

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
August 13, 2009 7:00 p.m.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Thomas Scott, Member

Tad Heuer, Member

Mahmood Firouzbakht, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, 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'll first start with the continued cases from prior hearings. And the first continued case is Case No. 9795, 32 Quincy Street.

Is there anyone here on that petition?

FEMALE AUDIENCE MEMBER: Actually, we've withdrawn that petition.

CONSTANTINE ALEXANDER: Yes, I was going to ask --

FEMALE AUDIENCE MEMBER: I'm here.

CONSTANTINE ALEXANDER: Do you want to speak with regard to the withdrawal? No? Okay.

The Chair is in receipt of a letter from the -- from the Harvard University Planning Office. I should have mentioned that Harvard is the petitioner in this case.

It says: Harvard University has a public hearing scheduled with the Board of Zoning Appeal on August 13, 2009, for the 32 Quincy Street project. On behalf of the University, I would like to request that this case be withdrawn because it represents a redundancy with the approved case 9809. If you have any questions, give me a call.

And as the letter notes, we did hear this case already. They -- Harvard re-advertised it. Heard on August 13 and a decision has been rendered on that case. So that is the basis of that withdrawal. We still need a motion, however, to accept the petition -- request for withdrawal.

All those in favor of approving

withdrawal of this case, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case has been withdrawn.

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

CONSTANTINE ALEXANDER: This is a case not heard. Anyone can sign this one, right?

SEAN O'GRADY: Oh, that's right. Can I give that to you since it's already there?

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

(7:05 P.M.)

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

CONSTANTINE ALEXANDER: The Chair will next call case No. 9816, Nine Ash Street. The petitioner being Harvard College.

Is there anyone here on that case? Please come forward unless you want to just stand on --

FEMALE AUDIENCE MEMBER: Yes, we're just submitting the --

CONSTANTINE ALEXANDER: Okay. Well, you don't have to come forward if you don't want to.

FEMALE AUDIENCE MEMBER: Okay, I'll sit back here.

CONSTANTINE ALEXANDER: The Chair is in receipt of a letter -- okay, a letter from Tonya Iatriadis, I-a-t-r-i-a-d-i-s, dated August 11th. It's from the University Planning Office of Harvard.

"On behalf of the President and Fellows of Harvard College, I am writing to request a continuance of our hearing scheduled for August 13, 2009, with the Board of Zoning Appeal to permit the proposed institutional use of the property at Nine Ash Street. We respectfully request that this hearing be continued to the September 24, 2009 hearing date to allow for continued discussions with the neighbors about this proposal."

And the Chair would note we have in the file a waiver signed by Harvard with regard to the time to render a decision in this case.

Discussion? Is September 24th

available?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be moved until seven p.m. on September 24th on the condition that the petitioner modify the sign that's posted on the property, to cross out the old date and put the new date in there.

FEMALE AUDIENCE MEMBER: No problem.

CONSTANTINE ALEXANDER: All those in favor of continuing this case on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion carried.

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

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

(7:05 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will next call case No. 9797, 34R Prentiss Street.

Is there anyone here on that petition? Please come forward. We keep a transcript, so please, for the record, state your name and address.

LAUREL ULRICH: Laurel Ulrich at 34R Prentiss Street.

CONSTANTINE ALEXANDER: And you're

here because you are seeking a Special Permit to construct a skylight in a rear yard setback?

LAUREL ULRICH: Right.

CONSTANTINE ALEXANDER: Okay. The rear yard setback in this district is supposed to be 30 feet.

LAUREL ULRICH: Uh-huh.

CONSTANTINE ALEXANDER: And your home, your residence is now two feet from that rear lot line.

LAUREL ULRICH: Right.

CONSTANTINE ALEXANDER: But you're not proposing to get any closer to the rear lot line, you just want to put a skylight on top?

LAUREL ULRICH: Right.

CONSTANTINE ALEXANDER: Anything else?

LAUREL ULRICH: And we've contacted all the neighbors. They all approve.

CONSTANTINE ALEXANDER: I'll read that into the record.

LAUREL ULRICH: It's pretty straight forward. Yes.

CONSTANTINE ALEXANDER: One issue we may have in this case is the nature of the plans that you submitted --

LAUREL ULRICH: Uh-huh.

CONSTANTINE ALEXANDER: -- with regard to the skylight. They're not up to our snuff for purposes of -- Mr. O'Grady, who has to enforce our decisions, to be sure that we have correct dimensions so we know exactly what's being approved --

LAUREL ULRICH: Uh-huh.

CONSTANTINE ALEXANDER: For example, the window doesn't show its size of the skylight.

LAUREL ULRICH: Uh-huh.

CONSTANTINE ALEXANDER: No dimensions are on it. I'm not even sure it shows the specific location of the

skylight.

LAUREL ULRICH: Yeah, it does show the specific location, yeah.

CONSTANTINE ALEXANDER: Well, but dimensions? I mean by feet?

LAUREL ULRICH: Yeah.

CONSTANTINE ALEXANDER: How many feet?

GALE ULRICH: I think it's (inaudible) of steel. I don't know if the dimensions --

LAUREL ULRICH: Yeah. I guess an engineer rather than a contractor did the drawing.

CONSTANTINE ALEXANDER: Well, the dilemma is that at some point, you'll have to -- if we were to give you approval, you have to get approval -- you have to get a sign-off on your building permit.

LAUREL ULRICH: Uh-huh.

CONSTANTINE ALEXANDER:
Mr. O'Grady, what he does, in all the

zoning cases, is he sees the plans that you're going to look your permit for --

LAUREL ULRICH: Right.

CONSTANTINE ALEXANDER: -- and compares them to what was submitted to the Board and make sure they correspond.

LAUREL ULRICH: Right.

CONSTANTINE ALEXANDER: And he's going to be at a loss to do that given the fact that your plans don't have any dimensions. Can you tell us what the size of the window is going to be?

LAUREL ULRICH: Yeah.

CONSTANTINE ALEXANDER: Or the skylight?

Please come forward, sir, if you're going to speak. Give your name for the record, too.

GAEL ULRICH: My name is Gael Ulrich, the husband. And --

CONSTANTINE ALEXANDER: Here's what we have. As far as I can tell, this

is the only thing we have in the file. So it doesn't say how big it is. It doesn't really show where it's located.

Gael Ulrich: Okay. Do I have a scale written on the plan?

Constantine Alexander: The scale --

Gael Ulrich: Somewhere.

Tad Heuer: But I'm not sure it will help you because that's the interior. It's not of the roof.

Thomas Scott: One inch equals ten feet it says.

Gael Ulrich: Okay. And I think you can scale it off the --

Tad Heuer: Where is it?

Thomas Scott: Yes, where is it in the plan? We can't see it.

Gael Ulrich: Can I come around?

Constantine Alexander: Sure.

Gael Ulrich: There are actually four other skylights.

THOMAS SCOTT: Is this the plan here?

LAUREL ULRICH: It's exactly the same of what's there now, yeah.

GAEL ULRICH: This is the south elevation of the house (indicating). Here's the north elevation (indicating). And -- okay, east. It's interesting. My fault.

THOMAS SCOTT: What's this say right here, proposed skylight?

GAEL ULRICH: This is the proposed skylight. Over -- and it's -- this one -- I drew this during the application process. This is the -- everybody see this? Here's the front of the house (indicating). This is the back of the house (indicating). And it was a carriage house that's had the roof lifted for the second floor. This was done in 1990. We bought the house in 2002. So, this is a slope of the back roof (indicating). And

if you look at it from this direction -- I'm sorry, yes, from this direction, this is what the house looks like, with the roof actually -- this is about what you see.

TAD HEUER: What we need to know is where the skylight --

Gael Ulrich: That's what I was getting to. The skylight is actually here (indicating).

Constantine Alexander: Can I make a suggestion, sir? Why don't we -- I take it you're the one who prepared these plans?

Gael Ulrich: Yeah.

Constantine Alexander: Why don't we recess this case? Let you go in the back room there and mark on these plans with a ruler and to scale so we see exactly the dimensions of the skylight, and exactly where it's going to sit in terms of how many feet from the roof line

and the like. When you've done that, come back and we'll then hear the case again.

Gael Ulrich: Yeah. Would it be better to just draw it on here?

Tad Heuer: I would prefer it on a new piece of paper that shows just the roof and where the existing skylight is and where the new skylight would be.

Gael Ulrich: Okay.

Constantine Alexander: And Mr. O'Grady might be of some help to you.

Sean O'Grady: I'll come back and help him.

Thomas Scott: There are several other skylights?

Gael Ulrich: I'm sorry?

Thomas Scott: There are several other skylights?

Gael Ulrich: There are actually

--

Laurel Ulrich: Three.

Gael Ulrich: Four.

THOMAS SCOTT: There are four other skylights?

GAEL ULRICH: Yeah.

CONSTANTINE ALEXANDER: They're all being built at the same time?

GAEL ULRICH: No, they're already there. They're in this section -- if you look at it now.

THOMAS SCOTT: So they're on the same side of the roof --

GAEL ULRICH: Same side of the roof --

THOMAS SCOTT: -- as the proposed?

GAEL ULRICH: And the proposed one is right here (indicating).

THOMAS SCOTT: Oh.

