

BOARD OF ZONING APPEAL
FOR THE CITY OF CAMBRIDGE
GENERAL HEARING
THURSDAY, JULY 9, 2009 AT 7:00 p.m.
in
THE SENIOR CENTER
806 MASSACHUSETTS AVENUE
CAMBRIDGE, MASSACHUSETTS 02139

ZONING APPEAL BOARD MEMBERS:

Constantine Alexander, Chairman
Tim Hughes, Vice Chairman
Brendan Sullivan, Member
Thomas Scott, Member
Slater Anderson, Member
Tad Heuer, Member
Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Constantine Alexander,
Tim Hughes, Thomas Scott, Tad Heuer

CONSTANTINE ALEXANDER: The Chair will call the meeting of the Zoning Board of Appeals to order. As is our practice, we will start with the continued cases. These are cases we started at another night and for one reason or another have been continued until tonight.

The first one on our agenda is the continued case of the property at 370-313 Cambridge Street. Anyone here wish to speak on behalf of that petition? The Chair notes there's no one here. The Chair notes and will read into a record a letter from Tony Shelzi, S-H-E-L-Z-I, who is the Petitioner in this matter, dated July 9: To whom it may concern, I wish to withdraw the variance application for the property located at

307-313 Cambridge Street at this time.

Thank you for your consideration and help.

Let me, because I know there are people here in the audience because of that case, we'll take a vote shortly on the withdrawal. I think you can assume we'll vote to approve the withdrawal. The withdrawal has the same effect as if we denied the variance. So it means for two years she cannot come back for the same petition. If she had a different petition we had to consider at that time, we may be able to consider it. This should end this case as now is for the next two years.

The Chair moves that we accept the request for withdrawal of case No. 9703 307-313 Cambridge Street. All in favor of approving the withdrawal request. All in favor.

(Unanimous). The case is withdrawn.

(Whereupon a discussion was held off the record.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9808, 338 Concord Avenue. Anyone here regarding that case? Please come forward.

People sitting on this case are Brendan Sullivan, myself, Tom Scott, Tad Heuer, and Tim Hughes, but not Slater Anderson.

Okay. You are here to construct two dormers, and we sent you away because we were not happy with the design the last time. Before we get into the meris of it, Mr. Heuer was walking by the property several days ago and did not notice a sign was up. So I'll let him take it from there.

MR. HEUER: Is the sign up?

DIRK LIPPER: The sign is up in the door, in the front door. And we -- it is taped in. We also changed the date today and

due time. It is taped from the inside it is a glass door.

CAROLINE LIPPER: It is a glass door you can see easily. As one of our neighbors showed up here last time it was definitely obvious for people to see it.

CONSTANTINE ALEXANDER: Are you satisfied?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: Okay. Why don't we proceed with the case itself. As I said, this case involved a construction of two dormers. You submitted, timely I should say, revised plans. These are the plans?

DIRK LIPPER: Yes.

CONSTANTINE ALEXANDER: I'll pass them to the members of the Board who have not seen them.

And say whatever you would like to say about it, what you have done.

DIRK LIPPER: You asked for two

modifications. One is setback from the ridge of the roof as described in the dormer guidelines. The other one was the modification of an existing dormer so it does not obstruct the newly built dormer. So the architect adopted the plans accordingly and that's the new plans being submitted.

CONSTANTINE ALEXANDER: The plans result in a need for any change in the dimensional form?

DIRK LIPPER: No.

CONSTANTINE ALEXANDER: It is the same footage?

DIRK LIPPER: Same footage only the ceiling height, of course, is a bit down.

CONSTANTINE ALEXANDER: Okay.

TAD HEUER: I have a question. Sir, it appears that the dimensional form was pencilled in. There's a change to the existing condition. I presume that's because you didn't include attic space

originally and now you have, right?

DIRK LIPPER: Yes.

TAD HEUER: If we make that calculation for the rest of the numbers it will have the correct ratio?

DIRK LIPPER: Yes.

TAD HEUER: Do you know what your current FAR is with the new number?

DIRK LIPPER: .48.

TAD HEUER: I don't think that can be right.

SEAN O'GRADY: Do the math.

DIRK LIPPER: The lot area is 4900 square feet and the total with the county register living space is 2400.

CONSTANTINE ALEXANDER: The plans on file show you are going from a conforming structure from a FAR point of view to --

SEAN O'GRADY: .58.

CONSTANTINE ALEXANDER: It is .58. They are nonconforming now.

CONSTANTINE ALEXANDER: Actually the to the extent -- the change in the FAR is smaller, but you are going from a nonconforming to a more nonconforming? Did I get that right, Sean? We are going from a nonconforming structure now from an FAR point of view to a more nonconforming structure.

MR. GRADY: They are in a .5 zone. They are at .58 and they're going to .6.

TAD HEUER: I have a question about the supporting statement. So there are four parts to the supporting statement we want to fill out so we know what we are voting on. It appears you filled out the first two and not the second two. Is there a reason for that? Did you skip over it?

CONSTANTINE ALEXANDER: While you are looking at that, let me elaborate what Tad is getting at. These are the things you have to demonstrate to our satisfaction to get the variance. So we need some argument, some

reason why, and we can come to our conclusions, but we don't have some reasons and that's why we need to know.

CAROLINE LIPPER: We are expanding our family.

CONSTANTINE ALEXANDER: I should've asked you at the beginning, give your name and spell your name for the record.

CAROLINE LIPPER: Caroline Lipper, L-I-P-P-E-R.

DIRK LIPPER: Dirk, D-I-R-K, same last name, at 338 Concord Avenue in Cambridge.

CAROLINE LIPPER: Substantial detriment to the public good for the following reasons in that we're extending our family and we need more space.

CONSTANTINE ALEXANDER: Your point is you have a nonconforming structure now. Any change gives you more space just you still are going to be nonconforming. You are

talking a modest change to the nonconformance. It is for a legitimate reason. They need additional living space. That's what you wanted to write down?

CAROLINE LIPPER: Yes.

DIRK LIPPER: Yes.

CONSTANTINE ALEXANDER: Members of the Board wish to comment? Brendan, you were pretty much in leading the charge with regard to the design of the --

BRENDAN SULLIVAN: Are you a little more pleased with the visual?

CAROLINE LIPPER: I agree with it. It looks much nicer.

BRENDAN SULLIVAN: This afternoon I was looking at your house and the one across the street. That's what I did not want to duplicate is across the street. I think it looks awful aside from the other issues with that. But when I saw the new plan, I think it is much cleaner, much nicer. Maybe a

little more work, but I think it is much nicer.

DIRK LIPPER: Thank you, Scott.

SLATER ANDERSON: I agree. I think it is a good improvement.

CONSTANTINE ALEXANDER: Is there anyone here that wishes to be heard on this matter? The Chair notes for the record that no one wishes to be heard on this matter. If I can have the final back. I don't believe there are any letters of support or opposition in the file.

Did you speak to your neighbors, by any chance?

DIRK LIPPER: Yes.

CONSTANTINE ALEXANDER: What could you report to us?

DIRK LIPPER: Neighbors were pleased, and I think some of them are even thinking they would like me to say there's no opposition at all.

CONSTANTINE ALEXANDER: Comments, questions from members of the Board? We are ready for a motion?

The Chair moves to grant a variance to the Petitioners to construct additional dormers as proposed on the grounds that a literal enforcement of the provision of the ordinance would involve a substantial hardship to the Petitioner. The hardship would be that living in a nonconforming structure and need additional space, living space, that the hardship is going to the structure itself. The only way to go is do the dormers that you are proposing to do.

And, again, you are constrained by the fact that you already have a nonconforming structure and that the relief may be granted without either substantial detriment to the public good or nullifying a substantial intent or purposes of this ordinance. That condition being satisfied

because the relief -- the further nonconformance is quite small.

The purpose for which you want do it is salutary. You want additional living place. The plans are responsive to the concerns of the Board and to the dormer guidelines and that there appears to be no neighborhood opposition to the petition.

The variance will be granted on the condition that the work proceed in accordance with plans dated or numbered, I should say, A-1, A-3, A-4 and A-5 prepared by -- A-1, A-2, A-3, A-4, A-5 prepared by Gorham Construction and initialed by the Chair. We'll take the vote. What that means if you can't -- these are the plans.

DIRK LIPPER: Yes.

CONSTANTINE ALEXANDER: No variation or you will be back before us.

All those in favor of granting the variance. All those in favor say aye. Five

in favor, the motion carries.

TAD HEUER: Actually four.

CONSTANTINE ALEXANDER: Four in favor. The votes still carry.

The Chair will call Case No. 9790, One Brattle Square. Anyone here with regard to that petition? Several people.

SEAN O'GRADY: This is not heard by any of the five.

CONSTANTINE ALEXANDER: For the record, Slater Anderson is sitting on this case and Tom Scott is not. And the other four members you see here are sitting on this case.

Again, would you give your name and address for the record, please.

BRIAN GROSSMAN, ESQ.: Sure. My name is Brian Grossman, an attorney with Prince Lobel Glovsky & Tye.

SOHAIL USMANI: Radiofrequency engineer for Metro PCS.

CONSTANTINE ALEXANDER: Before we

get into the merits of this case, before we get the case heard, I have a preliminary question. You filed the original application with us, and there was opposition from the Planning Board.

And apparently -- we got a letter from the Planning Board sometime early June or middle of June expressing some concerns. You then continued this case, went back to the Planning Board, and apparently submitted revised plans. And the Planning Board has generally given a letter of support which when we get to the merits I'll read it into the record.

My question is: The plans in our file and the photo simulations in our file are all 2008. We don't have in our files the plans that you showed before the Planning Board. And I'm not -- personally, I'm not disposed to consider this case just based on old plans or on plans that are presented to

us at the hearing tonight.

BRIAN GROSSMAN, ESQ.: The design change that you have because -- that was submitted including a revised photo sim. The majority of the installation has not changed, and I think if we have a chance to present, and I can walk the Board through the design change that made it more acceptable to the Planning Board. And the Historic Commission also approved it because the major design change was moving the equipment inside.

CONSTANTINE ALEXANDER: At the end of the day if we do grant relief, it is tied to plans and photo simulations and we're not going to have those in the files to tie our decision to it. So Mr. Grady when he goes to make sure our decision is enforced, complied with --

BRIAN GROSSMAN, ESQ.: If we can, what I will do is I can certainly leave the

set of plans that I have that are with the revision date of June 5, 2009 that are the corrected plans and the corrected photo simulation. I apologize. It was my understanding that the Zoning Board of Appeals had the revised set.

CONSTANTINE ALEXANDER: Again, I'm going to stop talking in a second, our procedures are that any of those plans are -- have to be in our files, the Building Department's file, by the close of business on the Monday preceding the hearing so members of the Board, as we do, go to look at the plans in the files and also any interested parties can come in and look at them as well and not have to react on the fly at the night of the hearing.

So I'll seek views of other members the Board, but I'm of a mind to continue this case. We'll take your plans and photo simulations and then we'll have a chance to

study the next time the case goes forward at the pleasure the members of the Board.

BRENDAN SULLIVAN: I think you are correct.

TAD HEUER: I agree.

CONSTANTINE ALEXANDER: It doesn't make a difference what you say.

TIM HUGHES: I'm well aware of that.

CONSTANTINE ALEXANDER: When is the first date?

SEAN O'GRADY: September 10.

CONSTANTINE ALEXANDER: Can you wait that long or would you like to us to squeeze you in some other time?

BRIAN GROSSMAN, ESQ.: If possible, we would like to be squeezed in. I don't think this is going to take particularly long especially with the design revisions we have. I think the Board, giving the Planning Board and Historic feedback, you will be very happy with what we have done with the revision.

CONSTANTINE ALEXANDER: We are trying to avoid the second meeting in August. Any chance to squeeze it in earlier?

MR. GRADY: The only other place to squeeze in without jumping ahead of people you continued two weeks ago which you are already overloaded there. You already have four continues.

CONSTANTINE ALEXANDER: I guess September 10.

BRIAN GROSSMAN, ESQ.: I promise I'll be quick.

CONSTANTINE ALEXANDER: We have, unfortunately, a number of other continued cases on the agenda. I am sorry but those are our rules. So the Chair moves that this case be continued until 7:00 p.m. on September 10, on the condition that the sign that's been posted on the site be modified to reflect a new date and a waiver of the time for us to reach our decision already on file. It has

been continued once before.

Let me make sure. They had to go back to the Planning Board the last time.

All those in favor of continuing the case say aye. Five in favor. Leave your plans here, and we'll see you September 10.

BRIAN GROSSMAN, ESQ.: We'll submit new ones.

CONSTANTINE ALEXANDER: No later than the Monday before September 10.

The Chair will call case No. 9793, 15 Crescent Street. Any one here on that petition please come forward.

This case was continued because it is a case not heard. We never really got into the merits because of the concern that you received a variance, the Petitioner received a variance, several years ago and the condition of that variance was that a driveway be removed. That driveway was not removed and so this Board is not disposed to

hear the case until that situation was resolved.

I think you undertook to the Board at that time because the best way to resolve from our point of view was to get the curb cut removed for that should be nonexisting driveway. What do you have to report back to us about the curb cut or anything else you are proposing to deal with to remove the driveway?

RICK AMES: Absolutely there's conviction to remove the driveway. They have retained a contractor, obtained a permit, Dig Safe last week went out to mark the driveway. And we were not able to complete all of the tasks.

CONSTANTINE ALEXANDER: Please identify yourself.

RICK AMES: I'm sorry. Rick Ames, A-M-E-S, with Next Phase Studio Architects.

ELIZABETH PEOPLES: Elizabeth

Peoples, 15 Crescent Street.

CONSTANTINE ALEXANDER:

Congratulations, and I assume we'll continue the case again, and we'll see you when the curb cut is actually removed.

RICK AMES: We were hoping that that good faith effort would allow us to at least have the case heard in that time. This time the of year it's extremely difficult to move a contractor.

CONSTANTINE ALEXANDER: The problem is once before -- I personally, speaking for myself, am reluctant to grant relief subject to a condition to be satisfied later. That's what we did the last time and that condition was not satisfied. So I for one would like see the curb cut gone, so there's no question about complying with the old variance, and take up your new variance request at that time. I would not be in favor of allowing you to go forward with this

project until that curb cut is gone.

RICK AMES: I understand that concern and would like to reiterate I don't think it was deceptive that the curb cut was not removed as we tried to express last time. It was somewhat coincidence and confusion. They have been good neighbors and maintained their property. The fact that there is this shed rotting on the hoof that we're trying to -- that precipitated the whole process.

And I don't know how to advocate for it, because it is a blue tarp breeding mosquitoes and rotting.

BRENDAN SULLIVAN: You said you have an agreement with Public Works?

RICK AMES: Yes. The contractor that paid \$100 fee and Dig Safe has gone out and marked the road.

BRENDAN SULLIVAN: It is in the works being done?

RICK AMES: It is in the works to be

done unequivocally.

BRENDAN SULLIVAN: And so that's in the works to be done. And I guess what you are saying if we could then grant a variance to renovate the shed, that the curb cut could be done, completed, before a building permit is issued?

SEAN O'GRADY: I agree that I would support the petition on the condition -- on the condition that it would be closed prior to any removal of any stop work order or any granting of any further permit.

CONSTANTINE ALEXANDER: My only question is how does that accelerate the process from the Petitioner's point of view? They can't work on the shed until the curb cut is removed.

BRENDAN SULLIVAN: There may be a time lag from the completion of the curb cut until it is filled in and then the actual application process which could again add

another month or so and add another six to eight weeks after our approval.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: So that I think what he's probably asking and what I can see is a shortening of the process before winter sets in. That's all.

CONSTANTINE ALEXANDER: What you are suggesting, Brendan, is that we consider the case on the merits tonight. If we decide to grant relief, a condition of the relief is that the building permits to go forth what is being sought can't be issued until the satisfaction of Mr. O'Grady or the Special Services Department that the curb cut has been completely removed.

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: So once that's done, and if we've granted the variance and the time for appeal, etcetera, they can immediately start working on it.

BRENDAN SULLIVAN: Then a permit for the shed could be issued.

CONSTANTINE ALEXANDER: Members of the Board have views about this?

