship.

CONSTANTINE ALEXANDER: The hardship being as Mr. Rafferty has

identified, the shape of the lot, the shape of the building and the requirements for two means of egress means that that building is -- the hardship is that building is not at all usable for business purposes even though 85 percent of the building is in a business district. I think that is a substantial hardship. I don't mean to quarrel with you.

DAVID BROWN: No, I see that perspective. Again, I'll just refer my own feeling and another letter submitted by another neighbor.

CONSTANTINE ALEXANDER: I'm going to read that letter into the file.

DAVID BROWN: Steven Halpern and Sarah Gibson and pointed out that, you know, use of that building as a residential building, as many of its abutting neighbors on Cambridge Street would be satisfactory and not make it a hardship.

CONSTANTINE ALEXANDER: I saw the letter. It put a light bulb in my brain at least about putting restrictions on that use of that alleyway in terms of egress from the building. So I think the letter was quite constructive. It does help advance the ball in terms of protecting the residents in a residential neighborhood. I wouldn't go as far as the person want to go to prohibit them -- deny the relief being sought but I think it's a good suggestions.

STEVEN MICHAELS: Mr. Chairman, I just wanted to ask if you could itemize for us the uses that the petitioner --

CONSTANTINE ALEXANDER: That's a fair request.

STEVEN MICHAELS: -- requested.

CONSTANTINE ALEXANDER: That's not an unreasonable request. I think all Board members should be made aware of that, too. While Mr. Rafferty is

conferring with Mr. O'Grady, I'll answer your question.

The uses that they're proposing to be permitted in the building --

DOUGLAS MYERS: In the variance area.

CONSTANTINE ALEXANDER: -- in the variance area, which would be the rear of the building would be a store for retail. Now, remember, they can't use the entrance, that entrance on the private way to get into the building. That's going to be a condition, certainly. So it's really part and parcel of the structure for the business is conducted on Cambridge Street. It will be a store for retail sale of merchandise. It would be a barber shop, beauty shop, laundry and dry cleaning, pick-up agency, shoe repair, self-service laundry or similar establishment. Hand laundry, dry cleaning or tailoring shop. A luncheon, restaurant, cafeteria.

Mortuary, undertaking or funeral establishment. A printing shop, photographer studio, art or craft studio or a bakery, retail bakery. Retail, not just a commercial bakery.

And also, and these are the things that they're suggesting. I don't want to get into a one by one discussion, but we can hear from you on those. And then also for office uses of the sort would be A through F. An office of a physician, dentist or other medical practitioner. An office of an accountant, attorney or other non-medical professional person. A real estate insurance or other agency office. General office use, bank trust company or similar financial institution or technical -- yes, technical office or research and development laboratory and research facility subject to restrictions that are otherwise contained in our Zoning by-laws.

Those are the kinds of things that

would go on in the whole structure. The structure would be the front -- the whole building. But with regard to the private way, my anticipation is that that private way entrance can only be used as a matter of egress from the building and only for emergency, secondary purposes non-reoccurring emergencies.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, I don't mean to interrupt, but I just wanted to clarify for a minute. So what -- I recall now what I did. I listed those, use of my intention for those uses that are allowed in the Business A and not all of them are. Some are permitted by Special Permit, but I didn't ask to have those uses allowed. So, for the uses that have a yes next to them for those office uses -- for those retail uses under 4.35 they're allowed as a matter of right in the Business A district is what the application hopes to

achieve.

STEVEN MICHAELS: I just want to note that there was a separate hearing last May and June before the Licensing Board with regard to use -- to permits to use the property for restaurant or entertainment licenses that were denied.

CONSTANTINE ALEXANDER: It was denied.

STEVEN MICHAELS: And those particular uses that are likely to rise to those levels concern the neighbors most significantly.

CONSTANTINE ALEXANDER: Well, those again, if he finds a tenant who wants to put in a nightclub, they have the same issues and go back to the licensing Board. What we're doing will not in any way allow it to happen.

STEVEN MICHAELS: Setting permits.

CONSTANTINE ALEXANDER: It will allow it. But there would be a second

check and balance for the licensing commission with regard to alcohol.

DAVID BROWN: You also have the ability to take that balance away now.

TAD HEUER: It already is. If you look at G under the options, which is one thing that is not allowed in the Business A District is bar, other establishment where alcoholic beverages are sold and consumed or where dancing or entertainment is provided. So that's one of the things that has not been included in his list of requests for uses.

DAVID BROWN: In my copy I have it's circled for some reason, but I see the column you're reading.

TAD HEUER: Yes. So he was citing -- this is in Section 4.35 and G is one of the uses that's bar and other establishment, that's not is what's being requested. So that will not be something that would be allowable under the variance

if it were granted.

DAVID BROWN: So that's good to hear. E and F restaurant and barroom would be allowable?

TAD HEUER: You're looking at lunch room, restaurant, cafeteria, that's E. And then establishments where no dancing or entertainment -- right.

DAVID BROWN: So I would like to oppose those uses formally.

CONSTANTINE ALEXANDER: He's not seeking those uses.

TAD HEUER: He's seeking E and F.

CONSTANTINE ALEXANDER: Are they Special Permit?

ATTORNEY JAMES RAFFERTY: No, no. The restaurant uses are as of right.

THOMAS SCOTT: He's not seeking F.

ATTORNEY JAMES RAFFERTY: What's F?

DAVID BROWN: Alcoholic beverage.

THOMAS SCOTT: Bar, saloon.

CONSTANTINE ALEXANDER: Yes, establishments where alcoholic beverages are sold and consumed, and where no dancing or entertainment is provided. So that would not be permitted under the relief.

ATTORNEY JAMES RAFFERTY: I'm sorry?

THOMAS SCOTT: On page 416.

CONSTANTINE ALEXANDER: 4.35, Mr. Rafferty, Section --

TAD HEUER: F.

CONSTANTINE ALEXANDER: -- F. That's not included in your list.

ATTORNEY JAMES RAFFERTY: Well, F is intended -- I apologize. F is intended to be included. I'm looking at this list now. It's clearly a -- restaurants were intended to be included.

TAD HEUER: E is restaurant.

CONSTANTINE ALEXANDER: Look at E.

ATTORNEY JAMES RAFFERTY: But F --

the restaurant with alcohol is an allowed use in the Business A District.

CONSTANTINE ALEXANDER: It is.

THOMAS SCOTT: It is.

ATTORNEY JAMES RAFFERTY: The narrative is says if you seek -- the description is we seek authorization for office and retail uses permitted in the Business A zone portion of the building. So to the extent that F -- those uses that have a yes in them as we talked earlier, I'm noting that the specific site, although we cited 4.35 on the subsections, it may not be enumerated, but the advertisement is clearly for those uses allowed as of right in the Business A District.

TAD HEUER: Which would also include, and I don't mean to be -- M, which is not on the list, but sales placement, new and used car rental, agency or autos, trailers and motorcycles. As I

imagine that can be done in that storefront.

ATTORNEY JAMES RAFFERTY: Does that say yes?

TAD HEUER: It says yes.

ATTORNEY JAMES RAFFERTY: Well, the intention was to merely take what could happen in the Business A and allow it to go there.

CONSTANTINE ALEXANDER: I think speaking for myself, I think your point's well taken. To the extent that a restaurant wants to --that serves alcohol wants to go into this space, that's an issue for the Licensing Commission. That's how our Zoning By-laws are set-up for the business district. If this building were entirely in the business district, they wouldn't have to come before us to rent to a restaurant that serves alcohol. But they would have to go to the Licensing Commission and neighbors

can and often do go in and object and it gets turned down. That's for your protection from the Licensing Commission. It's not a Zoning question. Because the city has told us that in this kind of a district, it's a matter of right. It's a zoning right to run a restaurant with alcohol, with alcohol being served.

ATTORNEY JAMES RAFFERTY: It is a practical matter for matters of enforcement, the License Commission has their own enforcement thing. So the use restriction imposed from here will flow through to any licensing provision, and a violation of that would be very quickly reported and addressed by enforcement authorities at the Licensing Commission if there were to be a restaurant.

CONSTANTINE ALEXANDER: I'm sorry, any further comments. I want to read into the record the other letter we received from an abutter.

STEVEN MICHAELS: I have nothing further.

CONSTANTINE ALEXANDER: We have a letter sent to us by Steven Halpern and Sarah Gibson, who reside apparently at 73 Tremont Street. "We own and live in a condominium at 73 Tremont Street. This is just down the block from the right of way between 86 and 84 Tremont Street that serves as the rear exit of 1164 Cambridge Street, the building which is the subject of the above cited petition. As you know, the rear of 1164 Cambridge Street is currently zoned as Residency 1. This zoning is appropriate since the rear of the building lies in an entirely residential setting and abuts residential buildings on all sides. In addition, the right of way is narrow and runs between two residential condominium buildings. We oppose any zoning change that would affect the residential nature of the rear of 1164

Cambridge Street and the right of way serving it. The section of the Zoning Ordinance permitting the granted variances requires that the petitioner show, amongst other things, that enforcement of the existing zoning would result in substantial hardship for the petitioner, and that the requested relief would not injure the public good. Since the premises can easily serve as a residential property, as do many similar buildings on Cambridge Street, the petitioner would not suffer a substantial hardship or be required to live within the current legal requirements. On the other hand, allowing the use of the building for commercial purposes threatens to substantially derogate from the right of the abutters and neighbors to the continued enjoyment of their homes in a residential. The purpose of the C-1 Zoning District is to conserve this enjoyment and guarantee that

residential communities are not subject to the disruption that characterize commercial uses. In June 2008 the petitioner attempted to lease the property for use as a restaurant. An application by the proposed restaurant for a wine and malt beverages license was rejected by the Cambridge License Commission after the community raised many of the same issues that now concern us about allowing a change in the zoning. The use of the building for a restaurant, bar or any similarly intrusive use, such as a dry cleaners would subject the residential abutters to noise, odors, use of the right of way for the storage or removal of garage, commercial deliveries, and the other disturbances that inevitably accompany such use. What was a quiet, residential lane would be converted into a busy, commercial alley. In addition, Tremont Street into which the right of way

empties, will be burdened by the significant increase in both commercial traffic and illegal parking. For all these reasons we believe that the requested variance is in direct contradiction of the purpose of the Zoning Ordinance and the protections intended by the designation of areas as Residency 1. By the way, the assertion of the petitioner's supporting statement of the 1164 Cambridge Street building was used as a commercial building somewhat misrepresents the situation. Until a few years ago, the building housed a Santo Christo Club, a private non-profit club open only to members. This does not constitute a commercial use. However, even in this use subjected abutters to a variety of disturbances that required frequent intervention by the Licensing Commission for excessive noise and other problems."

As I had said before, I think some of the issues that were raised by Mr. Halpern and Ms. Gibson are valid and I think we're proposing to address those in the context of granting relief. We think it's not an either/or situation. I think it's a middle ground, at least I believe, a middle ground that will protect everybody's interest.

FEMALE AUDIENCE MEMBER: Actually, do I have a chance to say one more thing?

CONSTANTINE ALEXANDER: Sure.

FEMALE AUDIENCE MEMBER: My understanding is the Licensing Commission grants licenses for liquor use. So if there was to be a restaurant that wanted alcohol, then we would have recourse to the licensing Board to stop that?

CONSTANTINE ALEXANDER: That's absolutely right.

FEMALE AUDIENCE MEMBER: Supposing it's a restaurant that does not allow

alcohol, perhaps the coffee house?

CONSTANTINE ALEXANDER: If we grant the relief I think we're moving toward, that would not require any action by the Licensing Board.

ATTORNEY JAMES RAFFERTY: Common licenses will be required for coffee --

CONSTANTINE ALEXANDER: That's true.

ATTORNEY JAMES RAFFERTY: -- for any food that's consumed on the premises would require a common license by the Licensing Commission.

CONSTANTINE ALEXANDER: Is there any experience that the Board has turned down a request for a common license?

ATTORNEY JAMES RAFFERTY: Oh, yes.

FEMALE AUDIENCE MEMBER: Oh, yeah? Okay.