GAEL ULRICH: We added a bathtub. This, in other words, there's a skylight over here (indicating). There's a skylight over here (indicating), and a skylight over here (indicating). And a skylight there in this corridor

(indicating). And we added -- actually, we remodeled this bathroom and wanted to put a skylight over this bathtub (indicating). So it's essentially parallel to this one. There are four others, 1, 2, 3, 4. And then we wanted to add this one (indicating).

TAD HEUER: Right. So the problem that we're having -- this is just another case, but we're used to seeing things like -- and obviously it doesn't need to be this professional. But we're used to seeing things where we're able to look and see and have dimensions on here so we know exactly what's going in, you know, to each particular area of the house. Because what's going to happen, as the Chairman said, is that you're going to bring it in. You're going to say we have a variance for a skylight -- or a Special Permit for a skylight, and they're going to say how big is it? Where is it going to go? And you

would say well, it's going to be a ten foot by ten foot skylight. And they'll say how do you know that? And you can say well, we don't really know.

GALE ULRICH: Okay.

TAD HEUER: So we need to have something in the file that we sign off on.

GAEL ULRICH: If you want to recess, and if you can help me.

SEAN O'GRADY: I'll help you.

GAEL ULRICH: We can do it.

CONSTANTINE ALEXANDER: Okay. So, why don't we recess this case for the time being. We'll hear other cases, and then when you're ready to come back --

GAEL ULRICH: Can I take the file?

CONSTANTINE ALEXANDER: Oh, of course. You're going to have to take the file.

So this case is in recess. We'll move on to the next case.

SEAN O'GRADY: I'll be out in just

a few minutes while we get the next case started.

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

(7:15 P.M.)

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

CONSTANTINE ALEXANDER: The Chair

will call next case -- we're going to call two cases because they both involve the same premises and petitioner. Case No. 9775 and Case No. 9802. They both involve Four Forest Street. And I believe it's really the second one, 9802 is the one that's before us. The first one was not properly advertised as I recall. So we're going to hear the variance to build two dormers, a roof deck, and stairs.

DAVID KINSELLA: And then assuming success we can withdraw the --

CONSTANTINE ALEXANDER: Even if it's a failure, you have to withdraw it.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Okay.
Name and address, please, for the stenographer.

DAVID KINSELLA: Yes, David Kinsella with TBC Architects. Representing Kanan Makiya of Four Forest Street, Cambridge.

CONSTANTINE ALEXANDER: Mr. Kinsella, where you've been here before, and the last time you were here we had problems with both the -- you wanted the dormer or some of the dormers, and the deck. And some members of the Board had problems with one, and some had problems with another and some had problems with both.

DAVID KINSELLA: Right.

CONSTANTINE ALEXANDER: So, you've come back with revised plans.

DAVID KINSELLA: Yes.

CONSTANTINE ALEXANDER: You did not revise the dimensional form. Is there any change in the dimensional information as a result of these plans?

DAVID KINSELLA: Yes. I mean, I didn't realize I had to do that.

CONSTANTINE ALEXANDER: Well, that's what we rely on obviously.

DAVID KINSELLA: I understand.

CONSTANTINE ALEXANDER: Can you tell us how the dimensional form from the one you submitted before has changed?

DAVID KINSELLA: Sure.

CONSTANTINE ALEXANDER: Or will change?

DAVID KINSELLA: What we did is we reduced the deck size.

CONSTANTINE ALEXANDER: I want to make that correction right on here first.

DAVID KINSELLA: Why don't I grab the --

CONSTANTINE ALEXANDER: Why don't you get out the dimensional form.

DAVID KINSELLA: Okay. You want the new, correct?

CONSTANTINE ALEXANDER: Yes. I want to know how do I modify the one you did submit to reflect --

DAVID KINSELLA: Okay. The deck is reduced to 11 by 14.6.

CONSTANTINE ALEXANDER: No,

there's nothing on the dimensional form on that. The reason you're before us tonight and you were before us the last time --

DAVID KINSELLA: Yes.

CONSTANTINE ALEXANDER: -- you had a GFA issue. You wanted to go from .82 to .85. And the district only allows .5.

DAVID KINSELLA: Correct.

CONSTANTINE ALEXANDER: Has the GFA changed as a result of your new plans?

DAVID KINSELLA: No.

CONSTANTINE ALEXANDER: All right.

DAVID KINSELLA: All my issues still remain.

CONSTANTINE ALEXANDER: Okay. Then you're also decreasing the usable open space from 37 percent to 36 percent and you're supposed to have at least 40 percent?

DAVID KINSELLA: All of the issues remain.

CONSTANTINE ALEXANDER: Still the

same. So, there's no need to make any changes to the dimensional form?

DAVID KINSELLA: No.

CONSTANTINE ALEXANDER: Okay, good. Now we're back to the plans, the revised plans. Sorry for the digression but we have to make sure we're clear.

DAVID KINSELLA: We basically need the relief in order to do almost anything we want.

TAD HEUER: So you're still adding 120 square feet; is that right?

DAVID KINSELLA: Yes, that's correct. We haven't changed the dormers from the last -- other than adding the detailing that we were asked to do. We put the window size together. Some people had issues or questions. I shouldn't say issues. We scaled the deck back substantially. The deck, you know, is -- we need permission to go forward with the deck. So --

CONSTANTINE ALEXANDER: These two pages are your new plans?

DAVID KINSELLA: Correct. All the dormer dimensions still apply. All the area dimensions still apply.

CONSTANTINE ALEXANDER: Why don't we start, if I may, because this is my issue with the deck.

DAVID KINSELLA: Sure.

CONSTANTINE ALEXANDER: Before you came before us the deck that was 19 feet by 19 feet. That's right.

DAVID KINSELLA: This one.

CONSTANTINE ALEXANDER: And I think it was the sentiment for at least a number of members of the Board, that was far too big. We're not in favor of the roof decks period. And one of this size was a real problem.

So, you come back now with a roof deck that's going to be 14 feet, 6 inches by 11 feet.

DAVID KINSELLA: Yes.

CONSTANTINE ALEXANDER: That's still a size of a room, a good size room in a house.

DAVID KINSELLA: It's what the owner -- we also -- is we felt like was addressed the issue of too many people variance, enough for a seating group of four with maybe the barbecue out there.

CONSTANTINE ALEXANDER: Our issue wasn't necessarily it was going to be six rather than four on the deck. The issue was that we didn't want the deck because of the privacy concerns. It becomes an area of congregation of having noise and an invasion of privacy.

DAVID KINSELLA: Sure.

CONSTANTINE ALEXANDER: I'm not sure, and I'm not trying to be difficult, I only speak for myself.

DAVID KINSELLA: No, that's fine.

CONSTANTINE ALEXANDER: I don't

know why a deck of still of 14 feet, six inches by 11 feet is still not a problem. How do you -- yes, you have reduced the size of the deck, but you haven't -- I don't think you've dealt with the issue, at least I've raised -- I think we still have a privacy issue with your neighbors.

DAVID KINSELLA: You know, I can't argue the privacy issue. I mean, it's a perception issue. He has heavily trees on this side of the property (indicating). And the neighbor here -- we asked for letters and he wasn't able to obtain the letters not because of objections but because the people were -- you know, he's away and, you know, they didn't even coincide. But we reduced the deck to address it. We got rid of the side stair here.

CONSTANTINE ALEXANDER: Why not get rid of the deck? Why do you need a deck at all?

DAVID KINSELLA: Because it's a second egress out.

CONSTANTINE ALEXANDER: You can just have a stairway on a small platform. You don't need a 14 feet, six-inch deck by 11 feet.

DAVID KINSELLA: Right now he has a little over the minimum, and he can leave it that way. But he wants to add some outdoor space for his son who is going to occupy the apartment. And his son, I assume that his son is looking for open space. He's a single male. You know, an older -- not as old as I, but, you know, he wants to entertain, you know. I mean, there's no getting around that. It's a fact. People will use the deck, you know. What we thought if we cut it down in size, we looked at different designs, we would reduce the amount of people that could be there. We dropped the stair off because the Board didn't

like the concept of a hanging stair. We tried to address that.

CONSTANTINE ALEXANDER: Spiral stairs?

DAVID KINSELLA: Yeah, we stacked the spiral. We're going to do spirals that meet code. They're very compact. They're not going to -- he has a very well developed garden in his backyard. He doesn't want to mess with that.

TAD HEUER: So, what if you drop the spiral off the right-hand side?

DAVID KINSELLA: Over here?

TAD HEUER: Yes.

DAVID KINSELLA: Yeah, we can do that. That's more than likely where we'd like to have it, actually.

TAD HEUER: Also if you drop the spiral off the right-hand side, then you can reduce that deck design size substantially. Because right now you're pushing it to 14.6 because that's where

your stairway is --

DAVID KINSELLA: Right.

TAD HEUER: -- your existing stairway; is that right?

DAVID KINSELLA: Yes.

TAD HEUER: So --

DAVID KINSELLA: We have one here, one here, one here (indicating). We're taking this guy and moving it on top of that one (indicating) without having to rebuild that one.

TAD HEUER: Right.

DAVID KINSELLA: But I know he would entertain moving it over line. I have no doubt in my mind.

TAD HEUER: Right.

DAVID KINSELLA: And I actually talked to him about the privacy issue to bring this roof up as a wall so that you just see the roof from the neighbor's yard and that would, you know, get privacy and a buffer for the noise. And here I'm not

concerned to be frank because it's the trees. He's right in the canopy of the trees. So that's very good screening. So, right here, one neighbor can see it. One neighbor, that's it.