TAD HEUER: I have a technical question for Sean. What point does the appeal process start to run? It runs on the signature of the Chair which he would sign now?

SEAN O'GRADY: Yes.

TAD HEUER: And the appeal process would run from his signature beginning of July?

SEAN O'GRADY: You would have a 20 day appeal process for anyone who wished to appeal, but they would be appealing based on a condition they don't know or will not be met?

SEAN O'GRADY: If that's their concern, that's the case.

TAD HEUER: I have to say I'm not

thrilled by that.

SEAN O'GRADY: I hadn't thought of that and appreciate that.

SLATER ANDERSON: It is a risk that you're talking by advocating to have this heard tonight that you may be creating a situation where somebody chooses to appeal because they are not satisfied with the curb cut. I don't know. It's a risk for them.

SEAN O'GRADY: I thought you were saying the opposite. Are you saying there's a neighbor out there who is all happy because the curb is being closed and then they get faked out because they missed the appeal period.

TAD HEUER: Yeah.

SEAN O'GRADY: That's what I thought.

SLATER ANDERSON: I was thinking there's an appeal that gets approved, hypothetically. There's an appeal period,

but the neighbors see the curb cut isn't removed. I don't know.

BRENDAN SULLIVAN: Then after the curb is replaced, then the appeal from our decision could then be withdrawn.

SEAN O'GRADY: Yeah.

BRENDAN SULLIVAN: Because the basis of the appeal has been satisfied.

CONSTANTINE ALEXANDER: That's exactly right.

Tim, you have been quiet. Any views you want to express on this?

TIM HUGHES: No. I think you guys are covering it pretty well.

RICK AMES: We apologize for bringing a confusing case.

CONSTANTINE ALEXANDER: Is it the opinion of the Board we want to go forward on the merits of the case or ask to continue?

BRENDAN SULLIVAN: I would say yes.

SLATER ANDERSON: I'm inclined to

hear it. I've seen the pictures, and I'm sure it is not appealing to the neighbors to continue like this. So I think there's a matter -- -- get the matter out of the way, and then Sean can deal with the enforcement side of it.

TIM HUGHES: I'm willing to hear the case.

CONSTANTINE ALEXANDER: On that basis. Three in favor, the majority of the decision, so we'll go forward with the case tonight. I'll turn to the merits of your case to be heard now.

BRENDAN SULLIVAN: Provided, after what you have just seen, that you are comfortable with going forward.

CONSTANTINE ALEXANDER: You got two people are not crazy about hearing the case in the first place. You need four votes. That's a good point. Make sure you understand.

On a procedural thing like whether to continue the case or not, hear the case tonight, it is a majority. Three of five. When you come to getting the actual relief, the variance, the state law says you need to get four. So four out of five as a super majority. So, you know, you see the body English around the table and make our own judgment.

If you go forward and you only get three votes to get the variance, the variance will not be granted and you are out of luck for the next two years unless you can come back with a completely different set of circumstances.

BRENDAN SULLIVAN: If you want to go and huddle and then come back after we hear the next case or two, rather than making up your mind quickly, talk to Sean O'Grady, you can come back after the next case or something.

RICK AMES: Do you want to do that? I feel -- you should feel informed what we're doing. We should accept that offer.

CONSTANTINE ALEXANDER: We'll recess this case until later in the evening and move on with the rest of our agenda.

BRENDAN SULLIVAN: Whenever you are ready come back.

TIM HUGHES: We can't do the next one because it is too soon.

(Brief recess).

CONSTANTINE ALEXANDER: We're going to resume the 15 Crescent Street. Have you decided whether you wanted to go forward on the merits tonight? What is your decision.

ELIZABETH PEOPLES: We'll go forward.

CONSTANTINE ALEXANDER: All right. Ready to go?

BRENDAN SULLIVAN: Yes.

RICK AMES: The Peoples have owned the property for some time now. About ten years ago they did a renovation that tore down an existing building that was on the property to build an addition. This condition that was unmet was a residue of that project eleven years ago.

They've treated the house as single family. They have been good neighbors. There's several letters here. The shed has always been on the property from the '20s probably. It is called a potting shed. For this part of Cambridge it is a good size parcel.

CONSTANTINE ALEXANDER: The shed is good size. A potting shed? It is more than a potting shed.

ELIZABETH PEOPLES: It was a potting shed from the next-door neighbors.

RICK AMES: They maintained the shed in a very casual way until this point.

It is really clear the building needed to be restored or taken down. They pulled a permit to do a repair on the building. Somewhat not understanding the level of work it was going to require, it clearly crossed the line from being a repair into a rebuild and a stop work order was issued sometime in September of last year.

They made some efforts that -- we were bought in, and we made efforts to see what it would take to make the shed a conforming structure. Those were pretty significant. And the process of researching what it would take to make the shed a forming structure, this delinquent situation came up and all bets were off and the effort to make it an as-of-right effort, cut it back from the property line, wasn't worthwhile, and we were going to need to come before the Board regardless.

It's a one-story shed, they are

intending to basically rebuild it in its exact footprint and exact character what it was. They will use it for some loose storage, potting again. There are some photographs that the property is actively used. And because it is the open space, it's really pretty active in the neighborhood.

TAD HEUER: Do you have photographs that we don't have?

RICK AMES: I believe these were submitted but I will allow you to --

TAD HEUER: We have just black and whites.

CONSTANTINE ALEXANDER: The initial form shows no change.

RICK AMES: I have a revised one right now.

CONSTANTINE ALEXANDER: You didn't put it in the file before tonight?

RICK AMES: I did not.

CONSTANTINE ALEXANDER: Do you have

it with you?

SEAN O'GRADY: Did you actually give me one?

RICK AMES: I don't know if I did it in passing this evening. There's one here.

CONSTANTINE ALEXANDER: That's the plan. I'm talking about the dimensional form that shows -- is this the dimensional form?

SEAN O'GRADY: No. I don't think there would be any change.

CONSTANTINE ALEXANDER: Well, you are treating this as a whole. Why the need for a variance?

RICK AMES: It is nonexistent so everything is proposed.

SEAN O'GRADY: Let me just --

RICK AMES: We have changed our dimensional charts to reflect everything is proposed.

SEAN O'GRADY: I guess when they

made this, they made it under the -- with the assumption that they counted the shed so it is not showing the FAR.

CONSTANTINE ALEXANDER: That's what I want to know tonight. Exactly what zoning relief are you requesting from us? Is it FAR, setback, what are they?

RICK AMES: Rear yard setback and we're 9 foot .3 from the existing house.

CONSTANTINE ALEXANDER: The rear yard setback, what is the requirement for the district?

RICK AMES: Five feet for an accessory building.

CONSTANTINE ALEXANDER: And your shed will be how many feet?

RICK AMES: Four inches.

CONSTANTINE ALEXANDER: Virtually on the line?

RICK AMES: There's a retaining wall behind it that has always been there.

CONSTANTINE ALEXANDER: Four inches from the rear lot line. And the second form of relief you need for a variance?

RICK AMES: It is it needs to be ten feet.

CONSTANTINE ALEXANDER: From the principal structure?

RICK AMES: From the principal structure and it is 9.3 feet from the principal structure.

TAD HEUER: Why not make it smaller? Why can't it conform?

RICK AMES: Well, we lost all dimensional -- we could make it conform by cutting it back but because of this other condition we were going to have to go before the Board to resolve the matter, and the recommendation was why you don't apply to rebuild it as it exists.

TAD HEUER: That doesn't seem right to me. You could have had the curb cut

with -- go to Public Works and say, I want the curb cut now. And they put in the curb cut. Your previous variance is satisfied. You don't need to come us. We don't clarify things. We just make orders. People either comply or they don't. And there you are free and clear of the curb cut issue, the driveway issues, and all you are here for is a variance for something that as you just said you could do by right if you made it smaller.

RICK AMES: We would have to take the foundation and cut the piece, and we actually submitted drawings to that effect. They were rejected because of this outstanding matter.

TAD HEUER: You could make a smaller one, right?

RICK AMES: We could.

TAD HEUER: You are asking our grace for a much larger shed. And you used the word repair and rebuild. It seems to me the

zoning code is designed to eliminate nonconformities where nonconformities no longer exist. And where you have gone from a repair into a rebuild, rebuild to me suggests there's nothing there which means that the nonconformity that was there in terms of the setback was eliminated. At which point it seems to me that the Zoning Board is going to enforce the ordinance to put you back into conformity which you say you can do without any difficulty except by bringing it --

RICK AMES: We have to remove foundation.

TAD HEUER: But it can be done and making it nine inches further away from the house. To me that sounds fairly reasonable, and I wouldn't -- based on what you said, unless you say something else, I'm not sure why we would be granting a variance for a huge shed when you can do something by right when

the curb cut is resolved. That's the issue I'm struggling with.

RICK AMES: I understand that logic and we are pursuing another recommendation.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: What I'm faced with tonight is you want zoning relief -- to a certain extent the relief is extreme in that you will be four inches from a lot line. In the face of the situation where you could have a acceptable structure as a matter of right, to be sure you've got to change the foundation, but without having us badger you here tonight, you could still build a potting shed that complies in all respects to the zoning bylaw -- you have to get rid of the curb cut. That's a separate issue. And why from our perspective should we allow you, rhetorical question, I'm not looking for an answer, why should we allow you to depart from the requirements of the zoning

law when you can comply with the zoning law?
I'm puzzled.

RICK AMES: Again, there's been a long path here and there was a recommendation from the Building Department that if we are going to go in front of you why don't you ask for what is existing as opposed to rebuilding it.

CONSTANTINE ALEXANDER: Why come before us at all? You have a solution that allows you you not to come before us.

RICK AMES: That's very clear right now, and it seems like it would be the recommendation. And so basically what I'm understanding is if we meet the condition on the curb cut, we should apply for a permit and move on.

SEAN O'GRADY: You had a site rebuilding permit as was recommended.

RICK AMES: Which we have done, and that was rejected because of this outstanding

matter.

TAD HEUER: Quite frankly, I understand because, you know, we work in concert with the Building Department. And when we issue variances that say do something and it comes back ten years later and that something was not done, we're not thrilled about it because we expect those things get done. That's why we grant the extraordinary relief. So I can certainly -- I would have expected the Building Department not to issue anything until outstanding variance issues have been complied with. Once those conditions are complied with, there's nothing that prevents the Building Department from issuing a permit for as-of-right construction.

CONSTANTINE ALEXANDER: Before we make a decision any other members the Board want to be heard that the point?

(No response.)

CONSTANTINE ALEXANDER: What I would suggest to you, by the way, is to continue -- bad word -- continue the case just in case something develops so don't lose your rights to pursue a variance. Continue the case for a couple months. And if in the meantime you get your curb cut removed and you go back to your original plans that show an as-of-right structure, when the case comes up again we'll dismiss because you don't need any relief.

If for some reason something else develops in the meantime, you can talk to us again. I gotta say, do it as a matter of right.

My thought is to continue the case one more time just as a matter of safety for the Petitioner because I think we'll be able to hear the case. What date should we put on?

SEAN GRADY: Push this one out pretty far for everybody's -- the farthest

one I have here is October 22.

RICK AMES: I think the project will be completed by then.

CONSTANTINE ALEXANDER: We'll continue to October 22, but we don't expect to see you.

RICK AMES: I hope not.

CONSTANTINE ALEXANDER: We have to take a vote. The Chair moves to continue this case until 7 p.m. on October 22.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: On the condition that you change the date on the sign to October 22.

RICK AMES: And if we do pursue another route, as a courtesy should we withdraw the petition, send a note?

CONSTANTINE ALEXANDER: Yes, you have to withdraw it. Absolutely.

All those in favor of continuing the case proposed. Five in favor. The case is

continued. Hopefully we'll never see you again.

The Chair will call 9810, 2472-2482 Mass. Ave. Anyone here to be heard on that case? If anyone wishes to come closer, feel free.

BRANDON WOOLKALIS: Good evening members of the Board. My name is Brandon Woolkalis.

CONSTANTINE ALEXANDER: You have to spell your name.

BRANDON WOOLKALIS:
W-O-O-L-K-A-L-I-S.

NICHOLAS LEO: Nicholas Leo, L-E-O:

BRANDON WOOLKALIS: Some years ago we were granted a variance to construct a Dunkin' Donuts on Mass. Avenue in North Cambridge. Since then we have been back a number of months ago to partner with East Cambridge Savings Bank to put an ATM machine on our premise. The Board looked favorably

upon us and granted us an amendment to that variance.

The before we had a -- before we had been granted that amendment, we put in application in to the Community Development Department for a sign for not only us but the bank we share, a pilon sign, which we were granted from Les Barber.

Subsequently, after we received your go head for the ATM, we got a letter from the Building Commissioner pulling that permit back, saying that they had to review it, it didn't fit the zoning, et cetera, et cetera. They had to look into it. So we waited and waited. We waited multiple weeks. And finally Don Drisdell, City Solicitor, the Building Commissioner, and Kevin Crane, our attorney who is representing the bank, went through legal documentation and found that it was in our favor to be able to build a conforming sign.

The issue that came up during the conversations was an agreement that we had with the previous abutter. It was a private agreement between us and him. And the agreement came up to bear at these discussions. And what we wanted to do tonight was basically to remove Condition 8 from our original variance which was -- you can see on your first page there. It's highlighted. And it says: To the extent of the written agreement between the Petitioner and direct abutter, Charles Teague, incorporates commitments that are properly within the purview of the Board and are not inconsistent with the plan submitted to and approved by the Board nor inconsistent with the decision, those commitments shall be deemed conditions of this variance.

Since then we have come to an agreement with Mr. Teague. And the second page you will notice is a letter from him with

his signature stating: I, Charles D. Teague, hereby certify the March 25, '04, agreement referred to in the BZA decision 8802 is cancelled and has been rendered null and void by the agreement of the parties thereto.

So basically tonight what we want to do is strike No. 8 off the variance.

CONSTANTINE ALEXANDER: Let me make a couple of observations. First is that to be sure this document nullifies your agreement with Mr. Teague. However, because that agreement that's now been nullified was incorporated into our decision, it has a separate life, free-standing. It is now part of our decision.

The fact Mr. Teague has agreed to relinquish whatever rights he has in that agreement, doesn't necessarily mean we should do it. We have to look at it separately. The first observation.

The second observation is that the agreement with Mr. Teague, and frankly an illegible photocopy is in the file, it is a very extensive agreement. It covers many, many things. I'm a troubled person about the sign issue. I'm happy to grant a departure from the sign requirements that's in that agreement tonight. But to throw out the entire agreement, which has a lot of things that might have influenced the Board when they granted the variance the first time around, I'm somewhat reluctant. I wasn't here, I wasn't sitting on the case, I don't know how important that whole agreement played in the decision of the Board to grant the variance.

We are fortunate tonight we have somebody here who was there, Mr. Sullivan. Mr. Sullivan, what is your views on this? How important was that agreement in totality to the decision that was reached by the Board?

BRENDAN SULLIVAN: Any of these agreements that come back as part of a presentation to us hammered out over long discussion encourage Petitioners to meet with the neighbors, discuss any issues with the neighbors, and any agreement comes back to us is really the bottom line and the end result of all of those discussions.

Possibly with -- obviously with the abutter, but also for the general community and a lot of those inputs from the general community are also part of that. And so I think that there can be a little bit of a -- well, I think we have to take each part of any agreement, some of them are not our purview, some of them we discount. But I think in general that the agreement gives a total different flavor and puts the Petition into a better light.

So, yes, I think that any agreement, even though another party may relinquish it

later on, I think it is very important to the decision.

CONSTANTINE ALEXANDER: Is it your view, and my view by the way, that we should only consider amending -- giving a variance to the sign requirement in there, but not deal with the rest of the agreement? We will deal with that when and if the time comes.

BRENDAN SULLIVAN: I think the agreement is still part of the decision.

CONSTANTINE ALEXANDER: Other members of the Board, please?

NICHOLAS LEO: To give you a little background on the sign. The reason for all this chicken scratch and the writing all over it is basically at the meeting the Board had asked us because Mr. Teague was the biggest in opposition and as direct abutter they asked us to take time in the other room. We went in there. They gave us a little recess, break, to try to come to an agreement with

him.