So, there is a license --

FEMALE AUDIENCE MEMBER: I think a major concern is the noise late at night.

Because like I said, it's a one-story building. Everybody is (inaudible). And it's very porous, and it's noisy and even a coffee house would be noisy.

MALE AUDIENCE MEMBER: There are many large. Any business is likely to generate a large amount of trash. We have nowhere to take the trash out, and this was part of the discussion during the Licensing Board hearing and it did come up.

ATTORNEY JAMES RAFFERTY: And those are very legitimate issues, and the Licensing Commission in these -- the commercial corridor in Cambridge whether it's Cambridge Street or Mass. Ave, the Licensing Commission -- they all abut residential areas. So, there are conditions that that trash has to go out the front. The loading has to happen in the front. That's why they've got loading zones on Cambridge Street.

The operational issues associated with any of these business uses can be directed between the Traffic Department and the Licensing Commission to be happening in the Business District. I agree, I don't think there isn't even a curb cut as you know at the end of that alley, the Tremont Street is residentially parked. You couldn't park a commercial vehicle to load there. There's a variety of enforcement mechanisms.

I had a little familiarity with the prior use. One of the issues was when the spoking ban went into effect, that back door in that alley came a place for those people who were the non-profit, charitable types that they were, they did seem to smoke a bit. So I think they created as much nuisance with that as anything else.

MALE AUDIENCE MEMBER: It damaged (inaudible).

CONSTANTINE ALEXANDER: I want to

close public comments if I may.

MALE AUDIENCE MEMBER: Thank you.

CONSTANTINE ALEXANDER: No, you don't have to leave.

But I think we're ready to have a discussion, if we do want to have a discussion, among the members of the Board. If not, we can move to a motion. Comments?

THOMAS SCOTT: The shed that they spoke about in the alley is that, does that belong to the property in some way? Or it does --

ATTORNEY JAMES RAFFERTY: It was there already.

THOMAS SCOTT: What's it used for?

MOSHEN REZAEI: Being used in the past for, you know, storing -- I mean, I haven't used it since I bought the building. But you know the previous owner --

THOMAS SCOTT: It wouldn't be used

for trash, would it?

MOSHEN REZAEI: The shed isn't there, you know, I cannot move the shed.

ATTORNEY JAMES RAFFERTY: No, no. The question is what's it used for? Is it currently storage?

MOSHEN REZAEI: Currently not being used.

ATTORNEY JAMES RAFFERTY: There's nothing in it.

THOMAS SCOTT: Nothing in it. My concern is what would it be used for?

CONSTANTINE ALEXANDER: You rent it to someone, someone's going to use the shed for whatever they're going to use it for.

ATTORNEY JAMES RAFFERTY: Well, I would say if they can't go out the door except for emergencies, how the heck are they going to get to the shed?

CONSTANTINE ALEXANDER: So storage.

DOUGLAS MYERS: Removing the temptation. The temptation is very strong, isn't it, to use that shed? Human nature being what it is.

THOMAS SCOTT: And the operator would have the key to open the emergency door, could use that door, you know, if they chose.

MALE AUDIENCE MEMBER:
Additionally the shed is not in particularly good repair at this point, and we believe that it has been a nesting area for rodents.

CONSTANTINE ALEXANDER: Speaking again for only myself, I think we're maybe getting too deep down in this. I think there should be legitimate concern about the shed, but I think there are also self-correcting ways of dealing with this. Namely, a vigilant neighborhood. This is used for trash or people are abusing that rear entrance, I think there will be

action taken by the City.

MALE AUDIENCE MEMBER: But by converting the use of that land, I mean, you're putting the onus on us to now police the business district --

CONSTANTINE ALEXANDER: Our job is to strike a somewhat of a reasonable balance.

MALE AUDIENCE MEMBER: I understand that.

CONSTANTINE ALEXANDER: We have a structure in the city that was built for commercial purposes, that should be used for commercial purposes. I mean, we always have this tension when a residential areas abut business areas. And we're never going to get a perfect solution. So, you're right. I'm not disagreeing with you. But I don't know how otherwise to balance the considerations.

DOUGLAS MYERS: There are

thousands of people in Cambridge who have the burden of calling city authorities to enforce the existing regulations.

BRENDAN SULLIVAN: But the petitioner that is now before us is asking for considerable relief, and I think this is probably the only bite of the apple is to do away with that shed.

ATTORNEY JAMES RAFFERTY: Could I just offer --

BRENDAN SULLIVAN: It has no purpose.

ATTORNEY JAMES RAFFERTY: I was going to offer a slightly contrary view, which is that I suspect that this is not the last opportunity. And from here there will be -- when a tenant is identified, and if that tenant intends to go to the License Commission, I would think that the success of that tenant's application is going to have -- is going to be very much affected by the reaction of the abutters.

And I would assume that in addressing abutters' concerns, that that issue may be very much something that will need to be addressed.

CONSTANTINE ALEXANDER: That assumes that the hypothetical tenant is going to be a restaurant. Suppose it's a dry cleaning establishment?

BRENDAN SULLIVAN: One that does not require any relief.

CONSTANTINE ALEXANDER: There's no need to go for a license --

ATTORNEY JAMES RAFFERTY: True.

CONSTANTINE ALEXANDER: -- and you use that shed to store chemicals.

ATTORNEY JAMES RAFFERTY: Well, I don't think --

CONSTANTINE ALEXANDER: I'm not saying you're going to do that. Or something other than smelling laundry. But there is no protection.

BRENDAN SULLIVAN: I think a quid

pro quo would be -- I would be amenable to grant the relief but that the shed should go.

CONSTANTINE ALEXANDER: That the shed should what?

BRENDAN SULLIVAN: That the shed should go. It is of no use other than to be an eye sore and a thorn in the neighbors' side. It only invites entry, exit.

CONSTANTINE ALEXANDER: Further comments from members of the Board?

BRENDAN SULLIVAN: And we're precluding the exit to it if you will.

CONSTANTINE ALEXANDER: I see you've been (inaudible) is that something you want to give me or you trust me to try on my own?

DOUGLAS MYERS: I would like to raise a question if there are any of the uses that are presently part of the variance request that would specifically

be permitted in the variance area in the event this Board were to grant the variance.

CONSTANTINE ALEXANDER: No, I think the motion that Mr. Rafferty's coming out, and I agree with it, is that any use in the business district is a matter of right.

ATTORNEY JAMES RAFFERTY: The Business A District.

CONSTANTINE ALEXANDER: Business A, yes, the district with the rest of the building. Thank you.

As a matter of right, that would be permitted in a residential portion of this building. If it required a Special Permit or a variance, that would not be permitted and they would have to come back before us.

DOUGLAS MYERS: There's one use that may be permitted as of right in Business A that I had been eluded to

several times, and each time I'm disturbed because it would be by virtue of any variance granted by this Board, it would be extended into what an area that was hit for residential, and that is dry cleaning. I just think the fluid, the smells that are associated with that, and yet it's come up as an example several times. I'm just wondering whether the Board wants to consider it?

CONSTANTINE ALEXANDER: If I may respond to this. If you go back to a suggestion that the building be truncated, so it's located only in the business district, and no relief is required, and a tenant wanted to come in and put in a dry cleaning establishment, you'll have the same issues in the building. The new building, the truncated building is going to be located relative -- very close to a residential area.

DOUGLAS MYERS: 100 feet closer.

CONSTANTINE ALEXANDER: Further.
Not that much further. I mean, I don't
know --

THOMAS SCOTT: Could we stipulate
that it's green cleaning processes only?

ATTORNEY JAMES RAFFERTY: I was
going to say, in the Business A District
the dry cleaning, they wouldn't be able to
have the plant. So and most dry cleaning
is drop off and the work is done
elsewhere. So I think the one that's
permitted in the Business A District, and
I've just asked Sean --

CONSTANTINE ALEXANDER: We had
this days before.

ATTORNEY JAMES RAFFERTY: You had
this case on Mass. Ave. down the street
not too long ago. And the issue is when
is it a dry cleaning plant, and when is it
a retail dry cleaner? I would say for a
dry cleaning plant, there would be no
desire to have it. And if that was the

distinction that provided the safeguard that members were concerned about, then, well, that's fine. My sense of the Business A dry cleaning is it's limited to the retail aspect of dry cleaning.

SEAN O'GRADY: There's actually a footnote, and the footnote says provided that only non-flammable solvents are used for cleaning and not more than nine persons are employed.

DOUGLAS MYERS: I was more reassured by what Mr. Rafferty said.

TAD HEUER: That seems to be every dry cleaner I know of, isn't it?

SEAN O'GRADY: Well, there's actually something more intense called a dry cleaning.

CONSTANTINE ALEXANDER: We can further modify to seek the relief to allow dry cleaning only of a retail nature and not where dry cleaning done on the premises.

ATTORNEY JAMES RAFFERTY:

Processing plant.

CONSTANTINE ALEXANDER: I mean, that's just not going to make a difference. Most dry cleaners these days don't do it on-site. And that would satisfy your issues.

MALE AUDIENCE MEMBER: That would alleviate my concern.

CONSTANTINE ALEXANDER: That sounds all right to everyone? Should we try a motion? And please everybody join in.

The Chair moves that a variance be granted to permit the use in the back portion of 1164 Cambridge Street that are located in the Residence C-1 Zoning District. That uses be allowed in that residential portion -- residentially zoned portions of the building of such uses that are permitted as a matter of right in the Business A District.

Such variance would be granted on the condition -- I mean, on the basis that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. That hardship is that unless relief is granted, given the requirements of access and egress or a secondary means of access and egress, there would be no abilities to use this commercially -- this building that was built for commercial purposes, designed for commercial purposes, and in fact is 85 percent of which sits in a commercial or Business A District.

That the hardship is owing to certainly to the size of the lot. It's a very long, unusually long and narrow lot. And the nature of the structure, it is a commercial structure that occupies virtually the entire lot.

And that relief may be granted without substantial detriment to the

public good or nullifying or substantially derogating from the intent or the purposes of the ordinance.

And that condition would be satisfied based on the conditions we're going to impose on the variance being granted. And those conditions would be that with respect to the right of way between 82-84 and 88-90 Tremont Street, the means of egress and access on that right of way be limited only to egress from the structure, and that egress would be used only as a secondary means of egress for non-reoccurring emergency situations.

And further, that to the extent that this structure will be used for dry cleaning purposes, that the dry cleaning purposes are limited to retail dry cleaning, i.e., dry cleaning work where the note dry cleaning is done on the premises.

Is there anything else?

BRENDAN SULLIVAN: The shed.

CONSTANTINE ALEXANDER: I'm sorry?

TAD HEUER: The shed.

CONSTANTINE ALEXANDER: Oh, the shed. I'm sorry.

And on the further condition that the shed that appears to the rear of the structure be promptly removed. And any damage to the structure or alteration of the structure be rectified.

Yes, sir.

ATTORNEY JAMES RAFFERTY: Could there be a limitation on the use of the shed? The only concern is structurally there's a concern that it's tied into the building, and that the removal of it -- it could be sealed and closed off and not used.

CONSTANTINE ALEXANDER: I'm fine. As long as the condition is that the shed not be used for any purpose whatsoever,

and be sealed, and as you said, sealed and shut off.

Can we hear from members of the Board.

BRENDAN SULLIVAN: I'd like to see it removed.

CONSTANTINE ALEXANDER: Okay.
The motion is that we remove the shed.

Are we ready for a vote?

DOUGLAS MYERS: There has to be a way without providing deep structural damage to the building.

CONSTANTINE ALEXANDER: Before we take a vote, I want to give you one last chance to comment on this.

ATTORNEY JAMES RAFFERTY: I'm just trying to understand the shed. I have a photo of it here. Your concern is?

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

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, the shed also serves as a --
to prevent cut-through of people going
through the alley.

CONSTANTINE ALEXANDER: You can
put a wall there in place of the shed,
that would solve that problem right there.

MOSHEN REZAEI: What I was saying
--

ATTORNEY JAMES RAFFERTY: He wants
a wall up in front of the shed door he's
saying. Leave it there.