CONSTANTINE ALEXANDER: Comments or questions from members of the Board?

BRENDAN SULLIVAN: The person that lives on the first and second floor; is that correct?

DAVID KINSELLA: What's that?

BRENDAN SULLIVAN: The present owner lives on the first and second floor?

DAVID KINSELLA: That's right. He occupies first floor and second.

BRENDAN SULLIVAN: And the third floor has some kitchen facilities right now. Is there a bathroom?

DAVID KINSELLA: Right, a kitchen and bath and a bedroom.

BRENDAN SULLIVAN: And the son, does he stay up there now?

DAVID KINSELLA: No. They have a renter there. It's a legal condo.

BRENDAN SULLIVAN: Okay.

DAVID KINSELLA: But the renter's moving out. He's remodeling the space for his son.

BRENDAN SULLIVAN: Okay. So, it's occupied now and it will be occupied in the future.

DAVID KINSELLA: Yeah.

BRENDAN SULLIVAN: I guess that's the point.

DAVID KINSELLA: I don't think from talking to him that they're going to be moving any time soon, but I know the Board has to look at somebody else coming in there and think of it that way.

CONSTANTINE ALEXANDER: Exactly.

DAVID KINSELLA: The other thing I want to point out, you had asked me about the dormer on this side (indicating). We had added -- previously we showed the wall

going straight up. And we added this in, the overhang of the roof that complied greater with the dormer guideline. And we also dropped the valley, if you will, of the dormer so it doesn't hit the ridge. I mean, he's trying to address your concerns. He's incurring -- I told him you're going to incur more costs with this detail. I think you guys know that. My point is that he's trying to address all issues. You know, and trying to get something that meets their personal requirements. We have the window sizes on the floor plan, also, if you. Somebody had asked the question about window sizes so I put them on the drawings.

TAD HEUER: Is there a reason that the dormers aren't symmetrical from the front? Or is that just the plan? It appears that one is higher up on the -- toward the ridge than the other; is that right?

DAVID KINSELLA: No, they should be symmetrical. It's probably the floor.

CONSTANTINE ALEXANDER: That's a good point.

DAVID KINSELLA: They're supposed to be symmetrical. That's the intent. There's no advantage of having them asymmetrical.

TAD HEUER: You'd be surprised what people ask for.

DAVID KINSELLA: Well, I have no advantage.

TAD HEUER: Okay.

DAVID KINSELLA: No design advantage by doing that. No gain of space. No....

BRENDAN SULLIVAN: So floor to window sill is still going to be 28 to 30 inch, 32-inch range or somewhere around there?

DAVID KINSELLA: That's right.

CONSTANTINE ALEXANDER: Members of

the Board have any questions or want to address any comments at this point before I open it up to public discussion?

THOMAS SCOTT: I think the deck is bigger than 11 by 14.6 because you're not counting this area here (indicating).

DAVID KINSELLA: The dimension I'm giving is the usable rectangular area.

THOMAS SCOTT: This area (indicating).

DAVID KINSELLA: Yes.

THOMAS SCOTT: This is usable area.

DAVID KINSELLA: Yes, I suppose you could put something there, a chair or what not. We didn't think of it that way. We were more interested in aligning that side of the deck on the wall and getting the access to the stair. I mean, if that's -- that's not a deal breaker from our perspective.

CONSTANTINE ALEXANDER: The deal

breaker -- you got to make the decision what's the deal breaker. If you're submitting these plans to us tonight, we're going to vote them up or down.

DAVID KINSELLA: Right, I understand.

CONSTANTINE ALEXANDER: If you want to revise the plans, because it's not a deal breaker to change the deck, that's your call. But we're not here to design this project for.

DAVID KINSELLA: I understand.

THOMAS SCOTT: Here's my problem: It's a studio apartment. You've got a deck that's the size of a large living room. It's going to be a congregating -- you know, an area where people are going to want to congregate; his friends, you know, relatives or whatever. You know, for a studio apartment of this size, I think the deck should be much smaller and really doesn't need to be that big. It's

not -- it truly shouldn't be living space outside of the apartment. So I have a lot of concerns with the size of the deck. I think it's too big.

CONSTANTINE ALEXANDER: For me on the subject, I feel the same way.

Other members of the Board?
Comments?

BRENDAN SULLIVAN: Yes. I don't have a problem. I think that they have reduced -- I think they made an attempt. I think it was more of a concern with the dormers. Yes, is the deck generous, but I think that it's a nice space. Is it too much of a nice space? That's subjective.

CONSTANTINE ALEXANDER: It's a congested neighborhood. It's an area where there's a lot of houses.

THOMAS SCOTT: I think architecturally what you did with the dormers is really a plus. It definitely improved the look of the addition that

you're proposing. So, I'm in favor of what you've done with the house. I'm not in favor with the size of the deck I guess.

DAVID KINSELLA: The issue is that the owner wants a deck. And rather than, you know, go back and forth on the deck size, I mean, it seems like the Board's divided. I don't know, I haven't heard from you two. But it seems the Board's divided. So, what I would ask, is there some compromise other than getting, I mean, just being an egress which is, you know, just a four-foot walkway, is there a compromise that we could stipulate as part of a vote? Because, you know, I don't want to -- I know he wants a deck. And, you know, he -- we played around with the deck, I did, and tried different sizes. And he said, yeah, this is fine. And, you know, I had asked, you know, and suggested bring the roof up to add a screen to the

neighbor, and he decided against that. But I know, I think my perception is that the dormers are adequate, but the deck is still the sticking point. And I'm wondering if we can get an approval on part of it so he can move his son in, because his son needs a place to live. And he's under the gun to do it. This guy is -- I don't know what his financial circumstances.

TAD HEUER: This is something I raised last time. He purchased the house knowing that it had a studio condo. I mean, the value of the studio condo is compounded in the price. If you overpaid for a house that has too small of a studio condo, that's not really our problem. That's his problem.

DAVID KINSELLA: Right.

TAD HEUER: And if someone's living there and moving out, the fact that his son can or can't move in, I mean, his

son can move in. It may not be the ideal space. It's clearly liveable because someone's there right now.

DAVID KINSELLA: No doubt.

TAD HEUER: So, I mean....

DAVID KINSELLA: I mean you can easily make that argument. I understand that.

TAD HEUER: Right.

DAVID KINSELLA: I'm just -- he's away. I felt like he should do this because he's pressing me to get this thing -- we wanted to get it built in April. And, you know, homeowners always underestimate the time it takes to go through the process. So I'm trying to speak to you on his behalf.

BRENDAN SULLIVAN: You know, a deck up there can either be an absolute annoyance or it can be a very benign existence. And if I lived in the house, and my son or anybody lived on the third

floor and used the deck, you know, I obviously would have ground rules. If the house were to change hands and somebody else comes in -- you never know. And, again, it's the fear of the unknown, the fear of the unknown, and the annoyance that we may create, I suppose if there was a huge outcry from the neighbors among either side or in back or something, I would feel a little bit more strongly about it.

DAVID KINSELLA: You actually raised a good point --

BRENDAN SULLIVAN: It's an amenity.

DAVID KINSELLA: His bedroom is under that deck.

BRENDAN SULLIVAN: I'm sorry, the what?

DAVID KINSELLA: His bedroom is under the deck.

CONSTANTINE ALEXANDER: Did you

say this is a condo?

DAVID KINSELLA: It's two condos.

CONSTANTINE ALEXANDER: Two condos. So at some point in the future we can have two separate owners. And the people who live downstairs are going to have to live with deck on the --

DAVID KINSELLA: They're going to co-habitate on the two-family, one above the other with the deck there.

BRENDAN SULLIVAN: Does it self-police itself or does it just become a source of contention? Again, it's a flip of the coin.

CONSTANTINE ALEXANDER: The trouble is -- if I might comment on that, Brendan. I don't think it polices itself as a condo unless there's something built into the condo documents. If it's a two-family and the owner lived downstairs, he can make sure he policed what the tenant did upstairs.

BRENDAN SULLIVAN: Oh, absolutely.

CONSTANTINE ALEXANDER: But, you know, a condo, the owner can do what he or she wants with respect to the property he or she owns.

THOMAS SCOTT: And the bigger it is the harder it is to police in my opinion. I mean, you're not, you know, if you can fit ten people out there, ten people will go out there.

DAVID KINSELLA: I'm the oldest of nine and I would not want to live under a deck. My co-owner has, and they have the parties there, I'd be raising holy hell. That's me personally. You know. And that's what I see as an argument to keep the noise factor down, you know.

CONSTANTINE ALEXANDER: I haven't heard from Tim or Tad. Do you want to offer any comments at this point or not?

TIM HUGHES: I love decks. I kind of agree with Brendan. I think -- I wish

that you could just cut off all that extraneous stuff. If you're going to call it 11 by 14 by 6, it should be rectangular and move the spiral staircase to somewhere to accommodate that rectangular part instead of going all the way to the back of the house. One of the things that will cut down on privacy, is if the deck doesn't go all the way to the outside wall of the roof, if it's -- if there's some space, if it's drawn back and is set back. So I think if it was small -- I mean, I'm willing to vote for it now because the rest of the project I think is okay. But you don't have the votes here so it's like irrelevant what I will vote for now. But I think if it was smaller, you might be able to sell it.