And that's when basically all the stuff happened in that room next door, all the stuff was added in. And we basically came back into the room, and said, We've come to an agreement. And to protect Mr. Teague they basically added that, well, to the extent of the Board, we'll make it part. I'm not sure if the Board even knew --

BRANDON WOOLKALIS: What Mr. Leo is trying to say is it was added at the behest of Mr. Teague. And I think, Sean might agree, it was added after? It was later on it was actually typed up. It was after the meeting, like days later it was actually added in the form it was because the city didn't know factually if they could attach a private agreement.

And we actually have a letter dated September 27, 2004 from Robert Bersani, the then Commissioner, stating which parts of the

private agreement would be upheld or would be considered part of the variance. And the only part that came through was the sound barrier wall. It says here -- I have a copy I can give us guys.

CONSTANTINE ALEXANDER: If that's the case, you are saying most of the agreement doesn't deal with zoning. You don't need to rescind the agreement.

BRANDON WOOLKALIS: The thing is we don't want it to cause problems like it did in the past with the bank and signage with the bank.

CONSTANTINE ALEXANDER: The signage isn't before us tonight. We'll decide the signage following the case tonight.

TIM HUGHES: I have a question. I need some clarification here.

We're not hearing a case on a variance for signage. The sign they want to

put in is a matter of right, is that correct?

CONSTANTINE ALEXANDER: No, because it doesn't comply with the agreement.

TIM HUGHES: It complies with the ordinance, but it doesn't comply with the agreement.

BRANDON WOOLKALIS: Compliant signage under Article 7.

TIM HUGHES: They are not looking for a variance for signage. They are looking for us to take little piece of the original variance out so that they can put up the signs that they are allowed to do as a matter of right, correct?

BRANDON WOOLKALIS: Right.

SEAN O'GRADY: The signs right now are off the table in that the Commissioner has already not only allowed the signage under the agreement but issued permits for that sign.

CONSTANTINE ALEXANDER: Why is

this --

SEAN O'GRADY: It was originally -- and tell me if I'm wrong because you guys know the case better than I. There was a request for a sign permit. There was a question raised about whether they were allowed to come as of right. There was this filing asking for the waiver of a -- including the issues with the signage.

Subsequently the train chugged along. The Commissioner and the Legal Department made the decision that the condition in No. 8 regarding the signage was unsupported, that there was -- the concept they couldn't have as-of-right signage because it wasn't supported. So the Commissioner said, I've made my decision. My decision is they can have as-of-right signage.

CONSTANTINE ALEXANDER: The matter before us then tonight is whether to

eliminate the rest of the agreement.

SEAN O'GRADY: The rest of the No. 8.

CONSTANTINE ALEXANDER: Which is No. 8.

SEAN O'GRADY: Is that pretty much it?

BRANDON WOOLKALIS: That's correct. We originally filed for it because it was in that stage of going back and forth between a City Solicitor and Kevin Crane and (inaudible), and we wanted to resolve it because the bank they want to go forward, we want to go forward. It is a tough economical time right now and it would be great to get the extra come from the rent and also benefit our customers and neighbors to be able to utilize an ATM machine. It is a well-liked bank in Cambridge and a lot of people use it so it would be great to have in our store.

CONSTANTINE ALEXANDER: I got to go

back to the question I started with and that is, I understand what you want to do, but what I don't know is when you say eliminate the agreement, Condition No. 8 which is incorporated in the agreement to some extent, I don't know what I'm doing when I grant you the relief you're seeking. To what extent am I granting you rights that you don't have potentially right now?

BRANDON WOOLKALIS: Well, it was decided by Mr. Bersanni back in 2004 that agreement was bound by -- the city could not bind us by that agreement except for the sound barrier wall which was built and in the plans. In the writing it says: The building permit plans Sheet C-1, show an 8-foot concrete wall around the left side and rear property. This is consistent with the barrier shown on Plan L-1 which is submitted to the BZA. And, therefore, we -- would be held to that that we had to construct that wall before the

building permit -- I mean the CO was given to us.

But all the other conditions -- all the other parts of that private agreement were struck. We said -- I can read one: Exterior lights will be enforced by the zoning code and other things. An easement between the parties was not made a condition of the variance and is, therefore, not considered to be within the purview of the BZA. It goes through and says each bullet this is not on the purview of the BZA. The only thing that was was the wall.

TAD HEUER: Are you coming before us to ask us to relieve you from the obligation to maintain a sound barrier wall you've already built?

BRANDON WOOLKALIS: No, no. We built it. We are not taking it down.

CONSTANTINE ALEXANDER: What relief are you asking from us?

BRANDON WOOLKALIS: We want this thing struck.

CONSTANTINE ALEXANDER: You've already got a decision from Mr. Bersani it has been struck. It doesn't apply.

BRANDON WOOLKALIS: It is still on there. Like the sign issue, this held us up. This one contractor we had, this private agreement that no one else saw except us and immediate abutter until later it was put in the variance, this held us up for three months. People were arguing that, well, they have to go by this private agreement. And we said, we already have the sign permit, and then they pulled it and then we had to get have a legal decision.

CONSTANTINE ALEXANDER: I understand your problem.

BRANDON WOOLKALIS: It cost money and time. It would be nice to be done with something that's a private agreement that by

the courts, Mass. General courts, it says it has been struck. It's done.

BRENDAN SULLIVAN: It has been decided in a final form that the agreement isn't the boogie man anymore. I think it has been well decided.

CONSTANTINE ALEXANDER: I understand you have been held up for three months. You've got a decision now. That letter right there.

TAD HEUER: I'm confused because it looks like you had five years, right?

BRANDON WOOLKALIS: The original variance was issued five years ago.

TAD HEUER: That decision was?

BRANDON WOOLKALIS: This is 2004.

TAD HEUER: You have had it five years.

BRANDON WOOLKALIS: This private agreement still rears its head and that's why we want to strike it.

TAD HEUER: Don't you show that letter to anyone who says tell me about this agreement?

BRANDON WOOLKALIS: Yes. They still say we don't know. We have had to sit down for three months and costs you legal fees, et cetera. That's why it is so important for us tonight to strike it.

NICHOLAS LEO: Our fear is you'll say ten years from now we tried to do something else, reinvent the wheel again, try to explain everything.

BRANDON WOOLKALIS: Lot of stress. Headache.

NICHOLAS LEO: The whole agreement was to basically to protect our abutter and most of the stuff in that agreement has already been satisfied, completely gone away. And through the private agreement with the direct abutter in the end we basically declared it null and void. And

other conditions that affected the neighborhood, there were other conditions put in the BZA to help satisfy those concerns of the neighbors and stuff.

BRENDAN SULLIVAN: Giving somebody some regulatory power over our decisions, whether it's in effect or not in effect, I'm not sure that we concede that to somebody even though they are part of drafting an agreement that we incorporated into one of our decisions and then the party comes back later on and says, Okay, that is no longer in effect. That's granting them some authority that I don't think they have.

TIM HUGHES: I think that's why they are here. They are asking us to make another decision as this body to rescind a decision that was made in the past.

Brandon WOOLKALIS: Right.

BRENDAN SULLIVAN: I think given that night and the -- and when we made that

decision and incorporated that agreement, that agreement was part and parcel of the total package that we granted.

TIM HUGHES: No doubt, but that was five years ago and this is now. And our obligation now is to hear their petition to rescind that article of the agreement. If you don't want to do it, you can vote against it, but we have an obligation to hear that and give them a hearing and vote on it whether we are going to rescind Article 8 of that agreement.

SLATER ANDERSON: Did you say Mr. Teague is no longer an abutter?

BRANDON WOOLKALIS: No. He sold the property.

CONSTANTINE ALEXANDER: And he obviously terminated the agreement.

BRANDON WOOLKALIS: We did that in court. I mean, it was never -- the agreement was never brought public to light in this room

in a hearing. We didn't go through the conditions. We did it in private in back. We came forward. The abutter Mr. Teague said, I do not contest anything. And we came to an agreement and the Board voted and that was it.

SLATER ANDERSON: You guys agreed to allow the private agreement to become part of the public record.

BRANDON WOOLKALIS: I don't know how that ended.

NICHOLAS LEO: That was not our intention.

CONSTANTINE ALEXANDER: You may not have agreed to, but the Board at the time may have imposed it upon you.

NICHOLAS LEO: I think it was something the Board wanted to make sure the direct abutters were protected or the direct abutter's attorney asking for it or something. I'm not sure.

CONSTANTINE ALEXANDER: Any public comments?

TIM HUGHES: And I think that's admirable of the Board to protect the direct abutter. But I think one thing here that troubles me is that the Board as constituted before said it instituted an agreement that kept you from doing what you would be allowed to do as a matter of right. Now, I think in in a case like that, our Board would be overstepping their authority to do that.

I mean, the best -- in terms of the signage anyway. In terms of the other stuff, I don't think that we were overstepping protecting -- the sound barrier and protecting a direct abutter and getting negotiations trying to see if we can get this thing done is what we do.

As far as the signs are concerned -- if what it takes for you to proceed is to get ride of Article 8, I'm in

favor of getting rid of Article 8.

CONSTANTINE ALEXANDER: We are taking public comment now.

SEAN O'GRADY: Counselor Toomey was here. He asked me to express his support for the project.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard on this matter.

ROBERT O'REILLY: Robert O'Reilly, O-'-R-E-I-L-L-Y.

I live across the opposite side of Mass. Ave from the Dunkin' Donuts and was involved in some degree with some of the discussions that took place several years ago when these gentlemen came forward to put up the building and their businesses has been operating since then.

One of the things that has come up here in some of my conversations with my neighbors and at meetings around the neighborhood, there's a desire on the part of

people who live in North Cambridge to not have signs on poles along Mass. Ave. It makes it look like a strip mall.

We have been working to eliminate those with some success with the Valvoline, which is immediately across the street from the Dunkin' Donuts. They reduced their sign, brought it down to basically street level. And we have been trying to get rid of these things. We see this as a step backwards as a quality issue in North Cambridge.

The confusion -- do you have a question?

CONSTANTINE ALEXANDER: You realize the signage that they want to do is the signage absent Section 8 of the old agreement, is something that they can do as a matter of right anywhere in Cambridge.

ROBERT O'REILLY: I take your word for it. I don't know the rules. They seem

very complicated to me. I take -- I read some of the stuff, and I was like, yeah, okay. I think there's been a movement in some parts of Cambridge you would have a hard time putting up a sign like that. If you wanted to put it up on Huron Avenue, I think -- you wouldn't even get here. It would be taken care long before it got to this Board. But we don't seem to get that.

There's a little bit of neighborhood stuff that gets a little in the way maybe sometimes but it is still a fact of life. I think there's confusion, too. You expressed it here among yourselves. The different people who have said it is this and that and it comes back to you guys. And I'm like when there's this much confusion, I know this is part of trying to resolve that, you know, somebody is not interpreting things the right way. You say they have a right but, I don't know. You got approvals and somebody turned

and said, No, you can't do it. And then various meetings were held and decisions reversed and it brings us here.

That kind of bothers me when it seems -- there's lot of people juggling the ball trying to figuring out what to do with it.

CONSTANTINE ALEXANDER: Your last point is well taken. There was confusion I think at the start of consideration of this matter. To my mind at least a lot of the confusion has been dispelled. We now understand what is involved. And I can restate it for, if you like.

I mean, we had an agreement that was signed, however it was signed, and it was signed and it was incorporated as part of the decision. It was a condition. Condition No. 8.

That condition said that to the extent that the written agreement between the

Petitioner and the direct abutter, Charles Teague, incorporate commitments that are properly within the purview of the Board and are not inconsistent with the plans they have to be complied with. Let me keep going.

That's a very general statement, but it says basically anything that's in the agreement that involves zoning, they have to comply with the agreement.

The agreement is now gone. Mr. Teague left but, nevertheless, the conditions stay. They have gotten a determination from Mr. Bersami back in 2004, he was the Building Commissioner at that time, saying that very little in that agreement are matters that are a matter of zoning. Most of the things in the agreement are something not within the purview of the Board and, therefore, are outside of the conditions that we imposed in our decision.

They represented to us tonight

actually the only part of that agreement that has a condition that we would be concerned with is the soundproofing wall which has already been constructed. What they are saying is basically the agreement that was a condition to this, this condition is largely a loser. That's very little in this condition that actually complies because it is not in the purview of zoning. But, nevertheless, because there's this general language in here that causes them, and I can understand that, legal problems every time they want to do something, they've got to go through the song and dance of explaining to people why what they want to do is okay and doesn't violate Condition 8.

For once and for all they want to eliminate that potential for problems in the future. Legal problems, just delay of going forward with the project. That's what is before us tonight.

ROBERT O'REILLY: I would say their initial plans and the plans submitted to this Board did not include a sign and a post. And those are the plans that were approved. There was actually a tree situated in that spot in those plans that they were going to plant in the location where they want the sign. Now what they are bringing to you today is not in their initial plan.

TIM HUGHES: But the plans were in the petition for a variance. Anything that can be done as of right doesn't have to come before us in the form of a plan to vote on. And these signs to my understanding have been granted a permit to be constructed as of right.

CONSTANTINE ALEXANDER: The signage is off the table. That's not the issue here before us tonight.

ROBERT O'REILLY: The other thing we're concerned about, I believe there were

some other things incorporated in Item 8 that may now be taken off the table. Things that have to do with drive-through food service or the drive-through ATM. Late extended hours. They agreed to reduce their hours not to be open all night or until 2:00 in the morning and all that sort of thing, the delivery times and pickup times for trash I think were also part of that.

As someone who lives there, I don't have the desire to have a 18-wheeler parked on Mass. Ave. when I'm trying to get out there to get to work in morning.

TIM HUGHES: Those items were specified as 1 through 7.

ROBERT O'REILLY: They are not in that separate agreement?

TIM HUGHES: There's a separate agreement. This refers to a specific agreement between Charles Teague and the Petitioner. And all the other things, times

of business and trash removal and biodegradable utensils where ever possible, that kind of stuff.

CONSTANTINE ALEXANDER: That will not be affected. If we were to grant the relief the Petitioner is seeking, those conditions would remain.

ROBERT O'REILLY: Okay. If they have it by right, I still think it is incorporated in there. They want to be done with it. I don't see the need for a sign like that. I know that doesn't have any standing in the group, but I still don't see how the overall environment of North Cambridge is not improved by this. As a matter of fact, it is a step backwards from our attempts to make it a more attractive neighborhood and less car-oriented sort of businesses and so forth which is a goal also of some zoning overlay district documentation trying to get away from that.

TIM HUGHES: I understand that. That's not our purview. We don't write the ordinance. We give variances to the ordinance. If you have a beef with the way the ordinance is written for your neighborhood, the City Councillors, including esteemed Mr. Timothy Toomey who submitted his support for this, those are the people you should be talking to.

ROBERT O'REILLY: I agree. You got to go to hearing the first shot.

TIM HUGHES: I can give you all of their emails, if you want.

ROBERT O'REILLY: I have talked to a few of them about some things.

CONSTANTINE ALEXANDER: Any other public comments? No one? Yes, sir.

RICHARD CLAREY: Richard Clarey, C-L-A-R-E-Y, chairman the North Cambridge Stabilization Committee.

I don't think the fact that the

Petitioner has a legal right to a pole sign is material here because he sold the Board -- they sold the Board on their proposition in part by agreeing not to put a pole sign up. The plans that were presented to our committee and to the Board show foliage. And the testimony that was very persuasive to the Board and many members of the public that there would be no poles, no signs other than the very handsome signs that they submitted had a lot to do, I submit, with the Board's decision in their favor.

I would say they gave up one of the rights they might've had to a pole sign as part of their persuading the many members of the community and the Board to give them the rights that they got.

CONSTANTINE ALEXANDER: You understand, sir, not us, the city offices have already granted them a permit to put up a sign that you and this gentleman are not

happy with. It is not before us tonight. The city made a determination that the sign, this pole sign, that apparently you didn't believe was going to be built or could be built is proper. Not before us. We don't have any jurisdiction.

RICHARD CLAREY: We know it could be built back in '04, but they got a variance saying they wouldn't build it.