CONSTANTINE ALEXANDER: Rather
than remove the shed put a wall -- brick
front.

ATTORNEY JAMES RAFFERTY: Yes,
just tie -- yes, close up the shed.

CONSTANTINE ALEXANDER:
Effectively making the shed unusable but
leaving it --

DOUGLAS MYERS: Rendering it
permanently inoperable.

FEMALE AUDIENCE MEMBER: There's a

vermin issues.

CONSTANTINE ALEXANDER: I'm sorry?
One at a time. Say it again?

BRENDAN SULLIVAN: It's an
attractive nuisance.

MALE AUDIENCE MEMBER: A public
health issue.

BRENDAN SULLIVAN: The shed should
come down, and to prevent people from
cutting through, a chain link fence goes
up. That's a simple solution to that.
It's cats and rats and animals that are
going to be in there.

CONSTANTINE ALEXANDER: I think
the motion then will stand, that the shed
be removed, properly removed. I think
that's the sentiment of the Board.

ATTORNEY JAMES RAFFERTY: Subject
to Historical Commission approval.
Obviously it's more than 50 years old.

CONSTANTINE ALEXANDER: Ready for
a vote?

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

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. The motion carries.

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

ATTORNEY JAMES RAFFERTY: Thank you very much.

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

(10:30 p.m.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call with apologies 133 Pearl Street, case No. 9780.

Please come forward. Give your name and spell your name and the address for the record, please.

GULZADA KORKMAZ: Gulzada Korkmaz, the petitioner, homeowner. G-u-l-z-a-d-a K-o-r-k-m-a-z.

CONSTANTINE ALEXANDER: Sir.

DERICK SNARE: Derick D-e-r-i-c-k S-n-a-r-e. 158 Central Street,

Somerville.

CONSTANTINE ALEXANDER: Are you the architect?

DERICK SNARE: I am the architect.

CONSTANTINE ALEXANDER: And the project you're seeking relief on involves the construction of a dormer, a variance to build a dormer?

DERICK SNARE: Yes.

CONSTANTINE ALEXANDER: And the problem you have from a zoning point of view is that -- it's an FAR issue?

DERICK SNARE: Yes.

CONSTANTINE ALEXANDER: In this district you have a max of .6, and right now you have a non-conforming structure of .71. And with this dormer you will go to .73. So slight increase in the non-conformance of the structure?

DERICK SNARE: That's it.

There's an existing stair to the third floor which has two bedrooms. It's

extremely steep. I mean, you actually -- I actually have to go up this way. I think there are maybe 11 risers -- no, 10 risers and we're proposing 13. But in order to get the head room, we need a dormer.

CONSTANTINE ALEXANDER: Safety issues and probably building code and compliance issues is why you need this dormer with regard to the stairway.

DERICK SNARE: Yes.

And actually, they have a special needs child which I failed to note in my letter.

CONSTANTINE ALEXANDER: But you're not looking to build another master bedroom suite with this dormer or anything like that?

GULZADA KORKMAZ: No.

DERICK SNARE: It would be two rooms, there's no bathroom up there. I mean, actually we're adding 37.5 square

feet of living area.

CONSTANTINE ALEXANDER: Questions from members of the Board before I open it to public comment?

(No response.)

CONSTANTINE ALEXANDER: No questions.

Anyone here? Yes, sorry, Mr. Heuer?

TAD HEUER: So you have the dormer going into the ridge line?

DERICK SNARE: Yes.

TAD HEUER: Is that right?

Usually we prefer them not to go into the ridge line. Is that because that's the only way to get the code compliant door on the facing side?

GULZADA KORKMAZ: The bedroom. Yeah, we need those two bedrooms.

DERICK SNARE: Well, and there was also an economic issue. The contractor says that it would be cheaper to run it into the ridge line. And I thought the

way the former guidelines -- they gave you a little bit of leeway on that. We're meeting the other obligations. In fact, it's shorter than the width.

CONSTANTINE ALEXANDER: What you're saying is you're substantially complying with the former guidelines. And what happens before, the ridge line is the one that often goes. Not that we like it, but I mean under the circumstances we've accepted that in the past.

TAD HEUER: That's it. Just curious.

BRENDAN SULLIVAN: Can I see the drawings for a second?

CONSTANTINE ALEXANDER: While Mr. Sullivan is looking at the plans, anyone wishes to be heard on in matter.

The Chair sees no one.

LANA SORENSON: I'm just wondering if we could see the blueprints?

CONSTANTINE ALEXANDER: Oh, I'm

sorry. I didn't see you. You can come forward and look over Mr. Sullivan's shoulder.

If we grant relief, we will do on the basis that the work must proceed in accordance with those plans. It's not an open-ended right.

BRENDAN SULLIVAN: This is the front of the house and there's a dormer?

TAD HEUER: The dormer is on the Perry Street side; is that right?

DERICK SNARE: Yes.

BRENDAN SULLIVAN: Here's the front of the house.

LANA SORENSON: My name is Lana Sorenson. And I'm the abutter that is the immediate neighbor on the right-hand side. And we don't have any problems with it. It actually makes a lot of sense.

CONSTANTINE ALEXANDER: Thank you for taking the time to say so late.

LANA SORENSON: Well, you promised

us 20 minutes. I'm expecting you're going to give it back to us.

BRENDAN SULLIVAN: He lies.

CONSTANTINE ALEXANDER: Brendan, any questions?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: Are we ready for a motion?

The Chair moves -- give me those plans back at some point, Brendan.

The Chair moves that a variance be granted to petitioner to construct a variance -- a variance to construct a dormer at the premises of 133 Pearl Street.

Such variance would be granted on the basis that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. Such hardship being that you have a non-compliant, code compliant stairway that's not functionally usable as

it should be. And this will allow the building to be used for the residential purposes -- the third floor to be used for residential purposes as intended.

That the hardship is owing to circumstances relating to the shape of the structure and the age of the structure. The structure being an older one, non-conforming directly before the Zoning By-Law was adopted.

And that desirable relief may be granted without substantial detriment to the public good. The relief being sought as modest. It allows better use of a residential structure in the City of Cambridge. It has been supported by the most directly affected abutter, and otherwise there seems to be no objection from any portion of the community.

Such variance will be granted on the condition that the work proceed in accordance with plans submitted by the

petitioner. They are 1, 2, 3, 4, 5, 6, 7 -- 7 pages. The first page of which has been initialed by the Chair.

You understand that these are the plans? These are not conceptual drawings. We're going to hold you to these plans.

DERICK SNARE: Yes.

CONSTANTINE ALEXANDER: Anyway, on the basis that the work proceed in accordance with these plans.

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

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

CONSTANTINE ALEXANDER: One housekeeping item that we have a Special Permit application that you have to withdraw. I trust that you're going to

ask us to --

GULZADA KORKMAZ: Withdraw,
please.

CONSTANTINE ALEXANDER: Thank you.
The Chair moves that the petition
for a Special Permit at the premises of 33
Pearl Street be withdrawn.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Withdrawn.

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

DERICK SNARE: Thank you.

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

(10:40 p.m.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call 239 -- 279 Huron Avenue. Case No. 9781.

Is there anyone here wishes to be

heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair is in receipt of a waiver of notice of the time to render a decision. I don't think we have an actual formal request or maybe we do. I'm sorry, we do. There's a letter in the file from Maggie Booz, a principal at Smart Architecture. "On behalf of my clients Joe Ronayne and Miruya M-i-r-u-y-a Nadal of 279 Huron Avenue in Cambridge, I hereby request a continuance of the zoning variance request they have made for their property. They are scheduled to be heard on Thursday night, May 14, 2009, but they already have been scheduled for a Special Permit hearing for their property on May 28th. So they would be happy to have the two hearings combined into one night. They and I will not be present on the May 14th as you have instructed us and will appear

on the May 28th instead. This letter will serve as explanation, and I have signed a waiver on their behalf as well. Thank you for your assistance in this matter.

SEAN O'GRADY: There's a great story why those are connected.

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

CONSTANTINE ALEXANDER: Can we do it on May 28th?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Seven o'clock?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on May 28th as a case not heard, on the condition that the sign advertising the hearing be changed to reflect the new hearing date.

All those in favor, say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The motion is granted.

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

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

(10:45 p.m.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9782, 147 Lakeview Avenue.

Is anyone here wishes to be heard on this case? Please come forward.

ATTORNEY JAMES RAFFERTY: For the record, James Rafferty on behalf of the petitioner. Seated to my immediate left is Dan Anderson, the architect. And to Mr. Anderson's left, the property owners John and Julia Goldberg. But I know Mrs. Goldberg has a different last name.

JULIA FABER: Faber. Goldberg will do. I'll respond to Mrs. Goldberg.

ATTORNEY JAMES RAFFERTY: Thank you.

The Goldbergs are recent arrivals to our fair city. Having come here from Nashville, Tennessee.

CONSTANTINE ALEXANDER: Show good judgment at least.

ATTORNEY JAMES RAFFERTY: They have happily settled here with their two sons. They purchased a home on Lakeview Avenue just in from the corner of Huron

Avenue. A prior owner had renovated. Previously it had been a two-family house, and so its intensity of use was somewhat reduced. It's a single-family house. And it is a fine home, but notwithstanding all the attributes of the renovation, it was left with a somewhat peculiar condition on the third floor. And that is third floor space that was designed for a room, but the two bedrooms that are on the -- two of the bedrooms on the second floor are really significantly undersized. So the Goldbergs sought out Mr. Anderson to see what opportunities they might have to enhance the third floor space. And the reason they did that is at the time of their acquisition, the seller represented to them, and in fact, Mr. Anderson has confirmed it, that there would be an opportunity to put an addition on the third floor here that would not have a GFA implication. And that is to simply to do

a rather awkward, almost clear story that would stay within the 35 feet, but as long as it was an area on the third floor that's about five feet that's already being counted for GFA. And it was kind of a -- somewhat a manipulation and it didn't result in anywhere near a sufficient a space in the design of it. And we have some imagery of it, it's really quite awkward. So no, that's what we're trying to get done tonight. That's the -- that's what Mr. Anderson is here for. I'm just the set-up man as you know.

So, it really came down to the use of this third floor for a bedroom. It's got very small ceilings. But as you know, in that space if it's already over five feet, it's included anyhow in the GFA. So, the answer was well, you can raise the ceiling in a way that wouldn't have a GFA implication, because just raise the ceiling on areas that are already GFA, and

if you stay in the volume issue, you should be fine. A long way of talking about what we're not trying to do, but just giving a bit of context. Because I said to the Goldbergs who are very nice people as I've got to know them, I said well, I'll tell you what my experience has been.

Someone might say, gee, you just bought this house and you kind of knew what you were buying when you bought it. And how you would respond to that? And I said, you know, this kind of also -- there's sometimes if you've been here a long time and your family is expanding and you'd like to stay in the city, sometimes there's a little appreciation for that. And their story's a little bit different in that Professor Goldberg actually wrote it out for me, and I submitted it in the file, and it is true that the Goldbergs knew what they were buying. But as

Professor Goldberg noted, they also made a commitment, they wanted to live in Cambridge. Their two sons, I hear they're teenage sons. And I said well, if you're going to be looking at dormers, you should be aware of the dormer guidelines which led us to this process. And there was an earlier application, an earlier filing that was, I think, Mr. Anderson got the sense from Mr. O'Grady at the time of filing that might not -- it might not fair too well. So there was an attempt to rethink the approach. And so what's been filed earlier this week was an amended version that attempts to be responsive to the guidelines and also work within the existing design of the home. And it is a GFA implication for which we need zoning relief. And Mr. Anderson can show you there are a couple of images that, again, I think that one -- no, this is kind of like the beauty pageant, this would be the

swimsuit contestant.

CONSTANTINE ALEXANDER: As you know we're going to have to tie the relief, to grant the relief to certain plans. So now I'm a little confused now. I know the revised plans. I know the ones were marked revised, I thought, seemed to be much more favorable. I agree with your assessment than what we saw originally. That's the original one. So I want to make sure we -- maybe if you have an extra set of the plans with you, that would be fine. I want do make sure we identify the plans that we're going to pass on tonight. And those would be the plans that you've heard me say before to other members -- to other people, that's what you're going to have to live with.