DAVID KINSELLA: Guys, Mr. O'Grady is, you know, he's very thorough. You know, he worked me over pretty good. Had me get in all my documents, you know, and

everything, dotted I's and T's and even then I missed some things. But in other towns and communities -- I know it's not Cambridge, but I mean, if you can agree on a size, we could stipulate and hand him an updated drawing and that could be submitted as part of the record.

CONSTANTINE ALEXANDER: You're asking -- Tad, I'm sorry.

DAVID KINSELLA: I'm willing to take -- I know he would allow me to take this off and even reduce it a foot or two. He just wants a space where he can have a table, chairs and a barbecue.

CONSTANTINE ALEXANDER: Tad?

BRENDAN SULLIVAN: The spiral sort of has to stay there?

DAVID KINSELLA: No, I can move it over. I can pick it up and move it.

BRENDAN SULLIVAN: Which way, left or right?

DAVID KINSELLA: I'd move it over

here into the corner. He actually wants it in the corner. And my -- right now what we did is we stacked it on top of the existing.

BRENDAN SULLIVAN: At the corner of the back wall?

DAVID KINSELLA: Yeah. We can easily move it over.

BRENDAN SULLIVAN: So you're shifting it over a little bit.

DAVID KINSELLA: What that allows us to do is, you know, come and take this chunk out right here (indicating), and then pull this back.

BRENDAN SULLIVAN: And then you're left with a walkway to it?

DAVID KINSELLA: Yeah.

BRENDAN SULLIVAN: Which sort of flies -- I think you're right, in that if the whole thing shifted or came in off the sides a bit which is what I think we have consistently done just to add as a little

more buffer. But then I don't know how that -- the spiral becomes a movable object at that point I guess. The deck is going to be the tail that wagged the dog as far as the spiral is concerned. I don't know, I would support the plan as is.

CONSTANTINE ALEXANDER: If Tad speaks and he may not speak, he doesn't have to. You understand you need four votes to get the relief.

DAVID KINSELLA: I knew you were going to pull the four vote quorum.

CONSTANTINE ALEXANDER: I don't want to surprise you. You think you have a majority and you don't have it.

DAVID KINSELLA: I know. I'm trying to get a majority. I'm trying to convince you two gentlemen that, you know, that we can work this out to satisfactory --

CONSTANTINE ALEXANDER: You may

have a third gentlemen.

DAVID KINSELLA: All right. He seemed neutral so I was hoping he'd swing my way.

TAD HEUER: Is it my turn to speak?

CONSTANTINE ALEXANDER: Your turn.

TAD HEUER: I have concerns thinking back to the last two decks that I'm thinking of. We had a French gentleman in here who we ran over the coals to get his deck. I think he started with a deck this size on a such larger rooftop and we made him cut it down. And we had one over near Norfolk Street a couple of months ago, where we had a long discussion about overhangs from the neighboring condo and privacy and other types of issues, we hadn't pulled enough for their roof. And here it looks like there's a pre-existing stairway in the back is what's creating the 11 by 14. I

would agree with Tim, that the back part of it, 11 by 14 is disingenuous when you've got another --

DAVID KINSELLA: Four or five feet.

TAD HEUER: Four or five -- 25 square feet in the back. You know, sometimes that's what we're talking about, a 25 or 30 square foot deck. And that's what comes before the Board. Here we we're talking about as an appendage. I think we shouldn't be.

DAVID KINSELLA: From a design standpoint I'd like to cut the deck back. I feel like it would be a stronger design. You know, on this side, I'd like to pull it in here, because then it's balanced around the end wall of the gable.

CONSTANTINE ALEXANDER: Do you need us to help you get there to get what you want?

DAVID KINSELLA: If you guys could

talk to the owner for me, I'll give you his cell number. No, in serious, you know, I recommended these things and he feels he needs a certain size, so -- and he's sensitive. He'll reduce it if he needs to reduce it. I know he will.

BRENDAN SULLIVAN: The deck is, I mean, the third floor is sort of a collecting little space. The deck is an amenity which all of a sudden is the lipstick, you know. It just -- it makes it.

DAVID KINSELLA: It makes it.

BRENDAN SULLIVAN: It makes the third floor sort of worthwhile at that point. And that's the tipping point is that deck. Other than that it's just an attic space.

THOMAS SCOTT: I think the deck really only needs to be big enough for a table and a few chairs.

CONSTANTINE ALEXANDER: Exactly.

THOMAS SCOTT: It doesn't need to be oversized. You know, if the thing were pulled back so that we're maybe 9 by 14.6. Or if you wanted to pull that side in maybe 9 by 12 or something, I think that's more than enough deck for this size apartment. And, again, so that he can entertain a guest or two, but not ten.

DAVID KINSELLA: Fair enough.

TAD HEUER: Nine by 12 plus the extension out to the spiral.

THOMAS SCOTT: Plus the walkway.

DAVID KINSELLA: Yeah, just a walkway.

TIM HUGHES: Strictly a walkway.

THOMAS SCOTT: Right.

TAD HEUER: So it would look a lot currently existing just flipped to the other side?

DAVID KINSELLA: Move this over here (indicating). Have the walkway right on the side and then come in (indicating).

BRENDAN SULLIVAN: Can you do something quickly?

DAVID KINSELLA: I can. I'm happy to recess and go back.

BRENDAN SULLIVAN: Maybe you can sketch it or something.

CONSTANTINE ALEXANDER: We got to do it on these, these are the official plans that you submitted.

DAVID KINSELLA: Sure.

CONSTANTINE ALEXANDER: We'll recess this case as well.

DAVID KINSELLA: Thank you.

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

(7:35 P.M.)

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

CONSTANTINE ALEXANDER: The Chair will call on our regular schedule now case No. 9823, 22 Locke Street.

Is there anyone here with regard to that?

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

CONSTANTINE ALEXANDER: Okay. As

you've probably heard, give your name and address, please, if you'd like to speak.

CAROL YOURMAN: I'm Carol Yourman and I live at 22 Locke Street.

DAVID GROSSER: David Grosser, 22 Locke Street.

PAUL BRENEMAN: Paul Breneman and I work with -- I'm a partner with Community Builders Cooperative.

THE STENOGRAPHER: Spell your name, please.

PAUL BRENEMAN: B-r-e-n-e-m-a-n.

ARNOLD JOHNSON: Arnold Johnson, Community Builders Cooperative, Paul's partner.

CONSTANTINE ALEXANDER: And you're here before us tonight because you're seeking a variance to raise the roof of your house, by four and a half feet in order to create a bedroom and family room on the third floor.

CAROL YOURMAN: Right.

CONSTANTINE ALEXANDER: Okay. Why should we grant you a variance? I'm not being difficult.

CAROL YOURMAN: Okay. We have two adoptive daughters now who are 16 and 17. One of our daughters is in a therapeutic boarding school in Vermont and she's coming home in December. The other one is 16 and she's living at home. We anticipate that both of them will be living at home for a very long time. We don't see them going off on their own any time in the near future. Our older daughter, who's in the boarding school went there partly because of a lot of risky behaviors, and she's still involved in some of them when she comes home. We want to be able to have her have a place where she can have friends but still be at home. We don't want her hanging out in Davis Square and Harvard Square a lot. So we're -- they -- and they both also have

academic issues. They had a very traumatic early history. So, you know, this is sort of going to be the progression for them. They're going to be home for a long time. Our house is fairly small, so we really don't have any room where they can hang out with their friends and not feel like we're on top of them. We want them as they get a little older to have a little bit of privacy and a little bit of independence, but still be part of the family, which we really can't do the way the house is laid out now. And the problem with the attic is our house -- the third floor is not really -- it's shorter. It's the squat roof. And in order to make usable space really at all in the attic, we need to raise the roof. In addition, we don't have a stairway. We have a little trap door, you know, you put the ladder through. And so in order to build a stairway, what we want to do is put it

over our existing second floor stairway, otherwise we'll use up a whole other room. And in order to do that, that's the height that we need. So basically what we're looking to do is the minimum amount that will grant us useful living space there, allow us to have the stairway. You know, we've tried to minimize the impact so we're not changing the front facade of the house. And as my builders will tell you, it actually is going to look better because it looks what now, it's shorter than the other houses. Actually the third floor and the attic now. So it will --

CONSTANTINE ALEXANDER: Excuse me. The other houses on the street are higher than 35 feet?

CAROL YOURMAN: They're --

PAUL BRENEMAN: Well, this house is closer to 32 feet, that's all.

CONSTANTINE ALEXANDER: But the neighboring houses --

PAUL BRENEMAN: The neighboring houses look like they're in the 35, 36 foot range, yeah.

DAVID GROSSER: And they all have finished third floors. Ours is the only one that doesn't.

CONSTANTINE ALEXANDER: There are two separate issues here.

CAROL YOURMAN: Yeah.

CONSTANTINE ALEXANDER: You understand?

CAROL YOURMAN: Yes, I do, I do. I'll just finish and you can tell me what you want.

We have a triple decker across the street. So that is higher. We have another house has a spire, like a tower and a spire. Another house has a widow's walk. Another house cut -- like their roof is now like this (indicating), and they have a big tower with a weather vain on top of that. So every house is

different. Every house has built up their third floor. Most houses have either separate apartments or, you know, all these rooms on the third floor. I can't say for sure that like they've gone up to 36 feet exactly, but they look -- I would guess that at least one, if not maybe two, are at least that high. And so, there's a variety of architectural styles. There's dormers everywhere. Everybody has renovated it. And so, they've also built out rooms in front of the house. So it's our opinion that we will not be impacting the neighborhood in a negative way. And in fact, the house will actually look better if we can do --

CONSTANTINE ALEXANDER: I understand you need additional -- you need additional space.