CONSTANTINE ALEXANDER: Now they got a variance and the city has determined that variance does not proscribe them from putting up the sign that they now have a pole sign. That's off the table. If there's a beef or there's a legal recourse, it is to some other part of the city not to this Board.

What Mr. Heuer is correctly pointing out, if you want to pursue the sign issue, you have to, some other neighbor, has got to take an appeal and come before us as the Petitioner and these gentlemen can defend it.

RICHARD CLAREY: I understand what you're saying. One of the neighbors, Mr. Ferry, as he eloquently stated in his request that you preserve the neighborhood the way these gentlemen persuaded everyone that their building would be complementary to the Marino's across the street. Marino's didn't ask for a pole sign either. And Mr. O'Reilly said there were several other buildings where pole signs have been taken down that used to exist.

I would like to say we never have seen the sign. We asked to see the sign. They wouldn't show it to us so it is going to be a big surprise. Have you seen it?

CONSTANTINE ALEXANDER: No. It is not before us tonight. You have recourse. If you are not happy with the pole sign, you take an appeal from the decision of the city, and we'll consider that petition at that time.

Anyone else wishing to be heard on this matter?

Mr. Brandon?

MICHAEL BRANDON: Michael Brandon, No. 27, Seven Pine Avenue. S-E-V-E-N is the first word. Seven Pine. Thank you.

I also object to the sign and I believe the sign is before you because it is in the application to waive the provisions that were agreed to, in fact, proposed by the Petitioners when they first came to the neighborhood. Stabilization Committee sponsored a hearing. Subsequently a subcommittee was formed that included Mr. O'Reilly, Mr. Teague, and me and some folks from Edmunds Street. The elderly woman who appeared, Mrs. Coska.

And at that meeting, and at a subsequent meeting, we went through various operational issues that were the standard sorts of things that come up when this Board

considers fast food special permits. And we had a checklist of what they agreed to, what they wouldn't agree to. And so within the side agreement, rather than take up the additional time of the Board to go through what had been negotiated in our view, agreed to, Mr. Teague, who was privately negotiating other issues, including financial issues, which clearly are not in the purview of the Board, he added it to his agreement. And we said, Fine. If you are satisfied with what you negotiated, that will protect the neighborhood from what was agreed.

Those are primarily in -- the copy I have is the typed copy, which lists on Page 12 operating hours to be determined by the Licensing Commission. Although in a different condition, this Board limited it to within a parameter. Dumpster service would be from between 8:00 a.m. and noon. Deliveries, pastries, maximum twice a day

daily. No 18-wheel trucks on site except utilizing parking on Mass. Ave. Products will go to the back door after 6:00 a.m.

TIM HUGHES: Mr. Brendan, are you reading from Article 8 right now or are you reading a different part of the variance as granted in 2004?

SLATER ANDERSON: He's reading No. 12 of the agreement.

MICHAEL BRANDON: The actual agreement that was referred to in your decision.

SLATER ANDERSON: I would say we have a copy of it. You don't need to read through all of the items. Items A through L.

MICHAEL BRANDON: A through K.

SLATER ANDERSON: L was struck, actually. And this is the one that's signed.

MICHAEL BRANDON: I think there might be others such as No. 9. All lighting on site shall be face down lighting

constructed so as to avoid any illumination of Teague's property. I know Mr. Teague while he was there this had been a constant problem. In fact, as recently as I believe a month ago, Inspectional Services sent an inspector out. He sent a letter asking that I guess they are like floodlights on the rear of the building, they are not pointing down and reflecting across Edmunds Street. And it is a disturbance. And you folks know these kinds of issues. What I'm saying is for you to just to wipe this out, A, it negates all the agreements that we have had, the many arguments that were made as to Mr. Heuer's point this is as of right this is -- this was not a Special Permit that was sought where normally we would say they would have a right to assign.

This is a variance. So they basically -- in this zone fast food is a prohibited use, and I would suggest that when

you have ancillary design aspects of signs to a prohibited use that the Board quite appropriately placed strict restrictions in the conditions and that was agreed to.

I would also point out -- and, in fact, Mr. Bersani, I haven't seen this letter, I have seen a letter that was during construction where Mr. Bersani met with the proponents and their lawyers and, in fact, told them to remove the existing pole sign which had been part of the agreement that was reached. And it is clearly shown on the plans that are mentioned in the existing variance, No. 1. Item No. 1: That the work be consistent with the drawings submitted in support of this application by MJ Tavari's architects, et cetera, et cetera, and initialed by the Chair and signed off.

I don't have that copy. I have a copy of the permits of that site plan, which quite clearly shows where this bush is there

was supposed to be a two and a half inch caliber Japanese maple. And once they were granted the variance, first Dunkin' Donuts went to the Planning Board, to Les Barber, the zoning expert who wrote the sign ordinance normally certifies that the sign company will come in with an application and certifies if it complies.

Well, first Dunkin' Donuts went approximately four years ago. First, they tried not to condemn the sign, the existing pole. They wanted to recycle it. This is the gas station pole. Mr. Bersani told them it had to come down in two weeks per the agreement they made. It did finally come down.

We were concerned when they started running electrical conduit as they were constructing the site plan which lead us to believe it was going to go up again. In fact, they got the certification that it complied

with the sign ordinance, and took it to Inspectional Services and signed off which is what they are told, and they stamped it okay.

We subsequently went to the Commissioner, who by that time was Rogers, and he looked at it and he looked at the site plan, and he looked at the agreement that talked about the first meeting on the 24th what was discussed. I wrote him a letter explaining that, which I'm happy to give you, which explains our understanding at their suggestion. They called the existing sign a public nuisance.

What Mr. O' Reilly was pointing out is, part of a longstanding planning effort to improve North Mass. Ave, the city did impose the North Mass. Ave Overlay District. It was an oversight that that did not include no pole signs. But the whole gist for this section of the avenue, from about Rindge Avenue farther than Rindge, but that whole strip

that formerly for folks who have been around awhile was a very rundown strip. It wasn't as nice as a shopping mall. It was vacant lots, used car lots, vacant gasoline station, automotive uses. The base zoning in the Overlay District changed to discourage automotive uses such as --

CONSTANTINE ALEXANDER: Please state your point, if you would. We have a long night ahead of us.

MICHAEL BRANDON: My point is, great effort has been put in by our organization and neighbors of various sites to get the sites redeveloped. A huge highway sign came down. The Valvoline sign came down. The Mobil gas station.

CONSTANTINE ALEXANDER: Okay. You made your point. Okay. Are you finished? It doesn't help to repeat points other people have made.

MICHAEL BRANDON: Okay. I don't

know if you have seen this, but if you go back and review the record, the testimony which I think Mr. Sullivan is doing to refresh his memory, they made a strong argument that was going to get rid of this terrible gas station and put up nice signs that had been suggested by the Planning Board at the previous attempt to install a fast food here.

So, you know, subsequently the same thing happened with the ATM sign. They are approved and Rogers said, No, you can't have them. The attorney for the bank went and spoke to the Law Department, and convinced the Law Department, based on additional minutes that we provided, that, well, they didn't explicitly say they weren't going to put up conforming signs.

We believe that the signed off site plan explicitly showed that it is not there and we would hope you take some steps so the neighbors don't have to appeal this in order

to have the original agreement enforced as a matter of fairness.

My last point is we repeatedly asked Mr. Leo to meet with us when we saw he had filed this in order to try to work this out. Well, maybe some changes might make sense and, unfortunately, he declined to do that so here we are.

CONSTANTINE ALEXANDER: Thank you. I want to put this sign issue, because it we keep coming back, to rest or put in the proper focus. I'm going to walk through.

We have -- the Condition No. 8, that is this agreement with Mr. Teague, in that agreement there's a provision dealing with the kind of signage that can be on the structure. That is a starting point. Then there's the letter from Mr. Bersani submitted by the Petitioner dated September 27, 2004, addressed to Mr. Teague, and it is in regard to signs.

"Signs are regulated by the provisions of Chapter 7 of the zoning ordinance. This department will ensure that any illegal signs are taken down." So there we have that. Then you come forth with a sign you want to put up. And I take from what I see in the file that the city, Mr. Barber, had signed off and approved the sign.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Those signs have been approved.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: He made a determination that consistent with Mr. Bersani's letter, that they were not illegal signs.

SEAN O'GRADY: That's my understanding.

CONSTANTINE ALEXANDER: So to the extent that neighbors are upset about the signs that Mr. Barber signed off on, what is

their recourse? It is not a decision of your department. It is a decision of Mr. Barber. Do they have a resource to this Board? Can they take an appeal from the decision of Community Development?

SEAN O'GRADY: I'm not sure how you would appeal Community Development's signature. I think you have to attack the sign permit itself as Tad mention earlier, an appeal of that.

CONSTANTINE ALEXANDER: The point for Mr. Brandon and Mr. O'Reilly is simply this. The case before us tonight does not involve the sign. It is something bigger. The whole agreement, whether we should scrap the agreement. Let's assume that we grant that relief. Well, if we don't grant the relief, then you have a right, any neighbor has a right to take an appeal from the decision when the permit is issued to allow the sign you don't like to go up. You can

take an appeal of that decision allowing that sign to be permitted. Come before our Board. You are the Petitioner not Mr. Leo.

ROBERT O'REILLY: It goes to the BZA.

CONSTANTINE ALEXANDER: It is a completely separate proceeding, different procedure. You have to pay the filing fee, do the advertising. Not you personally whoever will.

ROBERT O'REILLY: Understood.

CONSTANTINE ALEXANDER: That's how the sign is dealt with assuming we don't eliminate Condition No. 8. If we eliminate Condition No. 8, which the Petitioner is seeking tonight, then they are entitled to build whatever sign they want so long it complies with the sign bylaws. And Mr. Barber has already decided that absent Condition 8, this sign does comply with the sign bylaw and you have no recourse.

You could take an appeal of that, but you would have a tough appeal.

SEAN GRADY: The one thing I'd add to that, I'm not sure whether this is an appeal period that's opened or closed. I'm a little vague on that.

CONSTANTINE ALEXANDER: I've never seen anything in our zoning bylaw that deals with appeal periods.

SEAN O'GRADY: I don't think so either, but I'm just not sure in my mind.

CONSTANTINE ALEXANDER: Subject to there may be a statute of limitations issue.

MICHAEL BRANDON: Mr. Chair, would you address my point about Condition 1 and whether in fact, the --

CONSTANTINE ALEXANDER: That's a separate matter. Mr. Brandon, I don't want to get into a private dialogue. If you feel that Condition 1 has not been satisfied, you have the very same procedure to take with

regard to the sign here. You can complain to the Building Department. If they turn you down and say, No, we think Condition 1 has been satisfied, you can take an appeal. Come before our Board. That's how it works.

MICHAEL BRANDON: The condition --

CONSTANTINE ALEXANDER: If the Building Department found the condition was satisfied, that's the end of the matter unless you can convince us that the Building Department is wrong.

MICHAEL BRANDON: They didn't address that. They addressed --

CONSTANTINE ALEXANDER: You have a right to take it up with the -- I don't want to spend any more time on this tonight -- you have a right to take it up with Building Department. If you are unhappy with decision, you can take an appeal through us and go through the usual procedures of appealing a decision of the Building

Department.

The matter before us tonight is to scrap Condition No. 8 that was imposed when the variance was originally granted which incorporated into our decision a private agreement to the extent that the provisions of that private agreement are within the purview of the Board.

So it is very vague. Frankly, the language and the whole concept is very unfortunate, but that was a different Board at a different time. And from your perspective you would like to have the problems, the confusion this causes clarified by eliminating it. That's your point of view.

The point of view of the neighbors and perhaps some members the Board is that's all well and good and we understand it, but we don't really know what we're doing. We may not know what we are scraping and what we

are scraping might be something we don't want to scrap. Don't address it yet. I'll give you a chance. I think that's that is where we are tonight.

BRANDON WOOLKALIS: Members of the Board, just in closing, I won't take up time here. The letter from Bersani stated the only portion of that Section 8 that agreement, that private agreement, that was signed in closed doors, the only part of that agreement that was under their purview was the wall which was built, the sound barrier wall. Everything else was not under their purview.

And tonight all we are asking for is so this doesn't happen again, we don't have to come to you guys again, bother you and take your time up, that this doesn't have happen again we strike No. 8.

Les Barber issued a sign permit for us. It was then revoked by Rangi Viginitim

(phonetic) because she didn't know this -- No. 8 was brought up and said, See, no, they can't do the sign. She revoked the permit said we have to go to the council for this. We had to hire an attorney, Kevin Crane, costing us money, delaying us for months. The bank spent money. And finally Kevin Crane, Don Drisdell, city solicitor, Rangi Viginitim (phonetic) sat together. They had a meeting. And they looked over the documents and said, No, this does not apply. It goes under Article 7 and it is as-of-right sign. We just want to get rid of it adequately.

CONSTANTINE ALEXANDER: I'm going to close public comment at this point. And just now we will turn to a discussion of the members of the Board. Anyone want to speak first?

TAD HEUER: I have a question. Talk to me about Provision K in the Teague

agreement. When I'm looking at this, it says -- this is 12-K. It says: K, signs limited in size, number and style lighted in front as represented in January 14th community meeting.

I understand that Mr. Teague has abrogated his rights in this contract such as they are, but he references a community meeting which implies to me that other people agreed to certain provisions about signs. And that they arguably continued even if Mr. Teague doesn't care. And when I turn to the Bersani letter, this Point 8 it says: Signs are regulated by Chapter 7, that's true, the zoning ordinance which we are the enforcers of. Any illegal signs taken down. That's a truism, of course, because they are required it take down illegal signs.

But here it appears we may have granted a variance based on a condition that is not unique to Mr. Teague but has been

brought forth by the community. And to that extent we do get to enforce, regardless what Chapter 7 says, because there's been a binding agreement.

BRANDON WOOLKALIS: This is a private agreement in the back room. We made no agreements. We met with the community eight or nine times. We said we'll try to make a beautiful building which we did. We did have opposition. People still come in the store today and say, You know what, you guys did what you said you were going to do. You made a beautiful building, and I'm sorry I opposed you. That's the best comment I ever got.

This whole agreement was written in the back room. And we agreed -- the Board didn't even read this agreement. I don't know if they got a copy that night or they got a copy later on that week.

CONSTANTINE ALEXANDER: I should

read into the record correspondence the Board has received as part of the record.

There's an email from a Ron Jackson, addressed to the Board. "I cannot attend the meeting tonight but as a resident in the neighborhood affected by case No. 9810, I would like to oppose the requested amendment to the signage of the Dunkin' Donuts's property. Therefore, I encourage the Board to consider that in Case 9810, the amendment as described should not be allowed rather remain under the limitations as originally agreed." And Mr. Jackson resides at 18 Camp Street, C-A-M-P.

An email from a William Phares, P-H-A-R-E-S, owner and resident of Condominium Unit 7 at 2427 Mass. Ave. "As a resident in the neighborhood affected by case 9810, I wish to express my opposition to the requested amendment. Signage has a direct visual impact on the look and feel of a

neighborhood, and we in North Cambridge are struggling to foster and maintain a quality in our area.

However, with respect to the proposed amendments in this case, none of the residents in the immediate neighborhood of the businesses involved have been approached regarding the new changes under consideration. Therefore, I encourage the Board to consider that in the Case 9810 the amendment, as described, should not be allowed but rather remain under the limitation as originally agreed."

There's an email in the file from a Chris Marstall, M-A-R-S-T-A-L-L, who resides at 126 Montgomery Street. "I am writing as a North Cambridge resident to ask you not to allow changes in the signage at Dunkin' Donuts at 2472-2482 Mass. Ave. They are out of keeping with the homey neighborhood quality we have worked hard to maintain.

Thank you."

And last there's an email from a McNamara, Buck, M-c-N-A-M-A-R-A, B-U-C-K, who resides at 20 Gold Star Road. "I'm a nearby resident of a Dunkin' Donuts on Mass. Ave. I want you to know that I am asking you to oppose the requested signage amendments. They are out of character with the rest of the neighborhood. The ATM directly across the street from Dunkin' Donuts is unobtrusive, well-used, and found by those looking for it. It fits in with the neighborhood also.