ATTORNEY JAMES RAFFERTY: And in conclusion, the abutters to the property --

CONSTANTINE ALEXANDER: Yes, we

have the letters.

ATTORNEY JAMES RAFFERTY: -- are all in support. It's a well-established neighborhood. Most of the abutters have been there for a long time and they've been extremely welcoming and accommodating to the Goldbergs. And they've been appreciative of that. So as they've looked at different schemes, they've really tried to balance what they're trying to achieve in a respectful way to the house, the neighbors and the guidelines. So, Mr. Anderson can kind of walk you through the program and what's driving the dormer size.

DAN ANDERSON: I'd be happy to. Do you have a copy of the amended plan that's clear enough?

CONSTANTINE ALEXANDER: We do somewhere. It's buried. A lot of loose sheets in the file.

TAD HEUER: That.

DAN ANDERSON: That would be it.

TAD HEUER: And then that?

ATTORNEY JAMES RAFFERTY: That was produced today because there was a concern that the elevations didn't show the street elevations. So that was produced today. So that was submitted.

CONSTANTINE ALEXANDER: These two pages?

ATTORNEY JAMES RAFFERTY: Those two pages, right. That's the revised plan, both in elevation and floor plan. And then that was further supplemented by the perspective, as well as the front elevation which admittedly shows this in an exaggerated form. And the front of it -- and Mr. Anderson is going to explain why it's exaggerated. And that this is the view that will be experienced from Lakeview Ave. on a more consistent basis than what's appearing in the elevation because of the depth, how far setback this

is along the roof. That is a one-dimensional drawing would suggest that it's very prominent in the front facing the house, when in fact it's considerably back some --

DAN ANDERSON: 25 feet.

So you have when looking at that elevation it looks extraordinarily prominent and it behooved me to submit that to say this is more realistic sense of what the dormer would present itself to the passerby.

So the only thing that I'd like to add to --

ATTORNEY JAMES RAFFERTY: You want to just walk them through the floor plan?

DAN ANDERSON: Sure.

I have a version of that floor plan. It has a non-finalized interior layout, but essentially 16 feet to 20 feet back from the front face of the building is a proposed dormer, gable end dormer running

perpendicular to the ridge on both sides. The overall dimensions are pretty much generated and do vary from dormer guidelines and that it's 16 foot 6 as an outside dimension. So addressing that first of all, sine it's not 15 feet why that is. We would have been very happy to do it at 15 feet to conform, but there are some particularities about the structure of this building. There's a bearing wall here (indicating), and it's only one point column support that was modified previously. So these are the two bearing points for the structural load of this. So that's what generates that 16-foot 6 web rather than the 15. And it would be a considerable structure engineering feat since there are no other supporting walls below that. Neither on the second floor, the first floor or the basement to carry that structural load. So we look for your indulgence in looking at that width.

The proposal is that this room being a bedroom for their teenage son, and that one point he grows up and moves out, that it might be possible to use as a guest bedroom and possibly a study which this shows the possible configuration for. We're still trying to find the exact location for the bath and that has to do with plumbing chases and things here. So in terms of plan there are two spaces, a master bedroom on the second floor and a stair opening toward the front of the house that are open to below. So part of the reason that this condition happens is that there is essentially a mezzanine third floor which is connected solely with the stair down to the second floor.

ATTORNEY JAMES RAFFERTY: The GFA numbers, Mr. Chairman, are an additional 167 square feet resulting in FAR from .66 to .68.

CONSTANTINE ALEXANDER: In a

district that is supposed to be .5 to .35.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: Already in a non-conforming structure and you're talking about a slight addition to the non-conformance --

DAN ANDERSON: That's correct.

CONSTANTINE ALEXANDER: -- and FAR.

DAN ANDERSON: And this particular design -- yes.

TAD HEUER: I have a technical question about the advertisement. I see on the application it says for a dormer for third floor bedroom. On at least the piece that I see from the City of Cambridge, it's a variance to raise the roof. How was it actually advertised?

SEAN O'GRADY: As it's printed here, is as it's printed, to raise the roof.

TAD HEUER: But there's no need

for any relief to raise the roof because you're under 35 feet, right?

SEAN O'GRADY: Correct. It's not only the height, it's FAR. It's, you know, when you raise the roof, it's not only height that you implicate.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: My sense is that earlier design, since it didn't have most of the attributes of a dormer, I think it was probably felt it was more descriptive to call it a raised roof. Notwithstanding the fact that it's seeking height relief. But I think it was a more complete description and properly for notice purposes more thorough than simply --

CONSTANTINE ALEXANDER: And the advertisement does refer to Section 5.131, the table dimensional requirements.

TAD HEUER: Which we all have handy.

CONSTANTINE ALEXANDER: Yes.

Questions from members of the Board?

DOUGLAS MYERS: I have a question. How high, if at all, will the highest point of the dormer be above the ridge pole of the ridge line of the house?

DAN ANDERSON: Of the existing ridge line?

DOUGLAS MYERS: Yes.

DAN ANDERSON: About two foot ten is what's currently proposed. Which is two inches, the existing ridge line is 32 feet above average grade.

CONSTANTINE ALEXANDER: Still will be consistent with 35.

ATTORNEY JAMES RAFFERTY: Yes.

DAN ANDERSON: Yeah, it would be 34.

DOUGLAS MYERS: And are you in a position to say how high the highest point of the dormer will be in relation to the ridge lines of the immediately abutting

houses?

DAN ANDERSON: I couldn't exactly hazard a guess, but it is certainly lower than the brown house away from Huron.

JULIA FABER: I think it's lower than both.

JOHN GOLDBERG: I believe it's lower than both.

DAN ANDERSON: There is kind of a cream-colored gambrel roofed house on the corner, and that also appears to be probably 30 --

ATTORNEY JAMES RAFFERTY: The Assessor's plot might show --

CONSTANTINE ALEXANDER: That's in the file here.

DAN ANDERSON: 35 to 36 feet.

DOUGLAS MYERS: But in any event you would say that it would not substantially exceed the ridge lines of the immediate abutters?

DAN ANDERSON: No. In general it

would still remain below the height of the brown house uphill and be equal or lower than both abutters.

THOMAS SCOTT: Did you look at a shed solution that does not exceed the height of the existing roof?

DAN ANDERSON: Yes, we did.

THOMAS SCOTT: And why doesn't that work?

DAN ANDERSON: For a relatively low pitch 2 and 12 which I would say it's just about enough to shed water, which would have to be a rubber membrane roof, starting at the ridge and traveling out to a reasonable distance, you end up with an interior height at the outside face of about five foot, nine. So you're at, I would say, you're left with a significantly smaller habitable area that -- their teenage sons happen to be tall and in general it seems like a not particularly workable solution.

ATTORNEY JAMES RAFFERTY: I can represent there were many redesigns seriously looked at. What about the shed? What about the spacing it for that very reason. Because we recognize that that disparity within the existing roof line is -- the hardship has to really do with the existing height of the interior space.

CONSTANTINE ALEXANDER: Tom, any comments?

THOMAS SCOTT: I'm just a little troubled by the fact that this secondary element on the roof is -- has become more prominent than the main roof just by virtue of its height, and was kind of hoping that you had looked at a shed solution and that maybe that would work. But you're saying dimensionally you couldn't get enough head clearance at the perimeter edges of the space?

DAN ANDERSON: Right. Consider the inside ceiling is at seven foot and

that you're travelling out about eight to ten feet in each direction, that that head room drops off significantly quickly even at a 2 and 12 slope.

BRENDAN SULLIVAN: It wouldn't comply with the building state code either for minimum height. Minimum average height in a new structure, the existing is grandfathered, but when you're creating new space, it has to comply with the state building code. So a minimum average floor to ceiling height and --

THOMAS SCOTT: And has to be seven feet?

BRENDAN SULLIVAN: Seven feet. Coming off the existing ridge, you have a --

THOMAS SCOTT: You immediately start to travel.

BRENDAN SULLIVAN: Correct.

TAD HEUER: So you're representing that the distance between the ridge line

and the dormer here is two and half feet;
is that right?

DAN ANDERSON: Yes. Two foot ten
to be precise.

ATTORNEY JAMES RAFFERTY: The peak
of the roof and the peak of the ridge line
of the dormer.

TAD HEUER: Right. So this isn't
to scale, right?

ATTORNEY JAMES RAFFERTY: No.

DAN ANDERSON: It should be. I
can grab my scale.

TAD HEUER: Really?

DAN ANDERSON: It may have been
misprinted, but I believe it --

ATTORNEY JAMES RAFFERTY: Well, I
mean it's a reproduction from -- that I
did on the copy machine, so I didn't do
the scale on it. But what we're saying is
that dimension is two and a half feet,
correct?

DAN ANDERSON: Yes. Two foot, ten

inches.

ATTORNEY JAMES RAFFERTY: Oh.

TAD HEUER: Oh, okay.

DAN ANDERSON: So clearly there is a re production scale issue.

DOUGLAS MYERS: Where is that shown? Is that shown to scale on any of the document that is we have?

TAD HEUER: If that's to scale, that's tall.

ATTORNEY JAMES RAFFERTY: Well, as to the issue of scale, I'll defer to Mr. Anderson, but the representation is that it extends over the existing ridge line two feet --

CONSTANTINE ALEXANDER: Like the application says, two feet, ten inches.

TAD HEUER: I know what the application says.

ATTORNEY JAMES RAFFERTY: But I printed this off a PDF and I think it got, it might have got distorted. But we could

probably provide a scaled drawing.

BRENDAN SULLIVAN: It won't scale properly.

ATTORNEY JAMES RAFFERTY: Right. That's been my experience with it.

BRENDAN SULLIVAN: It gets shrunk.

CONSTANTINE ALEXANDER: Are these plans to scale?

DAN ANDERSON: They may have the same problem with that since they were -- you can see that they're cropped in the printing. But in any case, I can warrant that there will not be a height there greater than two foot, ten. And you can annotate that.

CONSTANTINE ALEXANDER: If it were greater than that, you would go over the 35 foot --

DAN ANDERSON: We would.

CONSTANTINE ALEXANDER: -- and then you have other problems.

DAN ANDERSON: Right, and we would

have other problems. The intent is not to go any higher.

TAD HEUER: Is there a reason there's only a partial elevation?

DAN ANDERSON: I think they're both in the same sheet of paper. The north elevation, since they were substantially the same dormer elevation, I didn't draw the whole building face.

TAD HEUER: But that's the only -- the north violation is the elevation with the existing gabled feature, correct?

DAN ANDERSON: No.

TAD HEUER: On the second floor?
No?

DAN ANDERSON: No. It's the south elevation is the existing unless I have my orientation completely wrong.

TAD HEUER: (Handing document.)

DAN ANDERSON: Yep. So part of -- there is some reconfiguration of that existing -- that gable and that bay piece

here.

TAD HEUER: Yes.

DAN ANDERSON: That has an existing, there's some demolition of that existing gable.

TAD HEUER: That will be taken off?

ATTORNEY JAMES RAFFERTY: Yes. Noted. Right, that's the difference.

DAN ANDERSON: So there's some -- in order to have that not kind of jam into that, and I think create a very chaotic elevation, proposal is to shed that roof consistent with some of the others.

THOMAS SCOTT: It's too bad that doesn't line up I guess because of the varying points.

DAN ANDERSON: It's the varying points that are -- is really what we --

ATTORNEY JAMES RAFFERTY: Tried it mildly to see if it would --

DOUGLAS MYERS: I'd still like to

repeat my concern, not on the substance of the application, I'm satisfied that the existing ridge of 2.10 inches is acceptable. I'm concerned that there's no document in our file on that point that is important to me, I don't know about the other Board members, that actually reflects a scale drawing that would enable the Board to refer back to that with the building inspector to refer back to it in a reliable way.