CAROL YOURMAN: Yes.

CONSTANTINE ALEXANDER: The Board understands that.

CAROL YOURMAN: Right, okay.

CONSTANTINE ALEXANDER: And because you're seeking additional space. You have a zoning issue because your FAR, floor area ratio, will go from now .65 going to increase to .71.

CAROL YOURMAN: Right.

CONSTANTINE ALEXANDER: And the district only allows up to .5. So you're non-conforming now, you're going to increase the non-conformance.

CAROL YOURMAN: Right.

CONSTANTINE ALEXANDER: That goes with respect to the additional area you're creating. That's one issue.

CAROL YOURMAN: Okay.

CONSTANTINE ALEXANDER: The other issue is the height issue.

CAROL YOURMAN: Right.

CONSTANTINE ALEXANDER: The zoning only allows 35 feet, and you want to go to 36 feet. You want to increase by four and

a half feet which your application says.

CAROL YOURMAN: Right, right.

CONSTANTINE ALEXANDER: And my question simply is: Is it just an architectural feature? What if you stayed at 35 feet and didn't need relief on the height? Can you not use the attic space or do you need that extra foot to use it? Or is it just --

PAUL BRENEMAN: Yeah, a lot has to do with the stairway. The stairway and the use of the dormer -- there's a gabled dormer, and the ridge pole is about three feet lower than the main ridge pole there. So to be able to utilize that dormer space and to have the stairway go over the stairway coming up to the second floor, that's where we need the four and a half feet. Otherwise, we're going to have to go into a room on the second floor for the stairway.

CONSTANTINE ALEXANDER: So that

one foot is crucial is what you're saying?

PAUL BRENEMAN: Yeah.

BRENDAN SULLIVAN: See, I'm not convinced that staying under that 35-foot dimension is not possible. What is the existing floor to the ridge now?

PAUL BRENEMAN: The floor to the ridge on the third floor?

BRENDAN SULLIVAN: Yes.

PAUL BRENEMAN: We would have to increase the joist size a little bit which would make it about eight and a half feet.

BRENDAN SULLIVAN: All right. So in other words, you go from the two by sixes which they probably are, which are the floor joists or the ceiling joists to the second floor?

PAUL BRENEMAN: Right.

BRENDAN SULLIVAN: So you're going to go to two by eights?

PAUL BRENEMAN: Right, exactly.

BRENDAN SULLIVAN: And then you

probably have two by sevens for the rafters?

ARNOLD JOHNSON: No, actually it's only a ceiling frame now.

PAUL BRENEMAN: Well, he's talking about the rafters only.

BRENDAN SULLIVAN: Rafters.

ARNOLD JOHNSON: All right.

BRENDAN SULLIVAN: And you're at right now at 32 feet.

PAUL BRENEMAN: Yeah. A little bit under 32 I think is the height right now.

BRENDAN SULLIVAN: I mean, we've had plenty of time and we've had plenty of cases come down before us and people will go right down to 34 feet and one half inch and get it all in. And I point to those drawings and I just don't see -- I'm not convinced that it can't be done under that 35 feet, because to me 35 feet is a threshold that would be very rare to

cross.

CONSTANTINE ALEXANDER: Exactly. That's the point. I mean, that's what I was trying to get out in my question.

BRENDAN SULLIVAN: Unless I was shown differently that it absolutely, positively don't work.

PAUL BRENEMAN: The stairway is the real issue there. The four and a half feet we would actually put a skylight where the stair would turn to go up the last couple risers --

BRENDAN SULLIVAN: Right.

PAUL BRENEMAN: -- up to the third floor.

BRENDAN SULLIVAN: Right.

PAUL BRENEMAN: Yeah. And so if we reduce it, we're going to have to bring the stairway more into a room on the second floor so that we're not by a perimeter wall, but more towards the ridge.

CAROL YOURMAN: And I might be speaking in ignorance, so, I don't know if it's addressing the issue, but the way the gable dormer is right now, if we couldn't raise that a certain amount, that cuts out almost like if here's the ridge pole (indicating), it pretty much cuts out this quarter of the space where we're hoping to put a bathroom and a study or a little study. And so that means that -- it's not that big of a space. So we've really -- and then if you add moving the stairway in -- there's really not that much space.

TAD HEUER: But the gable dormer doesn't affect the height. You're not going above height with the gable dormer, are you?

ARNOLD JOHNSON: No.

PAUL BRENEMAN: Well.

TAD HEUER: No.

PAUL BRENEMAN: Going above that? No, not before the 35 feet with the gable

dormer, no.

TAD HEUER: Right.

CAROL YOURMAN: Oh, so I told you our secret.

TIM HUGHES: But the gable dormer's ridge does not meet the ridge now?

PAUL BRENEMAN: No, it doesn't.

TIM HUGHES: But you need the four and a half in the gable dormer, and then in order to maintain the ratio between the gable dormer's ridge and the main ridge that's where the extra foot is coming in?

PAUL BRENEMAN: It's -- the bottom of that ridge pole in the gable dormer right now the existing floor joist is five foot four inches. Okay? We're going to need to raise the floor a little bit to put in adequate joists. So that's going to bring it around five-two or so. So, you know, it's an 11 to 12 pitch there. So to create usable space there, that four

and a half feet also makes it possible to use most of that space, not all of it, but most of that space, you know.

ARNOLD JOHNSON: Whereas, we couldn't use any of it unless we had the four and a half.

PAUL BRENEMAN: Small portion.

TAD HEUER: Is there a reason you don't want to dormer it?

PAUL BRENEMAN: What's that?

TAD HEUER: Is there a reason why you don't want to dormer it?

PAUL BRENEMAN: Well, we thought that it would actually look a lot better to maintain the existing roof profile and just go up with them and keep the same profile.

TAD HEUER: What if you went 35 feet and had dormers? That gives you some of the space underneath the edge that you're not getting now that you claim you need back by going to 36, right?

PAUL BRENEMAN: If we do what now?

TAD HEUER: So, if you went to 35 and you had dormers, you can gain some of the space that you were losing kind of in the corners.

PAUL BRENEMAN: If we did a shed dormer?

TAD HEUER: Yes. I'm not saying it's -- I'm just kind of thinking about what the Chairman is saying. 35 is a line that we do not like to cross. So I mean, I'm thinking of other, you know, perhaps not as elegant ways that would allow you to do something that's more by right and require less relief from us.

ARNOLD JOHNSON: Well, we thought about a dormer solution. And indeed we probably could make it work, but our feeling was that the Board wouldn't accept a dormer.

CONSTANTINE ALEXANDER: Wouldn't what?

ARNOLD JOHNSON: I shed roof
dormer.

PAUL BRENEMAN: It would -- I
don't know, it just seemed aesthetically
that would have more impact on the
neighborhood than lifting the roof. You
know, a difference of a foot in terms of
the view from the street or from the
abutting houses seems like it would have
less impact than doing significant shed
dormers on the roof. That would really
change the look of the house.

TAD HEUER: Is there a reason why
you can't go up on the rear of the house
on the L instead, or whatever the back
portion is? I mean, it looks like you've
got significant space there. Is there a
reason you can't second floor that?

PAUL BRENEMAN: Well, it's access
to it. Again, it's partway for a stairway
and, you know, on the second floor that's
a bedroom back there. It's access is very

difficult to build up in that space and utilize it.

ARNOLD JOHNSON: You'd have to build the stair up at the front and create a corridor through the main body of the third floor to get to that space.

PAUL BRENEMAN: And, again, you'd have to -- you'd have to come into one of the rooms on the second floor, because the stairway now going to the second floor is right along the perimeter wall on the outside wall there.

BRENDAN SULLIVAN: You don't have a floor plan of the second, do you?

ARNOLD JOHNSON: We don't.

PAUL BRENEMAN: Is there a second?
No.

BRENDAN SULLIVAN: It was missing.

CAROL YOURMAN: So, there's basically this first part where there's a stairway, the hallway and a bedroom, and then there's another bedroom. And then

there's a middle room that's just open, and a very small hallway. The bedroom -- the bathroom and that bedroom. So the bathroom and the bedroom in the back is second. It's -- it's not a flat roof. It's a pitched roof. It's separate from the rest of the house. So....

DAVID GROSSER: It's much lower than the --

CAROL YOURMAN: Right. It's not a full, it's not even a full size.

CONSTANTINE ALEXANDER: At this point I want to see if there's any public testimony.

Is there anyone here wishing to speak with regard to this petition?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one wishes to speak either for or against.

CAROL YOURMAN: And --

CONSTANTINE ALEXANDER: Just a

second.

CAROL YOURMAN: Oh, I'm sorry.

CONSTANTINE ALEXANDER: I will read -- the Chair is in receipt of correspondence regarding this matter. There is a letter dated July 21, 2009.

It says: We have no objections to the renovations plan for our neighbors, Carol Yourman and David Grosser at 22 Locke Street. And it's signed by John Hubble and Kate Reist R-e-i-s-t at 24 Locke Street; John Geiss, G-e-i-s-s at 18 Locke Street; and Lucy Edmonds and Paul Elwood, E-l-w-o-o-d at 23 Woodbridge Street.