"None of the neighbors were approached about these changes, and I ask you not to allow these changes. There was a neighborhood process that hammered this out. This process should be respected."

Any further comments or -- Mr. Sullivan, anything you would like to add?

BRENDAN SULLIVAN: I believe that Mr. Teague was part and parcel of the original

labor in the granting by the Board of the variance. I might even take a little more stronger and conservative view that the plans submitted should be the plans that the final -- the final form of those plans were after much community discussion. And that in the decision that the work be consistent with drawings submitted in support of the application, which is Condition No. 1.

And there were two signs that were shown on those plans so I take a little more conservative view on the signage. And I do not like pole signs at all, at all, up and down Mass. Ave but that's for councillor Greg Kelly to carry that banner for you people.

Anyhow, I would not be in favor of removing that condition.

CONSTANTINE ALEXANDER: If you don't -- just to be clear, if we don't remove the condition as you suggest, there's still a separate issue as to whether this sign

complies with the condition or not because the condition only applies to things in the agreement that are within the purview of the Board. And apparently someone decided --

BRENDAN SULLIVAN: That's correct. I think it has been decided, but I would still not be in favor of removing it.

CONSTANTINE ALEXANDER: The condition.

BRENDAN SULLIVAN: Removing the condition I would not be in favor of.

CONSTANTINE ALEXANDER: And --

BRENDAN SULLIVAN: I still think as far as you're being worried that this will come back to haunt you later on, I think the Commissioner now has made a final decision on it. I know you can say why not just remove it if it is sort of a moot point, but it is somewhat sacred anyhow.

CONSTANTINE ALEXANDER: Slater?

SLATER ANDERSON: My opinion is

that it was a private agreement. It became a public agreement when it got incorporated in the decision and recorded at the Registry of Deeds. Whether that was a mistake there was a period of time before it got recorded when you were delivered your copy of it that you could have said this is an error. That didn't happen so it is part of the record now. And it does strike me the language in that as being broader than just between you and Mr. Teague. It does reflect what I think were the concerns of the neighborhood.

And in that regard, I'm reluctant to undo a decision that was made by a separate Board at a previous time that has so many conditions. If we were dealing maybe with one item that seemed to be relevant, but there are many conditions on there that affect more than the abutter so I'm reluctant to strike Item 8.

CONSTANTINE ALEXANDER: Tim.

TIM HUGHES: I wouldn't have any trouble undoing the decision of a previous Board that I wasn't involved in. But having said that, I do think that there's more to this thing than the sign issue. And if you can get the sign permit without striking this thing, and we can persevere the other elements of No. 8 in this, then I don't see any need to vote to strike.

CONSTANTINE ALEXANDER: Tad.

TAD HEUER: I think I perhaps go a bit further, although I agree with the tenor of everyone else that in what Mr. Anderson said the agreement still is now a public agreement. I believe there's a provision in that public agreement that deals with signage.

I'm also not quite sure the letter from Mr. Bersani in all of his other -- in all the other discussions mentions expressing not in the purview of the BZA. That's

noticeably absent in his discussions of signs where it says they are regulated and the department takes down illegal signs. I don't believe it is an opinion on the authority of this Board to incorporate such specification about signs in variance opinions as opposed the current opinions.

So where we've granted a variance which generally is seen to be the grace of the Board allowing a chain from existing conditions in all material respects otherwise they come back before us, I would go further and say I'm not quite convinced, even with the letter of Mr. Bersani or the agreement necessarily convinced me that signage of the type being proposed is even allowed by right because I think it may have been given up in the agreement.

CONSTANTINE ALEXANDER: My view is simply, first of all, it is most unfortunate this Condition 8 was imposed in the decision

mainly because it is not clear what it means. It is a signal to this Board to be careful when it imposes decisions so it is clear going forward and everybody knows exactly what they can and cannot do.

Given that, I find Mr. Bersani's letter very unhelpful in 2004. I think it is a lot of words. I don't think it provides guidance to anybody, frankly, as a general matter in terms of interpreting Condition No. 8.

I'm sympathetic to your dilemma. I think because of the points I just made, I think you are in a bind in knowing what you can do and can't do going forward given the way this condition is worded. That all being said, however, that condition deals with an agreement that does many, many things.

I don't know if I were to vote to eliminate Condition 8, I don't know what the impact is on the neighborhood and how the case

would have been decided the first time around. I think we've got to deal with your agreement on a case by case -- for Condition No. 8 on a case by case situation so we know exactly what we are doing. I don't want to grant relief when I don't know what relief I'm granting.

On the signage issue, I still think there's still a lot of confusion here. The signage issue is not before us tonight in my opinion. My humble opinion. The permit has been given. For that sign issue to come before us, someone has got to take an appeal of a decision to grant the permit to allow the sign that's going forward. That hasn't been done.

You don't need to file an appeal because you got the permit. I think you have a right, subject to someone challenging it, to do the signage you want to do. Everything else in this agreement from my perspective,

I can't give it up because I don't know what I'm giving up. So I can't support the relief you are seeking although I'm sympathetic to your dilemma.

SLATER ANDERSON: I'm sympathetic, but it's -- it was created five years ago, but it got recorded and it is part of the variance. It's hard for us to -- hard to justify it.

CONSTANTINE ALEXANDER: I think we're ready for a vote.

BRANDON WOOLKALIS: Can we postpone until next meeting? We don't have our counsel here tonight.

CONSTANTINE ALEXANDER: It will be continued for two or three months.

BRANDON WOOLKALIS: Can you continue for two weeks?

CONSTANTINE ALEXANDER: Oh, no no. The first time we have any room to hear a continued case is in September 10. We got to

make sure five of us can be here on September 10.

Let me ask, first of all, can everybody be here on September 10 assuming we want to continue? Okay. Next question, should we continue the case at this point? We keep clogging our calendar when we continue cases. If anything -- anything that we hear on September 10 that will change our opinion?

We generally accede to requests for continuance as a courtesy to the Petitioners, but we don't have to do that. I for one would continue the case simply because it is a matter of courtesy. I think we should give you every last shot you are entitled to.

BRANDON WOOLKALIS: Our attorney wasn't able to come.

CONSTANTINE ALEXANDER: I wish you told us that at the outset before we spent all this time. So you are asking us to continue

the case?

BRANDON WOOLKALIS: Yes.

CONSTANTINE ALEXANDER: I'll make a motion to see where we go. When would the case be continued to?

SEAN O'GRADY: September 10.

CONSTANTINE ALEXANDER: The Chair moves this case be continued until 7:00 p.m. on September 10th on the ground that the Petitioner sign a waiver of a notice for a decision, and on the further ground -- the further condition that the sign be modified to show the new hearing date to be September 10.

All those in favor of granting the continuance on the basis so proposed say aye. One two, three, four, five in favor. The case will be continued until 7:00 p.m. on September 10.

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

CONSTANTINE ALEXANDER: We're ready to start. Case No. 9811. Give us your name, spell your name and address for the stenographer.

ARIADNE VALSAMIS: Ariadne Valsamis, A-R-I-A-D-N-E, last name is V as Victor A-L-S-A-M-I-S. 212-214 Fayerweather Street.

DAN LEVITT: Dan Levitt, L-E-V-I-T-T, 212-214 Fayerweather Street.

BILL BOEHM: Bill Boehm, B-O-E-H-M, 24 Rockingham Street, Cambridge.

CONSTANTINE ALEXANDER: You are before us because you want a variance to do various things to a two-family home.

ARIADNE VALSAMIS: Yes.

CONSTANTINE ALEXANDER: Tell us why we should give you the relief you want.

ARIADNE VALSAMIS: We are the owners of 211-214 Fayerweather Street. It is a two-family house. We have lived there

ten years, and two small children, two girls, eight and ten. And we would like to have more room for our family. They currently share a room. They are in bunk beds and their desks are in our dining room. And what we are asking for is to raise our roof. I think it is four and a half feet.

CONSTANTINE ALEXANDER: But you are not going to raise the roof beyond -- it still will be a conforming roof.

DAN LEVITT: Below the height limit.

CONSTANTINE ALEXANDER: 35 the feet is the height limit and you are 34.9.

ARIADNE VALSAMIS: It will allow us to use the space on that for a third floor where we would put bedrooms and a bathroom. And actually we have to recreate a stair. So there's a window that's moving because that's where the stair would go, but the windows are moving up. And we're also asking to extend

the porch a couple feet. That's so we can sit around a table. Right now we sort of do this bar seating. It is a lovely spot and it would be nice to use it.

We talked about it with our neighbors. We brought a list. We asked people to sign saying they support the plans, and we went around and talked to folks and showed them what you have. We thought we would also tell you we were inspired by our neighbors who have a house on Corporal Burns Street. Our house is all over our neighborhood. And they had the same house and they raised their roof. And I brought a picture of that so you can see what the exterior would look like.

CONSTANTINE ALEXANDER: We can have these pictures for our file?

ARIADNE VALSAMIS: Sure. We have a picture of some other houses on the street. There are a lot of occupied third floors, if

that's helpful.

DAN LEVITT: This is our current house. If this is helpful.

CONSTANTINE ALEXANDER: The reason you are here before us, I want to get on the record what ARE the technical problems you have. You have a FAR problem. Right now you are nonconforming.

ARIADNE VALSAMIS: We have a very small a lot.

CONSTANTINE ALEXANDER: And the district has a requirement of not more than .5 and you are going from .62 to .64.

Other way around? I'm sorry. I'm locking at the wrong list.

ARIADNE VALSAMIS: We are --

CONSTANTINE ALEXANDER: That's .75 to .96 so it is a significant increase in your FAR when you ARE starting with a nonconforming structure. You also have a rear yard setback problem. You are supposed

to be at least 25 feet from the rear yard line. You are currently 15 feet 3 inches and you want it reduce it to 12 feet 3 inches so you are three feet closer to the rear lot line. And there's a requirement of ratio of usable open space to lot area. You are supposed to have at least 40 percent, and you now only have 34 percent and you will go to 32 percent.

Those three areas you do not comply WITH THE zoning law AND that's what you are seeking a variance from. And you are going to proceed with the plans that have been submitted here. So if we were to grant relief, it will be this -- the work to be in accordance with those plans so they can't be modified without coming back before our Board. You understand that?

ARIADNE VALSAMIS: Yes.

CONSTANTINE ALEXANDER: You are supposed to speak to -- we have to find that a literal enforcement of the zoning bylaw

would cause a hardship, substantial hardship to you, that there are unique conditions that justify granting relief, and that granting relief will not be to the detriment of our zoning bylaw or derogate the intent of our zoning bylaw.

You submitted reasons as you have to in your application. And the hardship basically relates to the -- well, the literal enforcement is the fact that you will not have a house adequate in size for your current family needs. The hardship is owing to basically the fact that you have a nonconforming structure now and so any kind of modification will cause a zoning problem that you need relief and there is no substantial derogation from intent and purpose because of the fact that your building will still be consistent with other buildings in the neighborhood and the relief not consistent with those zoning bylaw will

not impact the neighborhood or the City of Cambridge unduly.

That's why you are here. That's the reason why you are seeking the relief you are seeking.

ARIADNE VALSAMIS: We are trying to not have something look too weird, but also have it because we like our house. And also have it be something that let's us stay there long term. We are very committed to it. Our kids walk to school. Dan's parents live six blocks away. We're able to both be supportive of them and have them be incredibly supportive of us. There are a lot of reasons why we would like to make this work for us.

I guess the issues are that there's -- the room they are currently in is quite small. They have to have bunk beds, put things side by side because they don't have a closet as I said.

CONSTANTINE ALEXANDER: Two teenage girls without a closet. You talk about hardship.

ARIADNE VALSAMIS: We all have one bathroom so we climb all over each other as it. There's not a place to put an a half bath given what we have now. We want to do those things, move up some bedrooms and a bathroom. And our current -- it is a little tiny attic with a twisted stair. You couldn't keep that. Once you are building a stair that takes up a certain amount. My mom comes up from Brooklyn to stay with us and she had to sleep in the living room. We thought if we could go up we'll be able to put the bedrooms up there, have a guest room and bathroom, and that will allow a more comfortable -- allow us to be stay right where we are which we love.

TAD HEUER: This is a two-family house?

ARIADNE VALSAMIS: Yes. The first

floor is an apartment as well.

TAD HEUER: Is there a reason you can't expand to the first floor?

ARIADNE VALSAMIS: It isn't easy to do because of the side by side nature of the units. And we actually liked having it be a two-family. I think that we both grew up in two-families. Folks downstairs I feel safer. We certainly -- certainly it is economically better for us. I didn't necessarily want to lose the two-family part.

DAN LEVITT: Let me just say that economically we could not possibly afford it. There's no way we could afford to do that. That's the hardest part for us.

TAD HEUER: I guess I'll speak to kind of my concerns about it. We're talking about here going from a -- we are in a .5 district. You are half again over that, and you're looking to double that essentially. So 879 square feet addition is one the larger

ones I've seen in awhile. The lot is already undersized, and it would be even further undersized. I think it is in violation of all the setbacks. So it is a big house for the size lot already regardless whether you add a third story.

I guess I understand that the desire to expand and be able to provide that -- have the second unit attached to the first floor unit. I guess what I'm struggling thinking about the neighborhood as a whole is it was designed for two families. Two families that were A and B and of the size that they are.

Essentially what you are asking us to do is to change the two-family nature of the neighborhood by creating an additional half the house -- there are houses in Cambridge about that size -- on your roof. I'm just not -- I'm not sure I'm comfortable with that given essentially it's a grant of

substantial amount of space to allow one family to stay in one place.

Whereas, the alternatives may be looking for a larger house that fits or expanding to the house you currently have even though it would take away the rental use and cause expense. So it is weighing your own personal issues there versus the fact it will be a huge grant for this neighborhood given what the ordinance has asked us to stay in which we are well above.

DAN LEVITT: Can I respond to a couple of those. One of them is quite a number of the houses on our street, including the ones directly across the street, actually have -- I don't know what you call it. The roofs that go like this. (*Indicating*). So actually a lot of them. If you look out front, if you look out the front window right directly across the street there are actually two families on that street on

either side of that street.

I think in terms of changing the nature of that particular street, I think our house will fit right in and we tried to design it that way. And the other aspect to be very honest is economical. I am a filmmaker. I work for myself. We hope to send our kids to college. We don't have a college fund. And, I mean, very honestly the revenue from the rental unit on the first floor has been our saving grace otherwise we would be in Medford. We could never afford to buy the house that we're in now. Lucky we bought it ten years ago just before the property values went like this.

For us to go into the first floor would be a huge economical sacrifice that -- I'm not going to into details. Let me just say it would be -- I don't see economically how we could do it. That's why going up allows us to do it. I don't think

it -- I mean, again, you look at everybody else around us -- almost with the exception of one place right next to us has people on the third floor.

ARIADNE VALSAMIS: I think if any family is going to stay there -- I think we made it work a long time, but it's not -- it's not going to be able to house a family unless there's some expansion for sure.

TAD HEUER: I understand that. Part of looking at the City of Cambridge as a whole we see people come in and they want to add a lot of space. Although it does allow the existing families to stay in the houses, a lot were built to be transitional and to allow someone at the lower end of the market. And the more we grant variances to add on dormer space and third floors, the more we essentially upscale the market. And it takes something off the market at the lower end for a family of that size while still

creating a bigger house. It is a broader issue.

ARIADNE VALSAMIS: Aren't you adding in -- when I look around our street, the structures that stay our size become condos rented or owned by single people. Not places people want to stay with their family. Obviously it is a philosophical issue. I could also see it as creating the room that allows people to have a couple kids.

DAN LEVITT: That's the other side of the coin. Honestly on our street when we moved in, there were hardly any kids there. We got kids, other families moved in. A lot of those buildings are now condoized because unfortunately the way a lot of these houses were built, they were not built for families with two kids. By keeping them as small units, it makes it impossible for families like ours once we reach a certain age, eight or ten for kids, we have to move out somewhere

else. We love our place want it stay, or have to -- but, you know, we are building our communities with families and kids in our neighborhood and without the units -- there's an argument on both sides.