CONSTANTINE ALEXANDER: Again, without a scaled document, if they did that, if it's not done to scale, the building would be higher than two feet, ten inches they're going to have a height issue.

DOUGLAS MYERS: That point shown to scale on any document.

CONSTANTINE ALEXANDER: When the time comes to get the file, when they grant relief and they get certificate

occupancy, they have to show a plan from the architect showing the height of the building with the dormer.

TAD HEUER: Here's my concern, I'm not sure I can vote for something that I think looks like that. That's not what it looks like, and I don't think I'm prepared to vote for it. If it's shorter than that, then I still probably will not. But I would be more inclined to -- looking at this picture and that height that is your belief. I'm eyeballing it, it seems like it's excessive, but that's the way it is looking at this drawing, this drawing will look like on the roof. That's my concern. It's not that it's being represented as two feet, ten, it's -- I'm looking at something, I don't necessarily like the way it looks and I hope it doesn't look --

ATTORNEY JAMES RAFFERTY: You should spend more time with that one.

TAD HEUER: Is this the swimsuit version?

THOMAS SCOTT: The interesting thing here, though, if I'm right, this looks like the two ridge lines meet, and in this diagram they clearly are separated by --

ATTORNEY JAMES RAFFERTY: But I think the -- I think the biggest shortcoming of that diagram, the flat elevation is the prominence of the dormer vis-a-vis the existing gable of the front gable now. It is recessed back 30 feet. So the -- that's why I have reservations about the quality of my printer, we can submit the scaled drawing by tomorrow. We knew the numbers -- it can't exceed 35 feet. Its does go over that. The existing ridge height is just around 32 and change.

DAN ANDERSON: It's right on 32.

ATTORNEY JAMES RAFFERTY: And

we're going up slightly from there. But what that elevation doesn't provide you, and this perspective does, is the distance into the house that the gable sits and that's why I said I think that -- I shared your alarm frankly, when I saw that for the first time today. I thought this can't be quite correct. And then it was explained to me by Dan how my printer might have made a mistake. We can certainly provide scale drawings by tomorrow. I'm sure you can --

DAN ANDERSON: In the original --

CONSTANTINE ALEXANDER: The problem is some members of the Board won't want to vote without the scale drawings.

DOUGLAS MYERS: I'm going to say I'm frankly uneasy. Ultimately it comes down to a question about the quality of the document produced by the printer, I'm uneasy.

ATTORNEY JAMES RAFFERTY: Can I

just have a moment that I might --

CONSTANTINE ALEXANDER: Go ahead.
You want to recess, we'll take another
case?

ATTORNEY JAMES RAFFERTY: Yes.
Would you mind? Thank you.

CONSTANTINE ALEXANDER: We'll be
happy to do that.

ATTORNEY JAMES RAFFERTY: I'm just
trying to get a sense of what we can come
back with in a few weeks if we had to.

CONSTANTINE ALEXANDER: This case
will be recessed while we take the next
case in order.

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

(11:05 p.m.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9784, Four Cambridge Terrace.

Is anyone here wishes to be heard on that case?

Okay. You're looking for a Special Permit to relocate a rear exit door and increase the size of three windows.

RICK VON TURKOVICH: Correct.

CONSTANTINE ALEXANDER: And what you're going to do is move the door from the right rear to the left rear?

RICK VON TURKOVICH: Correct.

CONSTANTINE ALEXANDER: And the windows are going to go in size from 36 by 48 to 36 by 12 inches?

RICK VON TURKOVICH: Correct.

Rick Von Turkovich, V-o-n
T-u-r-k-o-v-i-c-h. Address 31 Shepard
Street, Cambridge.

So I think I can move very quickly through an explanation of this. But -- so this is the property in question. I purchased last year and it's currently undergoing renovation. During a recent inspection, the inspector pointed out to me that -- and we're looking at the left side of the building here, facing the front. That these windows, which we'd increased in size slightly -- originally there were bathrooms on this side that had smaller windows. We chose to restore these windows to the same size as all the other windows in the building. He

indicated that that would require a Special Permit. So, I took that as an opportunity to consider relocating the rear exit door. And I'll explain why on this print. And just to put it briefly, this is the rear hallway. And in the old design people needed to come down this stairway and then exit by proceeding through this enclosed porch and then out an exit here to what is the right side of the building. Okay? You know, in addition to improving utility of that area for the first floor, it seemed to me that this would improve fire safety if they could simply exit this hallway as a secondary means of egress and then leave the building immediately from a stairway directly exiting off that hallway. Okay?

Just a couple more things to sort of provide some background. So this is a recent plot plan that I had prepared. And this indicates the size of the stairway

and the steps that would lead out of the new exit door. And our intention would be to take the concrete sidewalk and extend it through a garden area here with an appropriate brick sidewalk that would bring a passenger -- or people, traffic through this area. Okay?

And then the last thing is that I've solicited from my neighbors their opinions, and there are letters here attesting to the immediate abutters that they're all in -- they have no objection to the plans as they've been proposed. I'll just point out to the -- for accuracy sake, that this is a multi-family of which one of the owners has responded.

TAD HEUER: That's number 6 through 8?

RICK VON TURKOVICH: Yes, 6-8 Cambridge Terrace. And on Nine Cambridge Terrace one of the owners has responded with a written letter. Okay?

These are all single families. This is a multi-family property owned by a single person. He has also given us his consent.

TAD HEUER: That's No. 2?

RICK VON TURKOVICH: No. 2
Cambridge Terrace.

BRENDAN SULLIVAN: Relief is needed for the door and the windows in rear setbacks?

RICK VON TURKOVICH: Correct.

CONSTANTINE ALEXANDER: It's a non-conforming structure on the setbacks and you're making alterations?

RICK VON TURKOVICH: Correct.

TAD HEUER: And are there stairs where you're proposing the door to be relocated now?

RICK VON TURKOVICH: There's no stairs. And there's no exit there currently. The original exit would have been from this side, and because of sort

of grade from right to left, there are two steps here. There would be, I think, three or four steps here coming up to this landing. And the justification I would have for this is that it does improve fire safety. And that in the event of a fire somebody would actually have to travel back through the building to get out to there. But clearly it also improves utilization of the first floor.

TAD HEUER: Sean.

SEAN O'GRADY: Are these new stairs?

TAD HEUER: That's my question. These are new stairs. Are we in a variance situation because of a setback?

SEAN O'GRADY: I think we might be. Your right side you need to -- yes, that's a variance.

RICK VON TURKOVICH: Well, I reviewed these plans with Ranjit, and he indicated to me that since the -- there's

still about, you know, four, a little more than four feet to the property line, that, you know, it would be a Special Permit.

SEAN O'GRADY: I don't know where the break down is, but I'm not seeing how that could -- let me just ask the questions here.

RICK VON TURKOVICH: Sure.

SEAN O'GRADY: This wall here is six, three or there is six, three?

RICK VON TURKOVICH: No, no. This is -- this is six, seven.

SEAN O'GRADY: I'm sorry. That's the rear?

RICK VON TURKOVICH: Yeah, that's the right rear.

SEAN O'GRADY: So we're talking the left side setback?

RICK VON TURKOVICH: Correct.

SEAN O'GRADY: You say seven, two. Is it seven, two there or seven, two there?

RICK VON TURKOVICH: It's approximately eight feet. I may have indicated seven, two here. From these plans, from the scaled side -- the scaled version of this --

TAD HEUER: You're still building it to a twelve-five required side yard setback, right?

SEAN O'GRADY: Yes. You'd need -- under the best scenario, you need seven, six and then you could use the ground level deck rule, but that's not seven, six you can't use it. And we don't have a measurement of that side. We're in seven, three there.

RICK VON TURKOVICH: I mean, I measured it as seven feet.

SEAN O'GRADY: Well, it's seven, six you're okay.

And if you're confident that Ranjit said that you'd be okay, then maybe he made a determination work can proceed

as if that's as of right, but just understand, if we go down the road and it's not as of right, then your variance you're coming back again.

RICK VON TURKOVICH: Yes.

CONSTANTINE ALEXANDER: We'll just take a vote on the Special Permit for the windows.

RICK VON TURKOVICH: Would it be possible to -- can we consider the exit door at this time as a Special Permit assuming that the dimensions are --

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: If we can go with the Special Permit type of location, we would be giving you a door without -- we could let you physically create a doorway so that when you came back for a variance to get the steps, you could connect everything together. But I don't think you can get the steps. That's where I'm --

SEAN O'GRADY: I think you can give him a variance for the door, I mean sorry, the Special Permit for the door. And contingent on it being allowed, the building they're not going to let him cut a door to nowhere. And they're also not going to let him discard the other second means of egress until that works.

TAD HEUER: Oh, absolutely.

SEAN O'GRADY: So we need -- I'm not sure you need to do it in the alternative. Right, because the building code is going to say no.

TAD HEUER: Unless someone comes back to us otherwise.

SEAN O'GRADY: Right you grant him the door and if he's okay, he's fine. And if he's not okay, he has to come back or abandon the door because the building code is not going to allow him to have a door that just walks out.

RICK VON TURKOVICH: So the door

is in?

CONSTANTINE ALEXANDER: The door is in, but you may not be able to use it. For now it's in.

RICK VON TURKOVICH: I understand.

DOUGLAS MYERS: You may want to put it in.

TAD HEUER: You may want to measure first.

RICK VON TURKOVICH: Right. We'll double check those tomorrow.

CONSTANTINE ALEXANDER: Is there anyone else wishes to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No, I see no one.

For the record, there are 11 letters of support for the project signed by the residents at 73 Upland Road; Nine Cambridge Terrace, Unit 2; Two Cambridge Terrace; 67 Upland Road.

RICK VON TURKOVICH: This next one should have been 69.

CONSTANTINE ALEXANDER: 69 Upland Road?

RICK VON TURKOVICH: 67 and 69.

CONSTANTINE ALEXANDER: Nine Cambridge Terrace, Unit 2; and Eight Cambridge Terrace, Unit 8-1.

Board members ready for a vote?

The Chair moves that a Special Permit be granted to the petitioner to relocate a rear door, the rear exit door and to increase the size of three windows on the basis that otherwise the requirements of our Zoning Ordinance could not be met. Doing the work proposed would not generate traffic or patterns of access or egress that would cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation or development of the adjacent uses would not

be adversely affected by the relief being sought.

That there would be no nuisance or hazard created to the detriment of the health, safety and/or welfare of the occupant or the citizens of the city. And that the relief would not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this ordinance.

All of these requirements being met because the relief being sought is rather modest. It flows from the fact that you have a non-conforming structure. With regard to the windows at least, the aesthetics of the structure would be enhanced. And with regard to the door subject to satisfying other requirements of our Zoning By-Law, that the safety of the building -- of the occupants of the building would be enhanced.

Such Special Permits would be

granted on the condition that the work received in accordance with plans submitted by the petitioner, there are two pages, and initialed by the Chair. Those plans have been prepared by Architex A-r-c-h-i-t-e-x Team, Inc. of Brookline, Massachusetts, and they're dated April 6, 2009.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

RICK VON TURKOVICH: Thank you.

CONSTANTINE ALEXANDER:
Mr. Rafferty, before we take your case these folks have been here for a long time.

ATTORNEY JAMES RAFFERTY: I

understand completely. My clients are very appreciative.

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

(11:15 p.m.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9785, 132 Antrim Street, Apartment No. 2.

JACQUES GOVIGNON: My name is Jacques Govignon, G-o-v-i-g-n-o-n. I'm the owner of 132 Antrim Street. And here is Hans Fulscher.

HANS FULSCHER: F-u-l-s-c-h-e-r. Nine Mount Vernon Street, Charlestown.

JACQUES GOVIGNON: I have a set of smaller drawings. I have also the big drawings which are to scale.

CONSTANTINE ALEXANDER: Are these four drawings the same --

JACQUES GOVIGNON: It is a slight change that's not addressed. It's not substantial.

CONSTANTINE ALEXANDER: Where is

it reflected, is it on there?

JACQUES GOVIGNON: It's on there and also on there.