We also have a letter from a Mary E. Sullivan at 24 Campbell Park, Somerville, Mass. She writes: I am writing in opposition to the petition regarding the following -- and she refers to this case. My property at 24 Campbell Park, Somerville, Mass. directly abuts the

property at 22 Locke Street. I wish to express opposition to this petition to raise the roof of the house by four and a half feet. As a direct abutter, this will reduce air flow to my property and reduce/impact natural light to my property. In addition, I have concerns on the impact of that construction would have on my property as well as the neighborhood.

And then she has some comments about the way the property has been maintained. It's not relevant to what we're talking about here. Basically, she concludes: Any further impact by raising the roof will cause further damage and loss. I'm not able to attend the public hearing scheduled for August 13, 2009, but I wish my opposition to be noted and recorded for the hearing.

And that's the sum and substance of the correspondence in the file.

Comments, questions from members of the Board? Brendan?

BRENDAN SULLIVAN: Well, I'm just not convinced that we need to exceed that 35 feet. I think, you know, I would have to be shown that it's absolutely impossible to do it. There may be some alternatives. Again, you had mentioned about shed dormers, gable dormers may be more acceptable, but shed dormers, and again, as long as -- we can't have a whole roof of shed dormer, but being cognizant of the dormer guidelines. But I'm very -- I applaud your efforts in what you're trying to do, and, you know, I'd like to see you attain those. That 35 feet to me is quite sacred. That's all.

CONSTANTINE ALEXANDER: Mahmood?

MAHMOOD FIROUZBAKHT: I would agree, you know, especially given that there's some opposition from the direct abutters. It doesn't seem like it's

impossible to work within the 35-foot limit. You may lose some space on the interior but, you know, that's -- there is a little bit of a give and take there. I would like to see you stay within 35 feet and be able to do your project.

CONSTANTINE ALEXANDER: Tim?

TIM HUGHES: I have one more question, well, maybe not, maybe more than one. The staircase that you're talking about that's in the gable dormer, is it -- does it finish off the last landing of the staircase? When you get to the third floor is all under the gabled dormer?

PAUL BRENEMAN: No, the staircase wouldn't be in the gabled dormer. So, it would be coming up to the gabled dormer and then turning. And then heading towards the center, the last couple steps would be moving towards the center of the house away from the perimeter wall.

TIM HUGHES: If that's the case,

then I have to agree with Brendan that I think you can get that done within the 35-foot height.

CONSTANTINE ALEXANDER: Tad, any opposition or questions?

TAD HEUER: I have nothing more to add because I have a similar thought to the rest of the Board. I'd only add -- does -- this may sound irrelevant. How high is the basement? Is the basement counted in FAR or not?

CONSTANTINE ALEXANDER: Is it less than seven feet?

ARNOLD JOHNSON: It's somewhere around seven.

CAROL YOURMAN: I think it's a little low --

ARNOLD JOHNSON: Yeah.

CAROL YOURMAN: Is it?

TAD HEUER: Somewhere around seven is -- I mean, seven is the magic number.

CONSTANTINE ALEXANDER: Either

under or over.

ARNOLD JOHNSON: Oh, you mean in terms of the counting it as --

TAD HEUER: Yes.

ARNOLD JOHNSON: Yeah. I don't know.

PAUL BRENEMAN: We have to measure. I'm not sure.

TAD HEUER: But it's not calculated in the FAR right now or in your GFA?

PAUL BRENEMAN: I think it is not.

TAD HEUER: Okay. Because if that's the case, so, you're already at 2300. You're looking at another 230 feet to get you up near 2600. You're adding a lot of, you know, that's a substantial amount of ask in terms of FAR for a house that is already a good size for that neighborhood even though you're looking at .71 and a .5 eventually. And actually about 230 feet for me is steep regardless

how you're going to go out and getting it. So, that's my only addition.

CONSTANTINE ALEXANDER: Okay. But I think the -- and by the way, let me -- I want to comment on what you're saying. I highly endorse what Brendan has said. I applaud what you want to do, but I have a real problem with the height, and I'm not convinced that you have to have the height to do what you want to do.

But, Tad, you're dealing with a different issue. You're talking about FAR. Are you opposed to the project generally is that what you're saying? Whichever way it goes, if this is the amount of additional space they're adding, you might have problems approving it?

TAD HEUER: I wouldn't be real fond.

CONSTANTINE ALEXANDER: Okay. You're on the fence?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: I'll let you speak.

CAROL YOURMAN: As I understand, and again I may be wrong, what we were told our square footage is for the house is 1900. Am I --

PAUL BRENEMAN: 1900. I don't know if you have the figure.

ARNOLD JOHNSON: I don't have the numbers.

CONSTANTINE ALEXANDER: Your dimensional form says that you right now have 2,368 square feet. And if we get to the relief you're seeking tonight, you would go to 2,597 square feet. So that adds about another 200 feet.

CAROL YOURMAN: Is that what you did, you guys figured that out?

CONSTANTINE ALEXANDER: I'm sorry?

CAROL YOURMAN: Where does that figure come from?

CONSTANTINE ALEXANDER: That's

from the forms that someone filled it out on your behalf.

ARNOLD JOHNSON: Yes, I did those.

CAROL YOURMAN: Oh. The other question I have is could we just take a minute, because I -- what I'm still not clear about is I'd just like to check, as I understand it, if we don't get the extra footage for the stairway, we -- it will come down into our second floor and we won't have enough room on the second floor. So maybe I'm confused this.

CONSTANTINE ALEXANDER: Let me make a comment, and I hate to do this, because we never seem to decide anything here anymore. But, what you're hearing tonight from the Board is you're not going to get relief because of the height.

CAROL YOURMAN: Right.

CONSTANTINE ALEXANDER: I don't think you heard, except for Tad, who's reserving his comments about the amount of

additional space, it's the height.

CAROL YOURMAN: Right, right.

CONSTANTINE ALEXANDER: We're not convinced, or Mr. Sullivan is not convinced and other members are not convinced that you can't solve this height problem. But you're going to have to come back with new plans if you want to -- you can come back with the same plans and we'll vote on it one way or another.

CAROL YOURMAN: Right, right.

CONSTANTINE ALEXANDER: Or you can go back and think long and hard about this and see if you come back with plans that don't raise a height issue and present those to us. But we can't do that tonight on the back of an envelope. It will be --

CAROL YOURMAN: No, I understand that.

CONSTANTINE ALEXANDER: What we have to do is continue this case to another night when all five of us would be

able to sit again, because we call it a case heard. And we can find out what date that will be. I think that's the only way for you to go, because I don't think you're going to get an affirmative vote tonight if you try to proceed with these plans. I think you need to go back with your professionals and see if you come up with another solution. And give you what you want and doesn't cause a problem with regard to height.

CAROL YOURMAN: Is there other information that we would need before we do that?

PAUL BRENEMAN: I don't think so.

BRENDAN SULLIVAN: I would ask that you include a second floor floor plan also.

PAUL BRENEMAN: Yeah, okay.

BRENDAN SULLIVAN: So we can see how that correlates to the third floor. That's all.

PAUL BRENEMAN: Okay.

CONSTANTINE ALEXANDER: What date?

SEAN O'GRADY: October 8th if that's acceptable.

CONSTANTINE ALEXANDER: Let me see if members of the Board are available.

BRENDAN SULLIVAN: And the only other suggestion would be that you might have, it's up to you, conversations with the -- I think her name is Sullivan from Somerville, the abutter. You may or may not, but it's just that -- it's up to you.

CAROL YOURMAN: I have to say --

BRENDAN SULLIVAN: I think you have to understand that she does have presumed legal standing. So that no matter what we say, she could --

CONSTANTINE ALEXANDER: Tie you up in court.

BRENDAN SULLIVAN: -- could stop it.

CAROL YOURMAN: You know, and the

thing is there's plenty of space between us and them.

CONSTANTINE ALEXANDER: I'm sure there is.

DAVID GROSSER: And also a number of trees. We're not cutting down her light.

CONSTANTINE ALEXANDER: We're not here to judge that issue. I mean, she's expressed her views. She's entitled to do that.

CAROL YOURMAN: Right.

CONSTANTINE ALEXANDER: Whether it's determinative or not, who knows. We haven't taken a vote yet. So you just have to deal with that.

CAROL YOURMAN: Right.

CONSTANTINE ALEXANDER: If you can come up with another plan that maybe will satisfy her, that would be all for the better. But more importantly you have to come up with another plan that works

within the 35 feet. And if you can't, come back and explain why you can't.

PAUL BRENEMAN: Okay.

CONSTANTINE ALEXANDER: Tonight we haven't heard a case as to why you have to have that additional foot except that it will be better aesthetically. That's not enough to sway this Board.

PAUL BRENEMAN: Yeah. The reason we did that was because we would have to put the stairway into a room on the second floor.

CONSTANTINE ALEXANDER: I'm sure you can be imaginative and come up with some solutions.

What was the time and date again?

SEAN O'GRADY: October 8th.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until -- no, don't go away -- seven p.m. on October 8th. All members of the Board can make it on October 8th?

BRENDAN SULLIVAN: Yes.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: On the condition that you sign a waiver of notice for the time for us to render a decision. Which everybody has to do when we continue a case. And on the further condition that the sign that's on the property right now, modify that, cross out tonight's date and with a magic marker and put in October 8th. If you're going to come back with revised plans, which it sounds like you will have to do, those plans must be in our files, in Mr. O'Grady's office, by five p.m. on the Monday before. If you don't get them in there by then, we're not going to hear the case. We'll continue it further.