BRENDAN SULLIVAN: We sit here night and night where people come down with typical two-families. One the earlier cases tonight somebody came down that actually has three children, rent out the first floor, and they satisfied their needs for each child to have its own bedroom, to have a bathroom on the third floor, make use of that cavernous space that's right now not usable by means of two 15-foot dormers, and they seem to satisfy their requirement for more space.

The plan that I see here actually is quite grand. I think two bathrooms up there. There was a study.

ARIADNE VALSAMIS: One bathroom.

DAN LEVITT: It has a washer/dryer

in it but it is just a single bathroom.

BRENDAN SULLIVAN: Over here it has storage, future bath. There's a bath and then there's also provisions for a second one at some point proceeding. You know, there's a study, there's an office. I mean, to me it is quite grand. And, again, I think it has been pointed out that it really takes away from the two-family look. And I think that's the reason why it was a B zone is to reduce the massing -- reduce the amount of bulk on the lots. That's sort of my thought.

CONSTANTINE ALEXANDER: Is there anyone here wishing to be heard? Anyone in the audience? Let the record show no one wished to be heard.

Let me read into the record the petition submitted by the Petitioners. It is signed by nine different parties at various addresses. Presumably all abutters or nearby residents to the property at hand.

The petition states: I support our neighbors Ariadne Valsamis and Dan Levitt's plan to renovate their house to create more space for their family.

Further discussion by members of the Board.

TIM HUGHES: I actually prefer raising a roof to adding long dormers. I like the look of the house better even if it seems a little bigger or grand. You know, you're striking all the right notes in terms of staying here, the family. You know, those two girls are teenagers. It will be hell in that house if you can't expand. For all those reasons I'm in favor of the project.

CONSTANTINE ALEXANDER: Slater.

SLATER ANDERSON: I sympathize. Otherwise, same thing. Your intentions are totally legitimate. I do think it is a grander plan than probably necessary. I mean I've -- you've got basically four

bedrooms on the top floor there. So it's an issue of degree from my perspective. I acknowledge the hardship. I just -- it's a grand plan. I don't mind the look of it. I think you are asking to increase the building by a third basically, and that's significant in this zone for that lot, so I'm somewhat undecided right now.

CONSTANTINE ALEXANDER: Myself, I think Mr. Sullivan and Mr. Heuer made very valid points, but I would after listening to them I come down the opposite way they do. I find that the increase in the FAR from .75 to .96 although substantial it is not unheard of. I think you made an appealing case and an appropriate case why relief should be granted. I for one would be in favor of granting the relief.

Before we take a vote. Let me explain something. You need to get four votes to get the relief you are seeking. You

need four out of five. You heard us speak. There's an alternative and if we take the vote and you do not get the four votes, you can't come back for two years unless you come back with modified plans and convince us it is a different case.

What people do in situations like this, I'm offering you the opportunity, is to continue the case and go back and rethink the plans. And if you want to, I'm not suggesting you should, and come back with plans that in the views of some members of the Board are not as grand as what you have before us right now. That's your choice before we take a vote. And if you want some time to think about it, we can move on to another case. But we can either take a vote now, it is your call, or we can continue and you can rethink the plans. More than that I can't offer you.

TIM HUGHES: I would like to add to

what was said. If you want to come back, if you are denied and want to come back within two years, there has to be a substantial difference in the plans. It is not just you can modify one or two things and expect it to be heard again.

CONSTANTINE ALEXANDER: Exactly.

BRENDAN SULLIVAN: What were your thoughts on that?

TAD HEUER: On this?

BRENDAN SULLIVAN: Yes.

TAD HEUER: Too significant an increase in FAR for the size the lot for the zoning of the neighborhood, the setbacks involved in the neighborhood where I just don't think that amount of bulk and size increase is warranted.

CONSTANTINE ALEXANDER: So you want time it think about it? Do you want to continue the case? You can decide right now, or decide not to continue the case and we can

take a vote? What would you like to do.

DAN LEVITT: Can you give us a minute to consult?

CONSTANTINE ALEXANDER: You want to step to the back of the room.

DAN LEVITT: That's all right.

CONSTANTINE ALEXANDER: We are going to recess the case for now. After we finish the case which will be the Harvard College case, you will be happy to know we will take your case.

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

(Constantine Alexander recused himself.)

TIM HUGHES: The Board will hear Case No. 9809, 32 Quincy Street, Harvard Art Museum.

If you could tell us what a your plans are and what the relief is that you are seeking.

ALEXANDRA OFFIONG: We're are here tonight on behalf of Harvard Art Museum which is proposing a significant renovation and expansion of their home at 32 Quincy Street. This project is essential for them to be able to protect their world-class art collections and advance their teaching and research mission.

We worked very hard to respect both the unique urban environment as well the character defining features of the historic building. And the end result of this project we feel will bring substantial benefit both to the city as well as to the environment in terms of just the building itself for preservation of an historic building, significant improvements to the public realm through better sidewalks and street scapes, and it will provide more exhibition space, more public education initiatives, more study centers that will really be a benefit

to the public.

We are seeking relief in three areas. One is related to the setbacks to the Carpenter Center which is another Harvard academic building. It is basically the pinch point right there. (*Indicating*). And the building -- this relationship will not change, the two buildings, but because the project proposes additional height, the calculation for the setback will change and so what is now conforming will become nonconforming by a few feet.

The second variance relates to alteration or enlargement of a nonconforming building. And the historic part of the building predates the introduction of parking requirements to the zoning. It is a 1927 building. So because we cannot consider that conforming construction because of the setback, we need zoning relief on that aspect.

And, finally, we are proposing a curb cut for our loading. It is an existing curb cut. We would like to make it wider in order to create safer exiting movements for trucks and vehicles that exit that loading driveway.

So we have met extensively with lots of agencies across the city. If you are interested, we've received our demolition approval from the Cambridge Historical Commission. And they reviewed the project in the context of the whole project, the new construction as well as the demolition. We also presented this project to the Planning Board both as an informational meeting a year ago as well as a few weeks ago as part of this progress. I think you have in your file that they supported the project.

We've also worked closely with the Traffic, Parking and Transportation Department and they have -- I think there

should be a letter that they support the increased width for the curb cut. We also met with the City's arborist about our landscape planning, and he's been supportive of that. And we will be meeting with the Committee for Public Planting next month.

Finally, we've had several community meetings, and we have attended the annual meeting of the Mid Cambridge Neighborhood Committee, and we really received a lot of positive feedback from the community overall.

CHARLES KLEE: I don't know if this is a good place to jump in. It might make sense to talk about the underlying design and why it looks the way it does, what drove it to trigger these various nonconformity issues.

I think the starting point for all of this is that the museum is currently able to display 1 percent of its collection. The

Harvard Art Museum has the sixth largest collection in the U.S. It is a significant art collection that is not able to be shown. Typically a museum will show 2 and a half to 3 percent of their collection. I'm not an expert on that, but I follow the statistics. That is a major hardship in and of itself.

As Alexandra said the building has never been renovated and some of the new additions, particularly the Otto Hall addition that was added recently but through some difficulties with the way it was constructed fell apart right on day one and so it needs to be gutted and started over.

The mechanical systems in the original building need to be replaced. As you can understand, when you put in new mechanical systems, 21st century mechanical systems, they are a lot bigger than the ones they put in 1927. There's no room to put those things.

Finally, what we are trying to do here is consolidate the collection into one building because right now the museum is divided up into two homes and that has compromised dramatically the Sackler collection. They hoped when the Sackler was built that somehow or other we would find a way to connect and that's really a nonissue in Cambridge in the Harvard area to connect across the street so we're not going there.

The point being we need to get the collection in one building. Some of the museum's most important items are in the Sackler and they are dramatically under visited because everybody goes to 32 Quincy Street and leaves.

They have been working on this for a number of years to try to figure out how big the building needs to be. They came up with a program after a year-long study that included the History of Art and Architecture

Department, the amount of galley space, the amount of art storage space that could reasonably display the collection.

Unfortunately we couldn't fit that much building on this site. We started lopping things off. The first thing that went away was the History of Art and Architecture Department. We can't have them in the building. There's not enough room. The next we started cutting was galley space, art storage space.

So the project that we are bringing to you today actually is dramatically under the program. It's between 15 and 20 percent under their program based on the different systems. 15 percent on galleries and about 20 percent on art storage. They built some temporary art storage space off-site for pieces they don't need to look at on a regular basis.

Next thing we have done is we looked

at how carefully can we put things below grade. Get much as possible of the building below ground to minimize the amount of the additions we are putting on the building as visible. The difficulty with that is that art can't be stored below the water table. One of the problems with the building now is the basement is wet, standing water with fantastic works of art.

So that's one of the starting points, no art under the water table. And other programs like study centers or conservation need lots of daylight unlike gallery space so those can't be below ground either.

What we have done is by removing Otto Hall in addition to on Prescott Street, we can go all the way down to bedrock. We can put all our mechanical equipment, all the big air handling equipment that is substantial in the museum get that below ground and nobody sees

it or hears it and we are maximizing the use.

The other thing that is fundamental to this, and this gets to the community benefit. Right now the way the building has kind of grown over the years with these kinds of new additions of addition after addition the building kinda turned its back on Cambridge. Not intentionally, but it really does that, if you are standing on Broadway looking at that intersection of Broadway and Prescott.

And so Mr. Piano when looking at this design started first and foremost saying we have to open the building in both directions. Open up Quincy Street and has to have an address on Prescott Street on the intersection of Broadway and Prescott for the public. It has to be transparent. We have to be able to look into this building and see what it is, see it is a museum. If possible, get some art on the site so you know it is a

museum when you walk up to it. And so I think that's fundamental to all the things going on here.

Then, finally, we have to be very careful when we start designing the addition once we made it as small as we can. It has to be sympathetic to the historic architecture, the neighborhood, and the Carpenter Center which is a piece of historic architecture. That lead to a lot of discussion with the Cambridge Historic Commission and also with the Mass. Historic Commission about just how do you put an addition onto this building without altering the historic significance.

And that leads to this light diaphanous structure that's on the roof. It is the study center, it is the conservation laboratories for the building. Two spaces in the building that can be exposed and wants to be exposed to the natural light. Anything

that starts to become opaque up there makes it feel heavy. Makes it feel too big. We need the volume. If we can make it glass, we can keep it feeling light. And so I should stop now. That's a long diatribe.

BRENDAN SULLIVAN: Is there any building that you could do as of right?

CHARLES KLEE: As soon as you alter the height of the building by a foot, you trigger the building setback issue with the Carpenter Center because it is exactly 17 feet now.

BRENDAN SULLIVAN: But the answer would be there is an inherent hardship by them all being connected and the size of the lot.

CHARLES KLEE: The --

BRENDAN SULLIVAN: So the answer, I guess is no. There's nothing you can do as of right that has any meaning at all.

CHARLES KLEE: No.

TAD HEUER: No setback problem on

Prescott Street?

CHARLES KLEE: We did the multi-plan setback calculations ad nauseam through every design iteration we went through. There were a number of them. But now we are conforming in terms of the multi-plan setback. We can walk through the setbacks when you want.

TAD HEUER: Because of the way the building comes out, I think as you mentioned trying to have an address on Prescott Street, the natural question is now because the way it has been structured it doesn't so you don't naturally think about a setback there. Mostly it is enclosed.

CHARLES KLEE: You are right. That's the street where it's the closest.

BRENDAN SULLIVAN: Prescott Street has always been the delivery entrance.

CHARLES KLEE: And that's the nice thing, it will no longer be that. It will be

a front door.

BRENDAN SULLIVAN: The comment you made turning its back on Cambridge hit a cord with me because -- I don't live there -- but anyhow that has always been a sore spot with me that Prescott Street has been forgotten and a grand building.

TAD HEUER: You have no FAR or height problems? You are still well under the height, correct?

ALEXANDRA OFFIONG: Yes.

CHARLES KLEE: The other thing worth noting about the curb cut is that we really like this idea because for one thing we are getting rid of the curb cut that's currently used for material handling which is right on the corner of Prescott and Broadway. That's a dangerous one because the trucks have to back out and it's right where the pedestrians are crossing the street. Very unfortunate.

We are not proposing any alteration to the width of the driveway. All we are doing is changing where the curb flares down. It is a brick sidewalk that comes through here. It is really that outer two or three feet where the curb will ramp down, but there's still 13 feet of this flat brick you can walk across.

TAD HEUER: Is there any increase because you are consolidating the curb cut in the amount of traffic you expect into that curb cut to the building?

CHARLES KLEE: The museum uses only one curb cut right now. They have this one and they use one.

SLATER ANDERSON: Is there a net increase or decrease in public on-street parking? Is there on-street parking along side there?

ALEXANDRA OFFIONG: It doesn't impact any parking.

CHARLES KLEE: It is worth noting when we talk about the entrances and the porosity to the public, there's now not only an entrance on Prescott Street and Quincy Street, there's one --

TIM HUGHES: While you're digging that out, Let me read into the record the City the Cambridge Traffic, Parking and Transportation: We have reviewed the proposed curb cut modification and support it because it make access to the loading area function well minimizing impacts on the sidewalk and protecting an existing tree. We also support them closing the curb cut at adjacent to Prospect Street which will improve the pedestrian conditions on Broadway.

MR. KLEE: The think I have to explain about this plan because it's tripped up a number of us. It is showing two floors at the same time because of the change in

grade. This is the lower level. This is the Bacon floor plan which is the art storage. This is the level one floor plan that everybody probably knows.

The nice thing now is we got something labeled improperly here as staff entrance. This is actually a student entrance. The staff is here. We have a student entrance here and main entrance here and here. This student entrance comes in at the level of the classrooms. The big classrooms, auditorium, 100-person lecture hall, a public education room. These are rooms that could very well be used by the community at various points in time. And there's an entrance directly off of Broadway so, A, it is very easy for people in a wheelchair to get in the building. And, B, if there was an event held in the courtyard level, could you still access the lower level floor.

The other thing worth noting that's really I think fun about this project is that it extends the Carpenter Center ramp. If you are familiar with the Carpenter Center ramp, it kinda ends a little unceremoniously right now. This is the natural conclusion of this over here.

TIM HUGHES: Any other questions from the Board?

Open it up to public testimony. Anyone that wants to be heard on this question? Come forward and identify yourself for the record.

MARGARET McMAHON: Margaret McMahon, M-C-M-A-H-O-N, 14 Highland Avenue.

I as a neighbor. I very much want this project to go forward. I moved to mid Cambridge in this particular area, which is a few blocks way, eleven years ago. And, as you know, we have been through lot since then because you all probably dealt with every one

of them. And then we moved to the library and as the library's getting through we're going to the high school. We did the war memorial. We are simultaneously doing Hilliary Street with the water project.

So you would think that the neighbors would suddenly say another project, please no. But instead of that, I haven't heard a peep from anybody in opposition to this. I think there are three reasons for it.

No. 1, the careful and lengthy, by lengthy I mean a lot of presentations by Mr. Klee and his staff, really made people understand, the neighbors understand, this was an absolutely mandatory thing if the Fogg were going to be able to stay open. No. 2, because of the sensitive design of Mr. Piano, he has not only been respectful of the old building but also been respectful of the building next door and of the neighborhood in

which it is located.

And, No. 3, and I guess maybe in some ways the most important, is that this is not Allston. It is in Cambridge on Quincy Street. I do hope you will approve it. Thank you.

TIM HUGHES: Anyone else?

FRANCIS DONOVAN: My name is Francis Donovan, 42 Irving Street.

I have been in the Harvard Square area for fifty-five years. I have been in the area about three blocks away from this museum for the last fifteen, and I've seen a lot of building, a lot of projects, a lot of proposals, and I have attended a lot of BZA meetings.

This is the most beautifully managed, the most carefully planned, and I think one of the most beautiful buildings I have seen in ages. I think I and most of our neighbors are thrilled at the opening of this

museum to the eastern end of the building. I think that's gonna be enormously important.

We are very much looking for community meeting space in the building. I think the protection that this will provide for the art collection is there, and the opening of it to the public in general. All of these things have been explained to us, and I think this is as close to a flawless project as I've ever seen. I'm thrilled with it. I hope you will recognize the applicability of the grounds for granting a variance to the petition brought forth. Thank you.

TIM HUGHES: Anyone else?

JOHN UNGLAUB: My name is John Unglaub, U-N-G-L-A-U-B.