CONSTANTINE ALEXANDER: Okay. Let's work from these. These will be the official ones we're going to work from. Why don't you identify what that slight variation is.

JACQUES GOVIGNON: Yes. The slight variation is on the dormer. It's the dormer, it's on A3 and mostly on A4. The dormer has been lowered slightly.

HANS FULSCHER: Before it went up to the ridge. The shadow and the Historical people thought it would look better topping it down.

CONSTANTINE ALEXANDER: We would, too.

HANS FULSCHER: Good.

JACQUES GOVIGNON: So I present the proposed --

TAD HEUER: Yes.

JACQUES GOVIGNON: Several items. One is the creation of the fire escape on the outside on the rear building, on the rear of the building. Right now if you look at the front page A1, it shows the fire escape. The egress is shown at the bottom stairs going -- it's narrow, it's wooden. And there are two doors. One door here and one door here (indicating). And it's very, it doesn't leave a sense of safety and it's not too good because it's too narrow.

CONSTANTINE ALEXANDER: What are you going to do with those doors if we give you relief?

JACQUES GOVIGNON: Fill them in.

HANS FULSCHER: The door will be filled in.

JACQUES GOVIGNON: Although we will leave it as a trap so that if in the future somebody wanted to have -- because at one point it was a one-family and it

has been put into condominium. So the people downstairs use that door to go to the outside. For them it's okay. It's on the level, they just have one door. For us it's --

CONSTANTINE ALEXANDER: I'm sorry, I didn't mean to interrupt up. The carriage house, that belongs to you as well?

JACQUES GOVIGNON: Yes.

CONSTANTINE ALEXANDER: You as well?

HANS FULSCHER: He owns the second floor of this condominium building.

JACQUES GOVIGNON: I own the second and third floor and the carriage house.

CONSTANTINE ALEXANDER: And the carriage house is used for what?

JACQUES GOVIGNON: Studio. Decoration.

CONSTANTINE ALEXANDER: Is it

living space?

JACQUES GOVIGNON: It's not a living space. It has a room. It's just a studio. It's basically a studio.

HANS FULSCHER: It's a carriage house that the previous owner simply built out.

JACQUES GOVIGNON: I mean, it was --

CONSTANTINE ALEXANDER: It looked from the street like it's almost like a residence.

HANS FULSCHER: It's very pretty, huh?

JACQUES GOVIGNON: It's very pretty, yes.

CONSTANTINE ALEXANDER: Oh, it is. But it's not being used as a residential --

JACQUES GOVIGNON: No, No. It has a --

CONSTANTINE ALEXANDER: It's not a

separate unit with a kitchen and a bathroom?

JACQUES GOVIGNON: No, no.

So there is the stair going outside is in fact exiting from a door which exists already on the rear facade of the building, but it's a door leading to nowhere. So now it will have a use. Okay? The trouble with it is that the stairs violate the separation between buildings. And there is still six and a half feet of space, so it's pretty open. That structure isn't metal so it doesn't create a fire hazard or communication of fire from one building to the next. And if they had -- if the need was in the past to have a truck going in between the two buildings, it couldn't have done that anyway. So that's one point.

The other point is that on the roof --

HANS FULSCHER: Why don't we show

him the elevation here? So that you see the impact of the spiral stair that's in drawing A3 and A4.

The drawing A3, the first one shows the existing building on the left side. And then the proposed building on the right. And notice the fenestration, particularly in the second floor, in the second floor there's the -- there is a door without a balcony or anything like that. So we're proposing to change all of that and have new things placed.

CONSTANTINE ALEXANDER: You're creating a roof deck there?

JACQUES GOVIGNON: I will come to that later on.

CONSTANTINE ALEXANDER: That's what I'm most interested in.

JACQUES GOVIGNON: Okay. So this is for the fire escape and the windows that are brought back to a more original design. I don't know why they were as on

A3. It shows those two windows here and they are going to be changed into a more natural shape. More to go in style with the building.

Now, the other thing that we propose is to create a roof deck. Right now on the roof, on the front portion of the roof, and you can see that on the picture here, there is on the rear of the building there is a flat portion.

CONSTANTINE ALEXANDER: Right.

JACQUES GOVIGNON: Okay. On that flat portion --

DOUGLAS MYERS: Bring that back.

JACQUES GOVIGNON: So it's really in the rear. There is the compressor for the air conditioning unit, okay? And there is no access to it right now. And we have to bring a truck with a ladder, you know, so that the platform -- so that they can go on the roof, or somebody has to climb, somebody who doesn't have fear

of -- has to climb and go over the roof extend beyond the building slightly like this. So it has to climb and so it's -- every time we have to service the air conditioning unit, we have to have -- it's an expense basically. So we decided to get an access stair. And why we get an access? Put also a banister around it, this area, so that it would muffle the noise a little bit .

CONSTANTINE ALEXANDER: How big an area are we talking about? What size of a roof deck are we -- we're creating a roof deck here. One purpose is to service the air conditioning, okay.

JACQUES GOVIGNON: Yes.

CONSTANTINE ALEXANDER: But the other purpose is recreational.

JACQUES GOVIGNON: Yes.

CONSTANTINE ALEXANDER: I don't know if you heard a lot of commentary from Board members and members of the community

about the disadvantages of roof decks, particularly in a densely populated area as Antrim Street is. My concern is are we creating a larger roof deck up there that could be used for recreation?

HANS FULSCHER: 21 foot wide and 15 feet deep.

CONSTANTINE ALEXANDER: It's big.

JACQUES GOVIGNON: It's recessed from the edge and basically you don't see it from --

CONSTANTINE ALEXANDER: You're focusing on the aesthetics. I'm focusing on the noise. I don't care if you can see it or not.

HANS FULSCHER: Having large parties.

CONSTANTINE ALEXANDER: Aren't you going to effect the privacy of the people and your neighbors would be affected by this?

JACQUES GOVIGNON: First of all, I

have a letter from all the surrounding people.

CONSTANTINE ALEXANDER: Some of those surrounding people want their own roof decks, so it's self-serving.

JACQUES GOVIGNON: They do have an already roof deck. As far as noise, we are receiving their noise.

CONSTANTINE ALEXANDER: We're not looking here to increase the noise level in this part of the city.

JACQUES GOVIGNON: No, no, it's still a --

CONSTANTINE ALEXANDER: I'm troubled. I must say I'm troubled by the size of the roof deck.

HANS FULSCHER: The size --

DOUGLAS MYERS: Not even getting to the distance of the abutters. The hearing distance.

JACQUES GOVIGNON: Yes.

THOMAS SCOTT: I mean, if it's

access for maintenance of the equipment --

JACQUES GOVIGNON: It's mostly for that initially, but of course.

THOMAS SCOTT: You can make it smaller.

CONSTANTINE ALEXANDER: We have no objection to access to servicing your air conditioning unit, but you don't need a deck of that size to do it.

JACQUES GOVIGNON: We have to be honest, you know.

CONSTANTINE ALEXANDER: I understand. If I were in your shoes I'd do the same thing.

JACQUES GOVIGNON: And if you know the people on this side, they have -- it's a three deckers, they have three decks. The people next -- they have also a big --

CONSTANTINE ALEXANDER: But you have a lovely carriage house with a studio and you have a backyard, a green backyard that I've taken a look at. You have

things that maybe your neighbors don't have that mitigate a need for a roof deck.

JACQUES GOVIGNON: In fact, because it's a condo, part of the gathering in fact belongs to the other people, and we don't have -- I mean, now with that fire escape we have an access to the garden more direct otherwise we would have to come from -- so it mitigates that a little bit. But I think that, I mean, we are, I hadn't thought about this issue of the noise. I don't -- right now I think that we get, if we get the noise of the other people and we are not going to add that much. I mean, it's not a big house. It's --

CONSTANTINE ALEXANDER: Are members of the Board concerned about the roof deck?

DOUGLAS MYERS: I've expressed my concern.

JACQUES GOVIGNON: But again

access.

CONSTANTINE ALEXANDER: If there are issues, enough issues among the Board members about the roof deck, you're not going to get the relief you want. It might make sense to come back with a redesigned roof deck, smaller. That's where I'm going.

JACQUES GOVIGNON: Okay. What size of roof deck would be -- I mean, it's --

CONSTANTINE ALEXANDER: It's a deck that allows you to service the air conditioning and no more.

JACQUES GOVIGNON: No more? Nothing to --

CONSTANTINE ALEXANDER: I'm not the -- I'm only one member of five on this Board. I'm just telling you my views on this. So I mean, I think we should hear from other members of the Board. If they're not as concerned, then that's

fine, we can go forward.

JACQUES GOVIGNON: I mean all the people -- the abutters who are most affected by the noise, if this is really your concern, it's their concern, too. And they are all -- I have the letters.

CONSTANTINE ALEXANDER: I know, you've given us the letters. I don't mean to be argumentative even though the hour is late. But the fact of the matter is, I don't know why -- what these people have -- their motives are for signing it. They may not have appreciated what the impact of the roof deck just as you didn't in preparing these plans. They want to do their own roof deck and figure if you get one, then they're going to --

JACQUES GOVIGNON: It's true. The next people want to have also their roof deck. But the other people downstairs, the people on the other side, and the people across the street, they are all,

you know, concerned about that.

CONSTANTINE ALEXANDER: We've also found that sometimes neighbors will go along to be good neighbors and go along with something. But our job is to protect the residents of the city, sometimes pitting neighbors against themselves. The letters are helpful and I'm not dismissing them, but I am concerned. I don't think they're --

TAD HEUER: What if -- in the interest -- well, I think you certainly need a way to get out to service your air conditioner, and that's fine.

HANS FULSCHER: Also in winter you have to take care of the roof. We have to repair it.

TAD HEUER: Right. In that situation I think I would be comfortable of certainly allowing the dormer access out to the roof, and there be some space because of where the air conditioner is

created that you're going to need to deck out and you're going to need a rubber roof or whatever else.

HANS FULSCHER: Exactly.

TAD HEUER: I think I too share some of the concern about the size of the roof deck, and also, you know, its visibility from the street. I would be willing to propose, suggest, you know, a roof deck that came inside the line of the chimney which would allow access to the AC unit, would be smaller, more proportionate to what I think the members of the Board might be willing to accept. If that's something we can propose than the petitioner would like, we can possibly spare ourselves and assemble this board to come back before us again in four weeks. That's the kind of compromise I think I would be comfortable with because it would allow the access to the AC unit and it would provide a bit of the extra space to

the roof, but it would not be the extensive deck that's been initially proposed by the petitioner. Does that --

JACQUES GOVIGNON: Yes.

TAD HEUER: Something that....

CONSTANTINE ALEXANDER: That sounds fine to me.

JACQUES GOVIGNON: Yes.

CONSTANTINE ALEXANDER: You're going to have to lickety-split and go in another room and revise those -- markup those plans.

HANS FULSCHER: I can leave you a set right now.

CONSTANTINE ALEXANDER: Why don't you -- let's take a brief recess. Do it in five minutes or less, because I want to give Mr. Rafferty and his clients out of here, too.

ATTORNEY JAMES RAFFERTY: We're in no hurry. Take your time seriously.

CONSTANTINE ALEXANDER: You'll do

anything to get our vote, Mr. Rafferty, won't you?

ATTORNEY JAMES RAFFERTY: You are you're on to my tricks, Mr. Chairman.

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

CONSTANTINE ALEXANDER: So you're saying within the --

HANS FULSCHER: Just behind the chimney, yeah.

TAD HEUER: Do you have a scale as to what makes this dimension?

THOMAS SCOTT: And one more question. What limits the edge of the deck here? That building extends.

HANS FULSCHER: That's the property line. And this continues here to the next neighbor (indicating).

THOMAS SCOTT: Yes.

HANS FULSCHER: Yeah. So we also follow that one also to a roof deck.

JACQUES GOVIGNON: That's our

responsibility. This is to scale. This one.

HANS FULSCHER: So it will be in addition about 13 feet. And the roof is right here and that's also 13 and a half feet.

TAD HEUER: Right.

THOMAS SCOTT: So does the railing come back this way?