PAUL BRENEMAN: By the Monday before the hearing.

CONSTANTINE ALEXANDER: On the Monday before the hearing.

TAD HEUER: October 5th.

PAUL BRENEMAN: October 5th.

Okay.

CONSTANTINE ALEXANDER: October 5th I guess it will be. And also take into account Mr. Sullivan's suggestions. He wants floor plans for the second floor.

BRENDAN SULLIVAN: And if the revised drawings changes the dimensional form, the dimensional form should be changed to reflect the new plan. That the arithmetic, the numbers match the plan. That's all.

PAUL BRENEMAN: Right.

CONSTANTINE ALEXANDER: All those in favor of granting a continuance so moved?

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case will be continued to October 8th.

(Alexander, Hughes, Sullivan,

Firouzbakht, Heuer.)

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

(8:00 P.M.)

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

CONSTANTINE ALEXANDER: The Chair will reconvene case No. 9802, Four Forest Street.

Okay, you've had time to think about the deck and how you're going to revise the plans?

DAVID KINSELLA: Yes.

CONSTANTINE ALEXANDER: Go ahead, the floor is yours.

DAVID KINSELLA: We've reduced it to nine feet and we moved the stairwell enough just to make enough for a walkway. Three foot nine and I'm assuming a two by four handrail on this side.

CONSTANTINE ALEXANDER: I've got to see it on these plans here.

DAVID KINSELLA: I have it. I figured it's easier --

CONSTANTINE ALEXANDER: It's okay.

DAVID KINSELLA: I think it's easier. I drew it here.

CONSTANTINE ALEXANDER: Okay. But show me how it's going to look. You're taking out the cross hatched area?

DAVID KINSELLA: Yes. The cross hatch is removed. So just the green area. This is actually usable. You can't use the three foot nine.

CONSTANTINE ALEXANDER: And what's the dimension of what's usable?

DAVID KINSELLA: 9 by 14.6. I kept it on the outside edge, put the stair there. I know that's where he wants it, too.

CONSTANTINE ALEXANDER: So you've knocked off another -- how many feet did you knock off from the last time you were here before us? You were 14.6 by 11. Now you're 14.6 by nine?

DAVID KINSELLA: Yes. And I

reduced --

THOMAS SCOTT: And he got rid of the little dog wagging.

DAVID KINSELLA: And I got rid of this little piece right here (indicating).

CONSTANTINE ALEXANDER: I see.

Comments from members of the Board?
Tom?

THOMAS SCOTT: I would go along with that.

CONSTANTINE ALEXANDER: Tim?

TIM HUGHES: Likewise.

CONSTANTINE ALEXANDER: Tad?

DAVID KINSELLA: Another foot?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Can't support it?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Brendan?

BRENDAN SULLIVAN: Yes, no problem. That's fine.

CONSTANTINE ALEXANDER: It comes

down to me. If I can't support it, you're not going to get relief. I have to say I am not thrilled. I have to be honest with you, I was hoping it was going to be four others for support in favor, so I could vote against it and it would still go through.

DAVID KINSELLA: I understand.

CONSTANTINE ALEXANDER: But I -- I don't, you know, you're looking for a variance. You got to show special conditions, hardship. I don't see how the legal standard for a variance is going to be satisfied in this case. It's a dilemma for me. I hate to have the whole project scuttled which is you're forcing us to do frankly.

DAVID KINSELLA: I don't want to scuttle the project. I just want to get it to a size that you're comfortable with.

CONSTANTINE ALEXANDER: But you want us to design -- you want us to tell

you what your job is. That's not our job for us. We've got a zoning code we have to enforce.

DAVID KINSELLA: Look, I would just go by the Zoning if it were left up to me. I would follow the Zoning exactly and not even be here. But my clients, you know, they want an outdoor space.

CONSTANTINE ALEXANDER: If we vote on it tonight, you're going to lose the dormers.

DAVID KINSELLA: Right, I don't want to lose the dormers.

CONSTANTINE ALEXANDER: So why don't you continue the case and talk to your clients about maybe rethinking the deck.

DAVID KINSELLA: Could we withdraw the deck and then just re -- come back to the Board with a new application for the deck?

CONSTANTINE ALEXANDER: With the

dormers?

TAD HEUER: No. With the deck.

The answer is no.

TIM HUGHES: Separate the dormers from the deck.

DAVID KINSELLA: Yeah.

CONSTANTINE ALEXANDER: I'm sorry?

DAVID KINSELLA: We'll just separate the dormers and the deck. So, you can vote on the dormer piece and then I'll come back --

THOMAS SCOTT: You still need access to the spiral stair though.

DAVID KINSELLA: Well, there's an access now. I mean, basically -- the presumption is the access would stay, right? That's the presumption.

TIM HUGHES: That's drawing No. 1?

DAVID KINSELLA: So he's got, you know, this deck here (indicating), and then there is this elongated walkway over (indicating). So this would stay

(indicating), and then he can at least go forward to build his dormer and then we can come back and --

CONSTANTINE ALEXANDER: Well, we can continue this case like we continued the other case. You can reapply and re-advertise in which case you don't have to have the five of us sitting here reviewing your case. Three nice guys. I think it probably makes the most sense. I mean, I really -- I can't support this deck. I really have trouble.

DAVID KINSELLA: Okay. That's fine. I respect that. It just seems like you're all in agreement on the dormers. So, can we get a vote on that?

CONSTANTINE ALEXANDER: I don't think we can. We can't vote on the dormers. We can't break it down that way.

DAVID KINSELLA: You can't break it down?

CONSTANTINE ALEXANDER: No.

DAVID KINSELLA: Okay.

CONSTANTINE ALEXANDER: No. Come back. I think you got the sense of the Board that -- assuming that -- at least four of the five of us who are sitting here next time, you're not going to have an issue with the dormers. That's a given. But you're going to have to couple that with a deck plan that satisfies whoever is sitting here that night.

DAVID KINSELLA: Okay.

CONSTANTINE ALEXANDER: I don't have Sean here to figure out a time.

TAD HEUER: Actually, what is -- on the new plan, what is on the right side to the right of the deck? What is that?

DAVID KINSELLA: That's his stairs and stoop to enter the first level. First floor.

TAD HEUER: So that's not at the third --

DAVID KINSELLA: No, that's down

below.

THOMAS SCOTT: That's way down

below.

DAVID KINSELLA: You can see it on the side elevation.

TAD HEUER: Yes.

DAVID KINSELLA: Right there (indicating).

TAD HEUER: Right.

DAVID KINSELLA: We need Sean. I respect this. I can understand the situation.

SEAN O'GRADY: Okay. So I would -- all right, we can do October 8th again if that works for --

CONSTANTINE ALEXANDER: Well, it's probably a technical continuance because he's looking to re-advertise the new plans.

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

CONSTANTINE ALEXANDER: Why don't you push it back a little bit farther.

SEAN O'GRADY: Why are we re-advertising with new plans?

TIM HUGHES: He wants to split the dormer from the deck because he's fairly certain we'll give him the dormer.

DAVID KINSELLA: It was suggested that they just vote on the dormer so this guy can go forward. And then I can have the time to -- we'll re-advertise the deck with the separate piece. We'll withdraw the deck from the application.

SEAN O'GRADY: Then there's no continuance, right?

CONSTANTINE ALEXANDER: Well, we would continue this case. He would -- and this is how I understand it, he would advertise, the new case would be just the dormers. We would act on that case. Then we would continue to continue the other case while he filed a second application, if he chooses to, with just the deck.

TAD HEUER: His question is

whether we can split it.

SEAN O'GRADY: Yes. Can't you just give him the dormers right now on this and then he can come back for the deck?

DAVID KINSELLA: I mean, I'll talk to the guy and if he wants to squeeze it down more or even eliminate it --

CONSTANTINE ALEXANDER: Can we do that? He had a petition for variance for dormers and a deck.

SEAN O'GRADY: What we would do is you would be -- well, that might be a repetitive petition issue if he withdraws the deck piece.

CONSTANTINE ALEXANDER: Yes, we can't withdraw the deck as long as we keep continuing it.

SEAN O'GRADY: Right. I see what you're saying.

CONSTANTINE ALEXANDER: Well, we could -- if the Board feels all right with

it, we can vote on the dormers tonight.
What are the plans? Just take the plans
that you've submitted minus the dormer?

DAVID KINSELLA: Yes.

TAD HEUER: Minus the deck.

DAVID KINSELLA: Minus the deck.

CONSTANTINE ALEXANDER: I'm sorry,
the deck.

DAVID KINSELLA: You're only
voting on the dormers as amended, that's
it. I don't know, he can get a --

SEAN O'GRADY: As long as the
Board is okay with him --

CONSTANTINE ALEXANDER: If we do
that, then what do we do with the rest of
the case, continue it with the deck?

SEAN O'GRADY: Well....

CONSTANTINE ALEXANDER: That's the
problem.

SEAN O'GRADY: Yes. I mean, if
you say -- if you grant him the dormers
that are silent on the deck, and then he

comes in to re-advertise the deck, what's the sense of the Board on whether we have a repetitive petition issue?

BRENDAN SULLIVAN: It's a repetitive issue.

SEAN O'GRADY: Okay. Well, then we have to go the way --

CONSTANTINE ALEXANDER: We've got to what?