I just want it stay this is an extraordinary public amenity. I think that needs to be keep in mind. It is not just another Harvard academic building. It is an amenity for the people of Cambridge. Unlike

the Museum the Fine Arts across the river which costs \$25 per visit, the Fogg Art Museum is free to Cambridge residents.

I teach at Brandeis, and I bring my students to use the Fogg all the time. It's a source of pride living in Cambridge to have this world-class resource. And my only regret about this plan that there was any feeling initially that it had to be scaled back at all. The bigger the better. There should be no hesitation whatsoever.

I mean the historical building is retained. The expansion is extremely tasteful and dynamic in design. And I endorse the previous testimony that it is an extremely beautiful and compelling structure, and I can't wait for it to open. It should go forward with all expedition.

TIM HUGHES: Anyone else who would like to speak? Let the record show that I see none.

I would like to point out that Margaret McMahon also has a letter in the file, and I'm glad that she was here to speak so I don't have to read it into the record.

I also thank Jonathan Unglaub. I don't have to read his two-page letter, but it is a beautifully written piece.

I am in possession of two emails both also in support. One from Dom Perry at 1657 Cambridge Street. It is very brief, but I'm still not going to read it. And one from Karen Carmian also 1657 Cambridge Street. Again both in support of the project.

Any comments from the Board?

BRENDAN SULLIVAN: Tonight is probably the culmination of many hours of public meetings on this project and it's a good one. The water table though is how far down?

CHARLES KLEE: It's below the basement level.

BRENDAN SULLIVAN: Just below it?

CHARLES KLEE: Probably a couple of feet. Elevation of 28 and the basement is about 32.

BRENDAN SULLIVAN: The soil conditions preclude you from going down and hence force you to go out.

CHARLES KLEE: We occupy as much of the site as possible basically. For example, our basement areas occupy all this. Even though we don't want to built up here above ground, below ground we did. So we build right up to the Carpenter Center foundation, right up to the street edge below grade and then we go down to bedrock. And we get as close to the historic structure as we can being careful of not damaging it.

BRENDAN SULLIVAN: Okay.

TIM HUGHES: Tom, anything?

THOMAS SCOTT: No. I think it is really a nicely designed project. I'm very

excited about it. That's it. I'm in favor of it.

SLATER ANDERSON: I would compliment you. Broadway being sort of a gateway, one of the gateway roads into Harvard Square, this portion of it, and that building in particular what it is in the interior you get no sense of that from the exterior. I like how it faces the high school. There's a benefit there. I think it's a well-conceived plan and it is going to be an asset to the community so I fully support it.

TAD HEUER: I support it. And because certainly it falls in the category under the zoning relief if you have to come before us and we have to say what, really? When you talk about the reason that a zoning code comes into play to because of the height of the building, not that the distance between the buildings is any different. We

are talking about expanding a curb cut that already exist. Those types of things fall well within the slight nature that a redesign of the building in order to accommodate an existing distance between the buildings doesn't make any sense. That's what we are here for.

I would also like to commend you on having four individuals take time out of the night and then stay another hour than they had to come and support a Harvard project. As you know, Harvard projects can get contentious. To have four individuals from the community come out and voice their support for something you have done in the neighborhood speaks volumes. I encourage you to continue to achieve that level of the support for other projects if at all possible.

TIM HUGHES: Ready for a vote. The Chair would move that the variance be granted

to Harvard Art Museum at 32 Quincy Street for the renovation and addition to the existing Fogg, what is considered the Fogg Art Museum.

A literal enforcement of the provisions of the ordinance would involve a substantial hardship, financial or otherwise to the Petitioner in that it would prevent the centralization of its collection, prevent the expansion of its display areas and educational components and conservation facilities.

The hardship is owing to the following circumstances relating to the shape and topography of the land and structures and especially affecting such land and structures and not affecting generally the zoning district in which it is located for the following reasons: The close juxtaposition of the buildings would trigger a nonconformity with even a minimum of additional height or additional building.

Desired relief may be granted without substantial detriment to the public good. On the contrary, it enhances the cultural and educational opportunities for the community and the public as a whole. And relief maybe granted without nullifying or substantially derogating from the intent or purpose of this ordinance.

Relief is granted on the condition the work be done in accordance with the plans submitted by Renzo Piano, Building Workshop and Payette, marked 32 Quincy Street expansion and renovation.

ALEXANDRA OFFIONG: June 12 the date of the occupancy.

TIM HUGHES: Dated June 12 and initialed by the Chair consisting of a whole bunch of pieces of paper. Forty-four pages of rendering and plot plans and elevations and charts and tables. I'm not initialling every single page unless I'm told by Sean

O'Grady that I have to. All those in favor to the motion say all. Five members in favor.

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

CONSTANTINE ALEXANDER: Case No. 9812, 162 Pleasant Street. Anyone here wishing to be heard on that matter? Patiently waiting to be heard on that matter, right? You are asking for a special permit not a variance. Special permit to enlarge openings in a nonconforming wall, am I right? You have to introduce yourself.

PETER DESNOYERS: My name is Peter Desnoyers, D-E-S-N-O-Y-E-R-S, 162 Pleasant Street.

We're renovating our kitchen and bathroom. As part of it, we would like to increase the size of the existing window in the back and move the -- we have a door at the corner on the side in back. We would like to

move it around the corner and to the back itself and make it wider to open more onto our backyard.

TAD HEUER: The door would now face the rear setback?

PETER DESNOYERS: Yes. It currently faces the side, 164. And it is right on a corner. It will move around the corner to conform with the drawings that are submitted.

TIM HUGHES: Is that the nature of the nonconformity that these walls in a setback?

PETER DESNOYERS: Yes. Like every other house on that block, we don't have a 20-foot setback. For one of the walls it is tantalizingly close and for the other one it's significantly less.

TIM HUGHES: Nothing less than three feet, right?

PETER DESNOYERS: The smallest

setback is 15 foot 3 inches.

TAD HEUER: Are you planning to put a window into the wall where your door is being moved out of?

PETER DESNOYERS: No. We are filling up the location of the prior door.

TAD HEUER: In this situation you are moving it away from your neighbors -- the directly abutting neighbor.

CONSTANTINE ALEXANDER: We have a lot of support from the abutters.

PETER DESNOYERS: There should be letters of support.

CONSTANTINE ALEXANDER: We have them in the file.

PETER DESNOYERS: Actually from every abutter who has visibility of that section of the house along with the drawing.

CONSTANTINE ALEXANDER: Other questions from members of the Board?

Anyone here wishing to be heard?

Let the record show no one wished to be heard. The Chair will also note and read into the record there's a letter of support for the project signed by -- as the Petitioner stated all of the affected abutters. Namely, Theodore R. Yonge, Y-O-N-G-E, resides at 158 and 160 Pleasant Street. The residents at 164 Pleasant Street, Betty Taymore, T-A-Y-M-O-R-E, and Lori Taymore-Berry. The resident at 19-21 Whitney Avenue, Lorraine Woodson, W-O-O-D-S-O-N. And the residents at 15-17 Whitney Avenue, Philip Daniel and Bonnie K -- I'm going to spell the last name -- M-I-O-D-U-K-H-O-S-K-I. And they state in their letter they have no objection to the relief being sought.

I will note again in the record this is a Special Permit and the standard for a Special Permit is not nearly as onerous as it is for a variance. You need four out of five votes to get relief.

Questions and comments from the Board? Ready for a vote? The Chair moves to grant the Petitioner a Special Permit to enlarge openings in a nonconforming wall. Such Special Permit would be granted on the grounds that you cannot meet the requirements of the zoning code because you have a nonconforming structure at this point, that work being proposed will not affect traffic in the neighborhood or patterns of access or egress that would cause congestion, hazard or established change in neighborhood character. On the basis that the continued operation of adjacent uses would not be adversely affected by the nature of the proposed use.

We're talking about really an upgrading of the structure and not otherwise adversely impacting abutting owners of the property as indicated by their support for the project. And that these openings will

not cause a nuisance or hazard to the detriment of the health, safety or welfare of the occupants or the citizens of the city, and that granting the relief would not impair integrity of the district or adjoining districts. In fact, the relief is modest, supported by the neighborhood. It will upgrade the quality of the structure and otherwise add to the value of the housing stock in the City of Cambridge.

Such Special Permit would be granted on the condition that the work proceed in accordance with two pages of drawings submitted by the Petitioner and initialed by the Chair. I understand these -- you understand these can't change once we do this. All those in favor of granting the Special Permit say aye. Five in favor.

PETER DESNOYERS: Thank you very much.

CONSTANTINE ALEXANDER: Case No.

9813, 18-20 Sullivan Road. Anyone here wishing to be heard on that matter?

Good evening. You are here as well to seek a Special Permit and to relocate and replace windows and enclose a rear porch.

SARAH WINKLEY: Sarah Winkley.

JOANNE KINSLOW: Joanne Kinslow, and I'm the architect of record. Basically what we would like to do is remove some existing windows and replace them with windows that conform better to the interior renovations that are already permitted on the job.

Basically there's no change of use to the interior spaces. It is just upgrading of an existing bathroom, kitchen, and three- season porch. And we want it use the same uses but because of modern conveniences, the existing bathroom window shown in this space right here, does not allow for a convenient shower stall. They would like it

to be small, high and to the side.

And in the kitchen two large double-hung windows will not allow for a modern counter and cabinet situation. So we would like a central one over the sink casement. And then in the existing three- season porch which is now screened in, just tacked on screen, we would like to actually enclose it with windows.

And the rear elevation which you have there. You have the rear elevation which I'm showing here. Basically we have one and a half windows that is in the nonconforming section in the setback area right here and all these windows are conforming.

CONSTANTINE ALEXANDER: That's not the quite same thing we have in our file.

JOANNE KINSLOW: It is not quite because this is actually a different permit set which did get approved, and I filed that

just for the windows and they are not in here for some reason.

CONSTANTINE ALEXANDER: If we grant relief, we are going to grant it in accordance with these plans.

JOANNE KINSLOW: That's right. I just did not have those handy for illustrative purposes. That's all we're asking for permission this evening.

CONSTANTINE ALEXANDER: I didn't see anything in the file at all in support or opposition from neighbors. Have you spoken with your neighbors particularly those who would be affected, their privacy might be affected by what you were proposing to do?

SARAH WINKLEY: I'm not actually living there right now. They just started the renovation. I keep coming over and when I do come over I haven't seen them. I know they have four kids. They might be away on summer vacation.

CONSTANTINE ALEXANDER: They presumably received notice of the renovation and they haven't contacted you?

SARAH WINKLEY: I have been telling everybody around me for the last year that I was going to start this renovation.

CONSTANTINE ALEXANDER: Any other neighbors that expressed support in the neighborhood or opposition?

SARAH WINKLEY: No one said anything.

TAD HEUER: You didn't need relief from the south elevation of the porch because that's within the setback, is that right?

JOANNE KINSLOW: Yes, that's correct.

CONSTANTINE ALEXANDER: Anybody here that wishes to be heard with regard to this petition? Let the record show no one wished to be heard. Questions from members of the Board?

We're ready for a vote. The Chair moves to grant the Petitioner a Special Permit to proceed with relocation and replacement of windows and enclosure of porch. The work being proposed would not impact traffic in the neighborhood or add patterns of access or egress that would result in congestion, hazard or substantial change in established neighborhood character.

That the replacement of the windows and enclosure of the porch would not affect the continued operation or development of adjacent uses in the neighborhood. And no nuance or hazard would be created to the detriment of the health, safety, and welfare of the occupants or the citizens of the city, and that the proposed use would not impair the integrity of the district or adjoining districts.

In fact, what is proposed here is

rather modest in scale. It is kind of a project we have seen many times before on this Board and approved. It is a project that has received no neighborhood opposition. And it is a project that requires only a Special Permit which under our zoning bylaws is presumed to be granted unless one of the reasons I've cited were not met here were met. In other words, if you created traffic problems or nuisance or hazard.

The Special Permit will be granted on the condition that the work proceed in accordance with three pages of plans prepared by Winkley, W-I-N-K-L-E-Y, resident. Alterations and renovations initiated by the Chair.

All those in favor of granting the Special Permit say aye. Five in favor. Good luck.

The Chair will call Case No. 9814, 48-2 Fayette Street. Anyone here wished to

be heard on this matter?

Your name for the record. Please give your name and address.

DAVID LEVY: David Levy, L-E-V-Y. 48-2 Fayette Street, Cambridge, Massachusetts.

Thank you for hearing me today. My wife and I live have an attic condo in a three-family home on Fayette Street. The home is from built in 1880 or so. It is a nonconforming structure. It's somewhat like 41 feet tall, and I think both setbacks to the left and right are also nonconforming.

What we wish to do is to add three skylights for lighting and for ventilation.

CONSTANTINE ALEXANDER: Unlike say the windows in the prior case, these should not affect the privacy of your neighbors. You cannot look out through the skylights at them and they can't look at you.

DAVID LEVY: That's correct.

Actually I think our -- the skylights in our house are higher -- I can't look out them right now. I think it is higher than the adjacent properties anyway. I don't think there's any cross vision that can occur.

TAD HEUER: You are okay about Google Earth looking down into it?

DAVID LEVY: Right. For the time being. I don't know what they have in the works.

That's basically it. So the skylights would be higher than the existing setback allowed, at least the three skylights on the north side would be the left side -- actually the entire left side of the house is all beyond the setback.

CONSTANTINE ALEXANDER: You are seeking only a Special Permit not a variance. And the Special Permit is because you have a nonconforming structure. It is like replacing windows in a setback. You are, in

fact, putting in a skylight in a setback.

BRENDAN SULLIVAN: Is that what triggers the relief?

SEAN O'GRADY: Skylights. The leading edge of the skylight that crosses into the setback is treated the same way as a window.

BRENDAN SULLIVAN: An opening within a setback.

TAD HEUER: Is the setback issue or the height issue, in the area that is over height.

SEAN O'GRADY: I don't know. I would have to look at the thing.

DAVID LEVY: My reading of the ordinance was there's an exception 5.23-A excepts the skylights from the height requirement. That was my reading of it. In which case the third skylight, the south facing one, wouldn't even require a Special Permit. It would be the north facing ones.

TAD HEUER: That was my question. When you said for three skylights --

DAVID LEVY: That was my reading it. Yeah, I wasn't sure so put included all three.

SEAN O'GRADY: That's my reading also. We have not used that section very often because there's some gray in the language. I'm happy to support that reading.

CONSTANTINE ALEXANDER: Anyone here wishing to be heard on this matter? Let the record show no one wished to be heard.

Comments, questions by members of the Board? Are you ready for a vote?

TAD HEUER: Have you spoken with the condo association, people who are below you?

DAVID LEVY: The condo association, yes, is in support of this.

CONSTANTINE ALEXANDER: I should have asked you before, any neighbors have

comments pro or con with regard to this project?

DAVID LEVY: No. I mean not from any neighbors that would be --

CONSTANTINE ALEXANDER: Any neighbors.

DAVID LEVY: Our neighbor in the backyard thought it was a great idea. They couldn't see one way or the other.

CONSTANTINE ALEXANDER: Don't be apologetic about it. If it's a great idea, it's a great idea.

Okay. I think we're ready for a vote.

The Chair moves to grant the Petitioner a Special Permit to install three skylights in his attic.

Special Permit will be granted on the grounds there's no way of meeting requirements of the ordinance given the fact that we have a nonconforming structure.

That the proposed relief would have no impact on traffic patterns or traffic or patterns of access or egress. That the skylights would have no impact on the continued operation or development of adjacent uses. The skylights is such that they do not create any privacy issues given the way they are situated on the room and inability of people to look in or look out using those skylights.

For the same reason that the skylights will not create nuance or hazard to the detriment of the health, safety or welfare of the occupants or citizens of the city, and that the skylights will not impair the integrity of the district or adjoining districts. In fact, the relief being sought is technical and modest in nature. It would allow a better use of the structure by the Petitioner or any subsequent owners of the property or occupants of the property.

The project has elicited no

opposition from any neighbor. And on that basis the Special Permit will be granted but on the condition that the work proceed in accordance with plans submitted by the Petitioner, prepared by Reisen, R-E-I-S-E-N, Design Associates. There are one, two, three, four, five pages. The first page which has been initiated by the Chair.