JACQUES GOVIGNON: Temporarily yes, there would be a railing.

THOMAS SCOTT: Temporarily?

HANS FULSCHER: If it runs that we can just continue.

JACQUES GOVIGNON: There will be a railing there, yes.

TAD HEUER: Because the other one --

JACQUES GOVIGNON: Two different property.

HANS FULSCHER: Two different property.

JACQUES GOVIGNON: They have deeds and so on.

TAD HEUER: You're putting a railing on the property line?

DOUGLAS MYERS: Does it show the floor that this area will be made?

HANS FULSCHER: The deck.

DOUGLAS MYERS: It's a wood?

JACQUES GOVIGNON: Choice deck so that it's fake wood. It's more durable so that, you know, you don't have to service it, you know, more often than the roof below basically.

THOMAS SCOTT: Can you show this rail, too, then?

JACQUES GOVIGNON: Yes.

THOMAS SCOTT: Okay? So we can see the definitive limits?

JACQUES GOVIGNON: It's the property line.

THOMAS SCOTT: But there's no railing?

CONSTANTINE ALEXANDER: So let me see if I have it then. We're talking about the deck, the railing would be here (indicating).

JACQUES GOVIGNON: On the property line.

CONSTANTINE ALEXANDER: On the property line.

JACQUES GOVIGNON: Next to the property line.

CONSTANTINE ALEXANDER: The deck would be this area here.

JACQUES GOVIGNON: Yes.

CONSTANTINE ALEXANDER: And then within that deck would be the air conditioning unit?

JACQUES GOVIGNON: In fact, now that I see the point, it would be -- from the point of servicing, I would prefer to have the railing just on the other side of the chimney so that we can turn around the -- go around. The way now, it will be

difficult to get access to the compressor from that side. So if I, I would maybe say we have to put the line just on the other side of the chimney. I mean, that's not a big change.

CONSTANTINE ALEXANDER: I want to make sure -- show me on the plans how it would look.

JACQUES GOVIGNON: Okay.

CONSTANTINE ALEXANDER: Mark it down.

JACQUES GOVIGNON: We would put it here instead because now there's not much room.

CONSTANTINE ALEXANDER: I want to have the official plans so I have a sense where it is.

HANS FULSCHER: The deck will go out to here. Do you have another pen? No?

JACQUES GOVIGNON: So we can sneak in between the railing and the compressor

and be able to --

CONSTANTINE ALEXANDER: It's still a good size deck. I don't want to belabor this, why do you need -- why can't the railing come over here, something that leaves this part of the roof deck not usable? The roof deck is only supposed to be for access and servicing the air conditioning unit. Why do you need all this space over here?

JACQUES GOVIGNON: I admit we want to use it as a deck, also.

CONSTANTINE ALEXANDER: I understand that. That's exactly the issue. We understand you want a roof deck, at least I do. We're not recalling so much about the size of the roof deck or bigger the worse the roof deck is. Should you have a roof deck for purposes of servicing your air conditioning unit?

JACQUES GOVIGNON: Yes.

CONSTANTINE ALEXANDER: Or should

you have a roof deck for recreational purposes? You're still looking for a roof deck for recreational purposes?

JACQUES GOVIGNON: We are asking for both. Yes. It's....

TAD HEUER: So --

CONSTANTINE ALEXANDER: I'll defer to other members the Board. I'm troubled about this.

DOUGLAS MYERS: I still remain troubled. I really feel we have to be consistent on this policy, and I could see no reason for this set of facts for these purposes to be liberal in terms of permitting the structure of the roof deck. For access to the air conditioner, everything. The roof deck that is to be more limited. It has to be limited to that purpose.

JACQUES GOVIGNON: I understand your concern. If -- I mean, I can go back to the neighbors and specifically tell

them is -- there is an issue with noise. We can be noisy people and therefore you have to be concerned about it.

CONSTANTINE ALEXANDER: This is the point. We value neighborhood input. We welcome that, but it's not determinative. At the end of the day we have to look at what's best for the city and propose our judgment, and particularly because we set precedents. If your neighbors can live with whatever noise your roof deck's going to have, and we grant a roof deck, and the person wants to build a roof deck over a different part of the city whose neighbors are not as tolerant as yours, we're going to have an issue. We have to be consistent. The notion that your neighbors are not troubled by the noise is not going to be dispositive for me.

JACQUES GOVIGNON: I don't -- well, first of all, I don't expect to be

noisy. It's not my style. But I understand your concern. I mean, if you look at the -- and we have an exit and then we have to be able to go out and have enough room to service the compressor.

CONSTANTINE ALEXANDER: We agree with that.

JACQUES GOVIGNON: When you do that, we are really where it is right now in a way. So I ask for -- I mean, you were accepting the fact before the chimney and suddenly when we move it beyond the chimney, because I can see that it will be a problem servicing, then suddenly it becomes another issue. I don't know what to --

HANS FULSCHER: I don't know the way if the compressor is right. I don't know which side you have to have access to. But it might be well off behind the chimney on the first side that we've drawn it.

JACQUES GOVIGNON: Yeah, of course. I'm not the one servicing it.

THOMAS SCOTT: How do you service the unit? Does this service exist?

JACQUES GOVIGNON: Yes, it is there.

THOMAS SCOTT: How does it get serviced today? Somebody puts a ladder up.

JACQUES GOVIGNON: A truck comes in the driveway and with an elevated platform and they can go on the roof.

THOMAS SCOTT: There's no railing.

HANS FULSCHER: Nothing.

THOMAS SCOTT: Just jump up on the roof and service it.

JACQUES GOVIGNON: Yes. But it's an expense. Every time -- instead of having a guy that comes and, you know, climb the stairs, open the door and go to the roof, then it's a truck and so on.

CONSTANTINE ALEXANDER: No one's

quarreling with a need for and a desire to have a roof deck that would allow you to adequately service the air conditioning. The quarrel is with a roof deck that goes beyond that. A design that allows you to adequately service the air conditioning unit, however you do it, is fine by me, but you're asking for more than that. That's the problem.

JACQUES GOVIGNON: And in my defense if I can use that word, I'm saying that the other neighboring people have a deck. So in a way it's treating me a little bit unfairly and it's without creating a precedent because if some other people elsewhere are concerned about the noise, they can make their case in front of the Board. In this case we are trying to be very honest and telling you exactly what, you know, what the intent is. And the first intent was to get access to the compressor because it was a nuisance every

time we had to do that. And once you have that access then you say, well, let's have a little place where I can put something and get some fresh air. Not to make, not to make a party. You know, it's not good enough for that. Across the street we have three deckers with three decks which are bigger than that, okay? And the next abutter has also that.

CONSTANTINE ALEXANDER: Let's cut to the chase.

THOMAS SCOTT: Let's get to the architecture. This is adding something on top of the roof that didn't exist but was never part of the architecture.

JACQUES GOVIGNON: As far as view -- we made it -- you don't see it as far as the view. We made it especially recessed so that it would be totally non-view.

CONSTANTINE ALEXANDER: Sir, we can take these plans as proposed as

modified and proceed to a vote. You will need -- to get the relief you want, you need four of five of us to vote. You heard two members express some dissatisfaction. They may vote differently, but if those two votes -- I'm one of those two -- not to approve this, even if the other three vote in favor, it's not going to be enough. The motion is going to fail. Now, if you want to go forward on that basis, that's fine, take your chances on how they're going to vote. Your other alternative is to come back with a different proposal that just addresses the concerns of two of us.

JACQUES GOVIGNON: I thought we did that by cutting the -- and that's why, you know, I thought -- I can see that I have two vote against. And I do feel -- I don't know.

THOMAS SCOTT: I think the issue is if we allow you to build this big deck

and you sell your unit and some guy moves in and he's a big party guy, it's not just you. I think we're trying to look at this --

JACQUES GOVIGNON: No, no. You have to -- the deck has shrunk a lot now. And the part of it is the compressor, you know, so you're against the compressor. You have the chimney. It's not anymore the big party deck that initially yes, I can understand that, okay, I haven't thought about that. But I thought that with this compromise, this is where we're going to sway maybe those two votes.

CONSTANTINE ALEXANDER:

Mr. O'Grady, you want to say something?

SEAN O'GRADY: I just want to make sure we're all here. Were you suggesting a continuance?

CONSTANTINE ALEXANDER: Well, unless they can come up tonight at this late hour with plans that are sufficiently

detailed that we're happy with.

SEAN O'GRADY: Do you understand the offer that's being extended?

JACQUES GOVIGNON: I know. I don't know how much we have to shrink.

HANS FULSCHER: You don't want to give the whole thing away.

DOUGLAS MYERS: Lots. You basically, to satisfy me, you have to remove most of the space. It's not necessary.

JACQUES GOVIGNON: I can't even move the chairs along and be there.

DOUGLAS MYERS: Depending on the size of your chair or chez lounge, you may be able to place it. That's for you and your architect to determine in all seriousness. Everyone likes to sun bathe.

JACQUES GOVIGNON: But the sun factor.

CONSTANTINE ALEXANDER: Put the chez lounge in your backyard. It's not

like you don't have a backyard.

JACQUES GOVIGNON: The backyard is in fact, as I said, most of it is in fact for the other people, and our section is in line with the driveway.

HANS FULSCHER: It's in shade.

JACQUES GOVIGNON: If we move it this way, would you be happier?

CONSTANTINE ALEXANDER: I personally would be happy with a solution that allows you to adequately service your air conditioning unit, but does not allow the rest of that deck to be used in any material way for recreational purposes. If you can squeeze a chez lounge there, fine. One chez lounge. I don't want tables and chairs and a party space up there. You understand? You're going to have to tell me what you need to service your air conditioning unit and be pretty conservative in doing that. Because we're going to be looking very carefully at what

else you're using that space for.

HANS FULSCHER: You can have a chair here and a chair here, and that's about.

SEAN O'GRADY: Can I make a helpful suggestion?

CONSTANTINE ALEXANDER: By all means, we need some.

SEAN O'GRADY: Perhaps if we can talk for a few minutes, I can advise you and squeeze Jim in.

JACQUES GOVIGNON: Let's do that.

CONSTANTINE ALEXANDER: That's a very good suggestion. We'll recess this case until the next case, the other recessed case is heard.

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

(11:50 p.m.)

(Sitting members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman. Back on the record.

What we have and what's contained in the file, it may be helpful on this issue, and we can supplement later, this is the scale drawing of the earlier proposal which was at two feet, eight inches. And you can see the relationship which is much different than what's appearing here. And this is a two, ten. So in discussing with Mr. Anderson he said, well, we can certainly take two inches off this. And if the Board was comfortable with this representation of what two, eight looks like, he can supplement tomorrow with that version of that. That has the form of the

earlier submittal, but that shows the relationship between the height, the grade and what the, what two, eight to scaled at as opposed to this one.

DAN ANDERSON: It somehow got distorted.

THOMAS SCOTT: So is it two, eight or two, ten.

ATTORNEY JAMES RAFFERTY: Well, it was two, ten but since that one -- you know, since we can show you two, eight and that's acceptable, could we --

THOMAS SCOTT: This 35 is from the average and that's shown two, eight.

ATTORNEY JAMES RAFFERTY: So we would reduce ours by --

THOMAS SCOTT: You have to use two, eight. You couldn't use any more.

ATTORNEY JAMES RAFFERTY: Oh, I see your point is --

THOMAS SCOTT: The average rate is shown here, 35 feet is to the two, eight.

CONSTANTINE ALEXANDER: You could not do it for two, ten.

ATTORNEY JAMES RAFFERTY: I'm glad you caught that. All the more reason we'll modify our proposal to two, eight. Because we did not seek any -- so that's two, eight and that is scaled. It wouldn't have that form, but that's what two, eight looks like.

Now, I would say because my client's a law professor, if I'm being overly aggressive in looking for this, we would continue if it meant people couldn't get comfortable with this. So, I wouldn't want to push my luck here and suggest that -- if you needed to see that in that representation as much as they would like to get going, if that was needed to make people comfortable, we certainly would.

CONSTANTINE ALEXANDER: Well, what's the pleasure of the Board members? Would you like to see that?

TAD HEUER: I'd like to see it. I still think I'm falling into the category of having acknowledging -- I'm in a situation of finding this endeavor that you, Mr. Rafferty, mentioned earlier of having purchased a property that does not fit, and seeking a rather large cap on the house to make up for it. And weighing that against the fact that the house is the size that it is and it works with the house that the size that it is.

ATTORNEY JAMES RAFFERTY: If I may address that. We have the as of right cap which because the variance for the 166 square feet, there's a cap that could happen as of right, but would give some opportunity for -- and that's what led to the original advertising. There's -- I mean, excuse me, this is prior to that. That is the as of right scheme which caps the roof line but only increases the area that is already counted as GFA, it brings

it from five feet up. And this whole exercise has been about not pursuing the as of right solution because it's far more disruptive to the scale and character of the design of the house, and admittedly does achieve programatically what's being shown here.

TAD HEUER: And this keeps the gable as it was before because it pops it up before.

ATTORNEY JAMES RAFFERTY: Right. It goes to the issue what did they know when they bought? What they knew when they bought was this house and opportunity to do this. When they got Mr. Anderson involved, you know, you can do that you won't get much out of it and it's really the wrong thing for the house.

TAD HEUER: I agree.

ATTORNEY JAMES RAFFERTY: They'd rather not do that and do this I think as often is the case the as of right solution

is not the win/win and I've had these conversations with the neighbors as well.

TAD HEUER: Right.

DOUGLAS MYERS: Speaking for myself, I'm satisfied. I'm prepared to vote for it. My concern, and the members of the Board know that I'm careful and even skeptical sometimes about raising ridge lines above the raised dormers above the ridge line of the house and elevating ridge lines significantly above the ridge lines of neighboring houses, but I'm satisfied in this case that we're well within the range of reason. And the other points that I've mentioned, I'm really reluctant. Because of that I'm reluctant to judge the aesthetics. I think it's substantial and the order is close enough that I'm satisfied the variance is fine.

CONSTANTINE ALEXANDER: Tom?

THOMAS SCOTT: I guess if we change the dimensions to the two, eight

making sure we're not over 35, I guess I'd be inclined to go forward as well.

CONSTANTINE ALEXANDER: Well, the plans that we're going to approve, if we vote tonight, are these going to be these plans which don't have any height on them? But the --

THOMAS SCOTT: They were just demonstrated.

DOUGLAS MYERS: I thought we were going to approve that plan.

THOMAS SCOTT: They just demonstrated you can't be any more than two, eight, the existing ridge. That would be the stipulation, no more than two, eight above the ridge.

ATTORNEY JAMES RAFFERTY: And that gives you the depiction of the two, eight.

DOUGLAS MYERS: I ask that this plan be included.

ATTORNEY JAMES RAFFERTY: But that's referencing. It's not the right

plan. But for purposes of showing the relationship between the new roof height and the existing roof height, that is accurate. And I think that was the concern because of the inaccuracy.

TAD HEUER: So we're looking essentially at the distances measured along the vertical as contained therein and not at the massing.

ATTORNEY JAMES RAFFERTY: Very well said.

CONSTANTINE ALEXANDER: Brendan, you all set? I'll just read into the record that there are letters of support for the project from a person residing 159 Lakeview Avenue; 386 Huron Avenue; 1445 Lakeview Ave; 384 and 382 Huron Avenue and 390 Huron Avenue. Statements made by the petitioner. You need me to read it? I think you're covered by, Mr. Rafferty.

SEAN O'GRADY: Before you get started, I just want to make sure that I

know what's going on. We're going with these plans here?

CONSTANTINE ALEXANDER: Right.

SEAN O'GRADY: And then we're saying this dimension is two, eight but this plan is going to be --

TAD HEUER: That from average grade is 35.

SEAN O'GRADY: Can I ask that you make those recommendations on this plan here? Is that too much averages? And why is that dormer size --

DAN ANDERSON: Is that fine for you?

SEAN O'GRADY: Fine. Thank you.

ATTORNEY JAMES RAFFERTY: Should we note maybe for comparison only or something?

SEAN O'GRADY: Leave it out.

CONSTANTINE ALEXANDER: I would leave it out. Ready for a motion?

The Chair moves that a variance be

granted to the petitioners to proceed with the construction of dormers on their premises at 147 Lakeview Avenue on the basis that a literal enforcement of the provisions of the ordinance would involve a substantial hardship. Such hardship would be that the desired living space in the structure would not be made available without the proposed relief.

That the hardship is owing to circumstances relating to the shape of the structure, particularly the size, and the fact that it is already a non-conforming structure. So any modification requires some relief, and that there will be granted relief without substantial detriment to the public good or nullifying or derogating from the purpose of the ordinance.

In fact, this relief is modest in nature. It's consistent aesthetically with the neighborhood in general. It

would allow a more efficient and intensive use of the structure.

The Chair would also note that there are letters of support from abutters and no one expresses objection to the relief.

The granted work proceed in accordance with two pages of plans initialed by the Chair and then modified by the petitioners' architect to deal with the maximum height of the structure and how above, how above the existing roof ridge line the dormer roof would be; namely, no more than two feet, eight inches so that these -- the maximum height of the structure is 35 -- no more than 35 feet above average grade.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. At long last, granted your variance.

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

ATTORNEY JAMES RAFFERTY: Thank
you.

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

(12:00 a.m.)

(Sitting members: Constantine Alexander,
Brendan Sullivan, Douglas Myers, Tad
Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair
calls case No. 9783, 10 Trowbridge Street.

Is there anyone here who wishes to
be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair
notes there is no one. The Chair also

notes that there's a waiver of notification for the decision in the file. Is there a letter of request for the continuance? I don't think there is.

SEAN O'GRADY: Really?

CONSTANTINE ALEXANDER: Yes. Oh, here it is. It's a letter addressed to us, not signed by, but addressed to us. "This letter is to request a continuance of the hearing 9783 to June of 2009 for the following reasons: First, I just had total knee replacement surgery of my right knee. And pre-op activities for the same surgery on my left knee. Secondly, the Cambridge Historical Commission has continued its hearing on this case to June 1, 2009. I thank you in advance for your consideration."

What day would you recommend?

SEAN O'GRADY: June 11th.

CONSTANTINE ALEXANDER: June 11th.

The Chair moves that this case be

continued it until June 11th at seven p.m.
on the condition that the petitioner
modify the sign advertising the hearing to
reflect the new hearing date.

All those in favor, say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Continuance granted.

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

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

(12:00 a.m.)

(Sitting members: Constantine Alexander,
Brendan Sullivan, Douglas Myers, Tad
Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: We're back
to Antrim Street. You ready?

JACQUES GOVIGNON: Yeah.

Basically we ask for a continuance. We
need to review the forms and present our
case.

CONSTANTINE ALEXANDER: I would mention, by the way, you got approval from the Cambridge Historical Commission. I wonder if you would have to go back to them with a new design.

HANS FULSCHER: Probably.

CONSTANTINE ALEXANDER: So another reason to continue the case.

TAD HEUER: Separate from the staircase, anything separate?

CONSTANTINE ALEXANDER: Do you have a reason to do the staircase right away?

JACQUES GOVIGNON: Yes. We can start the work.

TAD HEUER: That's a separate.

SEAN O'GRADY: I just have no idea procedurally. I think it's a legal problem, but also as a procedural problem you can't write half of a decision.

JACQUES GOVIGNON: Maybe you can postpone the whole thing?

CONSTANTINE ALEXANDER: I think you probably can. I think we should postpone the whole thing.

SEAN O'GRADY: We should resolve this.

BRENDAN SULLIVAN: It's really two. You have to divide it into two separate cases.

CONSTANTINE ALEXANDER: The variance on the staircase and the variance on the roof deck. You can vote on one or the other.

BRENDAN SULLIVAN: It's a procedural nightmare to split it.

SEAN O'GRADY: I just don't know how to do that. We should think about that.

CONSTANTINE ALEXANDER: First of all, when can we hear it?

SEAN O'GRADY: June 11th.

BRENDAN SULLIVAN: It's up to Historical.

JACQUES GOVIGNON: I think that would be Historical and they will tell us that's okay. He give the okay for allowing.

BRENDAN SULLIVAN: Mark it up for June 11th.

CONSTANTINE ALEXANDER: Let's do June 11th, and if Historical gives you a problem, then you'll have to continue.

SEAN O'GRADY: It should be okay. He said it was okay because it was not visible from the public way.

JACQUES GOVIGNON: Not only that, but he said he's adding an architectural detail to the house so it's nicer to see that rather than that flat roof which is unsightly from my point of view. So we thought that it was adding -- you know, there are several arguments, but I understand your point of view.

CONSTANTINE ALEXANDER: Everybody available on June 11th? All five of us

have to be here for that.

DOUGLAS MYERS: It's fine.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case heard until seven p.m. on June 11th on the condition that the petitioner sign a waiver.

You need to sign a waiver for condition.

HANS FULSCHER: That's this here.

CONSTANTINE ALEXANDER: Surrender any rights that we are required to make a decision right away. And if you don't sign it, we decide against it. So you have a choice.

SEAN O'GRADY: Not much of a choice.

CONSTANTINE ALEXANDER: On the condition that the petitioner sign a waiver of notice, which you just did.

And on the further condition that the sign that's on your premises

advertising the hearing reflect the new date.

Take a magic marker and put June 11th on there and take out the old date.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case is continued to another night.

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

CONSTANTINE ALEXANDER: They must be filed, on the plans by Monday June 11th by five p.m. You won't hear the case.

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

CONSTANTINE ALEXANDER: One other matter of business involving, and this is

on the record, involving fees. All of us should have received, and all of the Board members should have received a memo from Ranjit Singanayagam to bring to your attention the current fee schedule has been in operation for more than 20 years. The fee schedule is much lower than the fees charged by the adjoining cities and towns. As you are aware, the cost of mailing and advertising has gone up, and the fees, rules and procedures to the Zoning Board. Therefore, I am recommending a change in our fee schedule as attached to replace the existing listed fees on pages 13, 14 of the rules and procedures.

And accompanying Mr. Singanayagam's letter are the new fee schedules.

Speaking for myself, it strikes me is quite modest given they haven't been changed in 20 years. I don't think it's a dramatic -- a lot of fees are increased, I

am personally in favor. Anybody else have anything to add?

TAD HEUER: I love the new fee schedule. Better fee schedule I've never seen. I commend the Building Inspector for their fine work.

CONSTANTINE ALEXANDER: Let record show that Mr. Heuer is satisfied with the fee schedule.

BRENDAN SULLIVAN: Maybe we should not approve the fee schedule until the new rules and procedures are in place. Then maybe that might get our new rules and procedures. It's very difficult to attach an updated fee schedule to an updated rules and fee schedule that goes back to 1983.

CONSTANTINE ALEXANDER:
Unfortunately the result, if we did that, same old rules and no new fee schedule.

DOUGLAS MYERS: Isn't there a subcommittee or a committee working on

rules and procedures?

CONSTANTINE ALEXANDER: I prepared a whole new set of rules. Brendan submitted them.

BRENDAN SULLIVAN: And the Law Department said they'd get back.

CONSTANTINE ALEXANDER: It's been a year. They'll get back to us.

DOUGLAS MYERS: Have you called or written a letter recently?

BRENDAN SULLIVAN: They said they will -- they're going to get back to us.

CONSTANTINE ALEXANDER: The old rules are just -- completely don't apply any more.

TAD HEUER: Are there any fees in the new fee schedule that would be deposited to the benefit of the Law Department?

CONSTANTINE ALEXANDER: Not that I'm aware of.

I would move that the Board adopt

the new fee schedule as Mr. Singanayagam has suggested and attached to the memorandum dated 2009.

All those in favor of adopting the new fee schedule, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. New fee schedule has been adopted.

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

CONSTANTINE ALEXANDER: Thank you all.

(Whereupon, at 12:10 a.m.

the Zoning Board of Appeal 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 22nd day of May 2009.

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

My Commission Expires:
April 23, 2015

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