All those in favor of granting the Special Permit on the basis proposed say aye. Five in favor. Motion carried.

DAVID LEVY: Thank you very much.

CONSTANTINE ALEXANDER: Good luck.

Case No. 9815, 100 Cambridgeside Place.

KEVIN DUGGAN: My name is Kevin Duggan. I represent Metro Sign and Awning who have been contracted to do the signage for 100.

SCOTT POLLACK: I'm Scott Pollack, I'm a principal at Arrow Street. The

Building Commissioner and after a conversations with Mr. Barber as well the ownership, I sort of been the keeper since the PUD. If the Board had any questions, I was requested to sort of come tonight to fill in anything. I'm not the Petitioner, but I'm here sort of to help answer any questions.

CONSTANTINE ALEXANDER: I think you are not going to like what you're going to hear pretty quickly, but let me go forward.

Ironic for a sign case, we have a sign issue, signage issue, here in terms of the notice. Under the zoning bylaw you have to post a notice ten days in advance of the hearing in the window. I went by the project as I do to just to look at the project and noticed there was no sign window.

I informed Mr. O'Grady, and he checked as well and also confirmed there was no sign. But he also had a reason we couldn't see a sign in the window; namely, the people

who were doing the renovations to the project either covered the sign up or discarded it. I mean that's not your fault. You didn't do anything wrong.

KEVIN DUGGAN: I posted those signs on the 23rd of June.

CONSTANTINE ALEXANDER: Somebody took them down.

KEVIN DUGGAN: They never came down. They were just cut. I mean, I think there is a distinction. There was no intention, absolutely no intention.

CONSTANTINE ALEXANDER: No suggestion there was.

KEVIN DUGGAN: The first time when they put up those graphics, whoever put them up I don't know, covered them on July the 3rd. As soon as I found out about, we went down and had the signs on the outside the window now, which I didn't want to do. But they are on the outside of the window and they have been

up there for the last couple days anyway.

CONSTANTINE ALEXANDER: That's not sufficient, unfortunately.

KEVIN DUGGAN: We made --

CONSTANTINE ALEXANDER: Let me make it clear for the record. I'm not suggesting, I don't think anybody would suggest that you guys were not acting in entirely good faith. It was an unfortunate situation caused by third parties; namely, the contractor doing the renovation. But you were responsible for the contractor, we are not.

And we have had this case before, not your case, when I was sitting on the Board in Fresh Pond Shopping Center. One the store fronts, Petco was going in, and they put up a sign as required and the contractor who did the work there either covered the sign or took it down. We wouldn't hear the case.

You have to have that sign up for the required period of time, and you have a

responsibility to make sure it stays there not covered and not removed. And if something happens, you have to replace the sign. We don't expect you to be there 24/7 to make sure nothing happens to the sign, but what you have done so far, again entirely unintentionally on your part, doesn't comply with our zoning code.

KEVIN DUGGAN: May I ask when was the sign was established, it was not visible?

SEAN O'GRADY: I saw it down on Tuesday.

CONSTANTINE ALEXANDER: I was there on Monday.

KEVIN DUGGAN: I'm admitting it went down on Friday. That's when I found out. That's what I recently found out. Technically it was there for two weeks. More than two weeks. It was just a day -- two days' interpretation in the middle.

CONSTANTINE ALEXANDER: That's

what I'm looking for right now.

BRENDAN SULLIVAN: It doesn't say it has to be there for fourteen days. It has to be there fourteen days prior to the hearing.

KEVIN DUGGAN: It just says two weeks before.

BRENDAN SULLIVAN: Continuous.

KEVIN DUGGAN: Like I say, for the sake of the two days and it was actually sixteen, I think, for a total -- it was up for a total of thirteen.

CONSTANTINE ALEXANDER: The required panel shall be installed as required in this section not less than fourteen days before the date of the public hearing. It shall be maintained in legible condition until a Notice of Decision is filed with the City Clerk by the Permit or Special Permit granting authority. Panels that are stolen, destroyed or rendered illegible shall be

promptly replaced and panels shall be promptly removed after Notice of Decision has been filed.

KEVIN DUGGAN: I would submit they were promptly replaced. We did it as quickly as we found out.

CONSTANTINE ALEXANDER: Doing it as quickly as you found out, I will not fight with you, but that's not what the requirement is. I can't support the case going toward tonight. I throw the matter out to members of the Board.

KEVIN DUGGAN: May I suggest not so much for myself but for Mr. Chang the change.

CONSTANTINE ALEXANDER: I don't know Mr. Chang personally.

KEVIN DUGGAN: It is a financial hardship to put this off if we don't discuss it tonight.

CONSTANTINE ALEXANDER: He can still open his restaurant.

KEVIN DUGGAN: I understand that, but he's still got to lose a substantial amount of traffic and whatever without the sign. It is the whole purpose of the sign is to bring customers in. He's losing a substantial amount of money.

CONSTANTINE ALEXANDER: He can put a conforming sign up. He wants to put up -- it is a corporate. He wants to put up a sign greater than the sign bylaw permits. That's why you are here tonight.

KEVIN DUGGAN: We haven't gotten to that point why -- what should be put there.

CONSTANTINE ALEXANDER: We are not ready to do it because you don't have appropriate notice. It is a precondition for us to consider the case on its merits is that you give the property -- Mr. Chang give proper notice in terms of posting a sign.

Other members feel differently?

BRENDAN SULLIVAN: I think we are

very consistent with posting has to be fourteen days prior to the hearing. And when it is not -- we have had people take them down to wash the windows and never put them back up again. We are consistent. It has to be maintained. People don't take the signage as serious as they need to be. And if I had control of a sign, I would put the sign up and put big signs for the contractors do not remove this signage. And we get this more often than we should where the signs are taken down for whatever reason. But we are quite adamant that that part of the requirement must be observed.

CONSTANTINE ALEXANDER: The signage is important because it puts the public on notice that something is going to happen here. And you have a problem come complain or not complain to the Board. It is not just a matter of the mailing of a notice to abutters.

TIM HUGHES: It creates a liability for us to hear a case when it hasn't been properly posted.

BRENDAN SULLIVAN: It is not technical. It's legal. It is a legal matter.

KEVIN DUGGAN: Given the situation, we'll get a continuance.

CONSTANTINE ALEXANDER: We'll talk about continuing the case.

KEVIN DUGGAN: Is it possible given the hardship it will put on Mr. Chang that we get on to the next meeting, I know you are pretty well booked, putting it to December 10 --

CONSTANTINE ALEXANDER: September.

KEVIN DUGGAN: Whatever it was.

CONSTANTINE ALEXANDER: Even later on tonight we don't have time.

KEVIN DUGGAN: We are fully committed to being here for the entire four

hours and if the Board would consider a possibility of bumping us.

SEAN O'GRADY: The next available is the 13th. We got four there.

CONSTANTINE ALEXANDER: The 13th of August.

SEAN O'GRADY: 13th of August.

SLATER ANDERSON: I wouldn't be around.

TIM HUGHES: This is a case not heard.

CONSTANTINE ALEXANDER: Next is September 10.

SEAN O'GRADY: September 10.

CONSTANTINE ALEXANDER: Before I make the motion to continue the case, let me ask you one other thing. Your file. I read the file anyway, it has problems with it. Your advertisement talks about to install internally illuminated projection sign, singular. I see two signs in here that you

need to a variance for.

KEVIN DUGGAN: The other one -- the ones over the doorways, it requires 12 inches. We are going to redesign them for 12 inches.

CONSTANTINE ALEXANDER: You are only looking for one sign.

KEVIN DUGGAN: Yes. In the course of the discussion I was going to mention that the two signs over the two entrances we can reduce to 12 inches.

CONSTANTINE ALEXANDER: Good. I didn't want it come to September 10, and we have problems all over again.

KEVIN DUGGAN: We were going to mention that. The other thing on the blade sign while we are here.

CONSTANTINE ALEXANDER: No, I don't want to get into the permits of the blade sign.

SCOTT POLLACK: One question.

These signs, of course because I won't let anything get to this point without making sure it has gone through Mr. Barber, did they actually submit anything because they have been reviewed by them.

SEAN O'GRADY: Who submit?

SCOTT POLLACK: Les. Did he actually send anything in writing? These signs were discussed with Les. Obviously he didn't want to come and spend the whole evening here, but he said he was in favor of the sign. I wanted to find out whether that got into record.

CONSTANTINE ALEXANDER: What is in the record from Les is the fact that the sign needs zoning relief. Typically he does not express personal opinions on signs.

SEAN O'GRADY: The history of Cambridgeside because of the nature of the PUD and the original approvals, amazingly enough I'm still working on it and he's

working on it twenty something years later, he tends to take a more personal interest what we do or don't do to the exterior of that building. My job is to make sure he was okay with what anyone proposes.

CONSTANTINE ALEXANDER: Chair moves that this case be continued until 7 p.m. on September 10 on the condition that the Petitioner sign a waiver of the time to render a decision, on the further condition that the sign when it gets put back up cross out tonight's date and put September 10.

KEVIN DUGGAN: Change the time from 9 to 7.

CONSTANTINE ALEXANDER: Thank you. All those in favor of continuing the case as so proposed. Five in favor. Case will be continued as soon as you sign that waiver of notice.

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

CONSTANTINE ALEXANDER, CHAIR the Chair will now reconvene Case No. 9811, 212-214 Fayerweather Street. What is your decision? I'm going to feel like a quiz show host.

ARIADNE VALSAMIS: Great appreciation for your patience with us and all the information that people gave us and the comments. We decided to try to take our plans and shrink them in the interest of -- you gave us really good feedback. And we had a prior drawing that we didn't submit that was for a dormer that wasn't 15 feet.

So that -- we ended up deciding a better plan was to raise the roof. So we have taken that dormer and shrunk it to 15 feet which we hope will make a better FAR for the concern. And if it is all right we would like to show it.

CONSTANTINE ALEXANDER: Yeah. We have to decide ourselves -- if the changes

are very substantial in our opinion, we can't decide it tonight because we need to have more time to consider it. If we decide it is a relative minor modification we can pursue the case tonight at the Board's pleasure.

Has your dimensional form been modified as a result?

ARIADNE VALSAMIS: Yes, because it is a smaller gross area.

CONSTANTINE ALEXANDER: You have a modified dimensional form.

BRENDAN SULLIVAN: Let me ask a technical question. What is the existing floor to the ridge height now?

BILL BOEHM: The existing third floor to top of ridge is approximately 8 foot, 9 inches.

BRENDAN SULLIVAN: Top of ridge. Your ridge is 2 by 8 maybe?

BILL BOEHM: Yes.

BRENDAN SULLIVAN: You are down to

eight feet. You are not going to be able to get a dormer in there to comply with the dormer guideline and leave the ridge at its present height. Changes are you are going -- you probably have 2 by 6s for ceiling joists, floor joists. Those will have to be beefed up. You will have to raise the roof anyhow.

BILL BOEHM: Right. We are aware of that.

DAN LEVITT: Right.

BILL BOEHM: In this previous scheme that we just mentioned, we had proposed a scheme where we did raise the ridge of the entire roof but we kept most of it a gable under the height limit and raised a dormer for -- in the previous scheme over 20 feet. Now we have shrunk it. So this floor plan shows that scheme and these red marked elevations show the shortened dormers.

CONSTANTINE ALEXANDER: You will

have to increase part of the roof. Is that going to throw you out of compliance?

BILL BOEHM: No. We'll stay under the 35 feet.

CONSTANTINE ALEXANDER: Okay. Why don't you show modified plans to the Board, particularly Mr. Sullivan. I would like to hear his views as well as other members of the Board as to whether we can pursue this case tonight or not.

SLATER ANDERSON: These are the plans, the earlier ones.

BILL BOEHM: I modified them so I've shown the dormer shrinking up to here to 15 feet, relocating this window, getting rid of this. This is over the stairs. We raised that window to be above. We carried this skirt across. I made an error there but this is the new 15-foot dormer.

BRENDAN SULLIVAN: There are a couple of things that stand out. One, coming

down from the ridge a foot is recommended. Also, that the front wall the dormer would not be in line with the outside wall of the house. Are you familiar with the guidelines at all?

BILL BOEHM: I have just recently become familiar with them, and it was my understanding those are guidelines, not requirements, and we thought by just carrying across the skirt you might find that acceptable.

CONSTANTINE ALEXANDER: You are right, they are guidelines and not requirements other than we take the guidelines quite seriously and to make sure that projects comply with them.

What extent do you not comply with the dormer guidelines? The size complies. Just the ridge area?

SLATER ANDERSON: Actually you think you're going to bring this up more than you're coming down?

BRENDAN SULLIVAN: If you raise it up, then you can come down from the ridge that foot that they recommend.

BILL BOEHM: This is already just below the height limit now, 35 feet. We have to have to flatten this pitch which is probably possible.

BRENDAN SULLIVAN: I'm not sure we can do it tonight.

BILL BOEHM: Did you want to see the interior at all?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: It is not a zoning matter. What you do inside is up to you.

BRENDAN SULLIVAN: It still -- basically you are looking for two bedrooms -- well, you maybe looking for three bedrooms up there.

DAN LEVITT: Bedroom, bedroom, bedroom and bath.

ARIADNE VALSAMIS: And a stair.

BRENDAN SULLIVAN: Anyhow I think that -- -- again, I think -- I guess my thought is if you go back and rework it, come back, being sensitive to the guidelines, but then, you know, you may say it doesn't work for us. I mean, this obviously is your wish list, but it's really in direct contradiction to the ordinance and I think what being a B zone is trying to achieve. But then you may look at this and say, No, we really need to do it this way here.

So I'm not saying it has to be this, if you give us a couple different options, but I think it has to be reworked being sensitive to the guidelines and also that it either works or doesn't work for you being sensitive to the guidelines. But it's gonna have to be reworked and brought back to us. It can't be done tonight anyhow.

CONSTANTINE ALEXANDER: I'm also a

little leery.

BRENDAN SULLIVAN: Only because whatever we approve is what has to be built. There can't be any exceptions to that and this is somewhat schematic right now.

CONSTANTINE ALEXANDER: I think as someone who is supportive of the original plans, I would have a problem voting on these recommended plans tonight because it is just not -- we don't have enough time to think about them. And you haven't had enough time to think about them. It's not the way we like to do business and also it leads to problems down the road.

SLATER ANDERSON: We need new drawings.

CONSTANTINE ALEXANDER: So we have room still on September 10.

SEAN O'GRADY: We just gave that away. We are now September 24.

CONSTANTINE ALEXANDER: Everybody

has to be here for that. Any problems that anybody knows about?

TIM HUGHES: Not that I know about.

TAD HEUER: No.

SLATER ANDERSON: Yep, I'm okay.

CONSTANTINE ALEXANDER: I think that's the only way. We can go forward tonight, but you don't need a weather man to know which way the wind is blowing.

BILL BOEHM: When we come back on the 24th all five of you have to be here at the hearing? Is there anyway to know in advance whether you will be here?

CONSTANTINE ALEXANDER: We take an informal pole right now. As far as we know we'll all try to be here.

BRENDAN SULLIVAN: And the plan should be in the file the Monday prior to.

CONSTANTINE ALEXANDER: Your new plans must be in the public file no later than 5 p.m. on the Monday before the Thursday of

the hearing.

BRENDAN SULLIVAN: A revised dimensional form too.

CONSTANTINE ALEXANDER: You have to modify the sign in the place, change it to reflect the new date. It will be in the motion I'll make. You have to take a Magic Marker and change the date from today's date to the 24th 7:00.

The Chair will make a motion that this case be continued until 7:00 p.m. on September 24 on the condition that the Petitioners sign a waiver of notice for time of reaching the decision. That's the waiver there. And the further condition that the sign be modified to reflect a time and date of the hearing.

All those in favor. Five in favor.
See you in September.

(Whereupon, the proceedings were concluded at 10:30 p.m.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
NORFOLK, ss.

I, Jill Kourafas, 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 these matters.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of July 2009.

Jill Kourafas
Certified Shorthand Reporter No. 149308
Notary Public
My Commission Expires
February 26, 2010

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