SEAN O'GRADY: If that's the feeling of the Board, then your initial response is correct.

CONSTANTINE ALEXANDER: Yes, I think we just have a whole new petition. You come up with -- to us with the dormers, no deck or whatever you're going to do with the deck.

SEAN O'GRADY: So, just continue this on.

CONSTANTINE ALEXANDER: Continue about three months, just because we're not really going to hear this case again. We

want to preserve your right, so you don't lose it.

DAVID KINSELLA: So he has to wait three months?

CONSTANTINE ALEXANDER: No, no, no. We're going to continue this case with these plans for let's say three months. Starting tomorrow if you're going to come back here with a new set of plans, which is just a dormer, no deck, you advertise, you file another application and it will be heard certainly much shorter than three months from now, and then we'll act on that case.

DAVID KINSELLA: Or I can ask for another continuance tonight for the whole thing and then do something with the deck and then come back?

CONSTANTINE ALEXANDER: Yes, you can do that, too.

DAVID KINSELLA: That's the most expeditious.

BRENDAN SULLIVAN: Yes, if he wants to plead his case.

CONSTANTINE ALEXANDER: Do you want to do it that I way? Yes.

DAVID KINSELLA: If that's the --

CONSTANTINE ALEXANDER: How much time would you like to hear the case?

DAVID KINSELLA: I'm done tonight. I could just take the deck off. I'd be happy with that, you know.

BRENDAN SULLIVAN: Can we not tie them together for the same night? The petition for the dormers and continue this case until that night?

SEAN O'GRADY: We just don't know when that is.

CONSTANTINE ALEXANDER: We don't know when it is, though.

BRENDAN SULLIVAN: We have no idea when the next opening is?

SEAN O'GRADY: I believe that the next opening is -- I don't know, but I

think it's October 8th, but it also is dependent on two correct filings in the time that that window's open.

BRENDAN SULLIVAN: So it would have to get in as soon as possible obviously. And when does the October 8th close? Well, you don't know that.

SEAN O'GRADY: Well, it doesn't.

BRENDAN SULLIVAN: Right.

SEAN O'GRADY: It closes when eight come in. And frankly like I said, I've been out of the office really for a week now and I just have no idea what we're doing.

BRENDAN SULLIVAN: So we don't have an answer?

SEAN O'GRADY: No. I mean, if I had to guess, I'd guess October 8th, but I could be off by --

CONSTANTINE ALEXANDER: Or I can always continue to October 8th --

BRENDAN SULLIVAN: October 8th and

then continue it again.

CONSTANTINE ALEXANDER: Yes.

DAVID KINSELLA: Continue to the 8th. I mean, that makes the most sense. And then I'll just talk to him about this thing and say, look, what you've got to show is the minimum, that addresses your concerns. And then, you know, just the minimum to get the egress like what he has now and then --

CONSTANTINE ALEXANDER: Okay.

DAVID KINSELLA: -- or he can come back and we can isolate it.

CONSTANTINE ALEXANDER: The Chair would move that cases 9775 and 9802 be continued until October 8th at seven p.m. These are cases heard. We have a waiver for the time of decision already in the file.

But, sir, it's on the condition that you take that sign, it's been crossed out several times already --

DAVID KINSELLA: Yep.

CONSTANTINE ALEXANDER: -- one more time. Okay?

DAVID KINSELLA: Yes.

CONSTANTINE ALEXANDER: And also the extent you have revised plans, even if it's just to take off the deck, they must be in the zoning office no later than five p.m. on the Monday before that Thursday night, which I guess is October 5th. So just don't come in on October 8th with plans. We're not going to hear the case.

DAVID KINSELLA: Yep.

CONSTANTINE ALEXANDER: Okay?

DAVID KINSELLA: Yep.

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

(Aye.)

CONSTANTINE ALEXANDER: Case is continued.

(Alexander, Hughes, Sullivan,

Scott, Heuer.)

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

(8:15 P.M.)

(Sitting Members: Tim Hughes, Brendan
Sullivan, Thomas Scott, Mahmood,
Firouzbakht, Tad Heuer.)

TIM HUGHES: The Board will hear
case No. 9825, 211 Alewife Brook Parkway.
TD Bank care of James Rafferty, Esq.

Just for the record, Mr. Rafferty --

well, you can identify yourself first.

ATTORNEY JAMES RAFFERTY: Thank you. Good evening, Mr. Chairman, members of Board. For the record, my name is James Rafferty, I'm an attorney with the law firm of Adams and Rafferty, located at 130 Bishop Allen Drive in Cambridge. I'm appearing this evening on behalf of the applicant, TD Bank. Seated to my immediate left is Joshua Swerling, S-w-e-r-l-i-n-g. He is the project engineer from Bohler Engineering. And to Mr. Swerling's left is Paula Manning, M-a-n-n-i-n-g. Ms. Manning is an executive with TD Bank.

TIM HUGHES: Before you get started I want to point out that we have in the file are revised plans which didn't get to us until after the -- somehow didn't get to us until after the Building Department closed today. And they were stamped at 6:38 p.m. today. Can you

explain that to me?

ATTORNEY JAMES RAFFERTY: That's a -- there's an earlier set that were not as large. So at four o'clock those went over. I think there's a date stamp on that.

TIM HUGHES: 3:22, I'll give you that.

ATTORNEY JAMES RAFFERTY: Right. So then that --

TIM HUGHES: These are the same.

ATTORNEY JAMES RAFFERTY: Those are the same. And they went over at four o'clock, so I don't -- and neither Mr. O'Grady nor Ms. Pacheco was there at the time. It was reported to me that a gentleman that would appear to fit the description of Mr. Nicoloro took the plans and said he would see to it that they went into the file. But they are merely an enlargement of that plan.

TAD HEUER: And you would admit,

Counselor, that three o'clock on Thursday the 13th is later than five o'clock on Monday previous?

ATTORNEY JAMES RAFFERTY: By at least a few hours I would agree with that, yes.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: But the nature of the change, and it is a change, I'm well aware of the Board's rule. A couple of things happened here. If you had an opportunity to read the correspondence from the Planning Board, the applicant and myself actually went to the Planning Board to make a presentation so that they could be informed on whatever opinion they might send to the BZA. It was a helpful exercise because they had some very strong opinions, which sent a signal to the applicant that the relief as proposed was unlikely to -- wasn't going to enjoy the support, a favorable

recommendation from the Planning Board, and it was a, I think a reasonable precursor of the reaction that might be received here.

So, on Friday there was a meeting with some Planning Board staff, CDD staff, and what's new is simply a revised reduction in what was there before. Such that the relief today is only related to illumination. The prior application had requests for a number of signs, area of signs, and illumination. In fact, the area in this case of the sign that's being proposed is approximately 50 feet below what's permitted. The proposed total area here is 141 square feet. In the earlier submission it was in excess of 200 square feet. What's allowed here in total area of sign of 190 square feet. So this is nearly 50 feet below an area. And that was an issue that the Planning Board focussed on. It said, you're asking for

too much relief here. There are too many signs on this building, and they're too big. So the size of these signs are now conforming.

The hardship is really related to the interpretation of the illumination requirement. If these signs -- and we're talking now about the signs over the door, the TD Bank, if they were externally illuminated, they would be approved. But the nature of the lighting is -- the preference here is to have an internal illumination. And the hardship comes down to the style of the sign. If you look at the sign itself, the TD Bank, the way a sign is measured here --

TAD HEUER: I haven't had a chance to look at it.

ATTORNEY JAMES RAFFERTY: Well, it's the same -- the signs are in the same location in the same proportions, but

what's relevant for purposes here -- do you have that breakout of the individual letters? No, no, the hand thing with the 28 inches.

JOSHUA SWERLING: Yes.

ATTORNEY JAMES RAFFERTY: The ordinance says that you can have an internally illuminated sign but it can't be more than 30 inches high. The problem with this sign is that 11 feet -- excuse me, 11 inches between the bottom of the word Bank from the top of the banner is included as part of the sign. But it's actually not sign at all, it's building facade. Those letters are adhered directly to the building. The area below the Bank is not illuminated. So if the green line moved up, it could be made to be 30 feet. But the proportionality wouldn't be consistent with the bank's logo. Visually the change is quite modest. So the interpretation of the sign

ordinance is that the sign gets measured from the top of the TD shield, the square there, to the bottom -- and it's only this area of illumination that really requires a difference (indicating). This sign with four goose neck lamps across it could be installed as of right.

It would obscure the sign, frankly, in the view of the applicant. It would not being consistent with the signage on the rest of the building, and really not project the nature of what's attempted here. These LED lights are designed to compliment the lighting along the corner street. I'm sure everyone knows this building is a newly constructed building. This area, this raised brick area (indicating) was designed to serve as a sign band, but as a result of the modifications -- you'll see if you flip through the large one -- a number of signs, you'll see on the -- this is the

facade that faces the parkway (indicating), the next page which is referred to as the west elevation. Two signs have been removed from here. And those were signs that exceeded the area in the amount of signs.

And then on the side of the building here (indicating) that faces Wheeler Street, almost directly to the gas station, we're significantly below the amount of signage. A sign was removed from there as well. So, the issue really is illumination.

Now, with regard to area, it should be noted that the area of signs, as you know in the ordinance, is based upon -- I mean, the permitted area of sign is based upon the frontage of the building, the individual establishment. So in this case, the sign here which faces the parking lot, which is the principal entrance into the building, this is the

end unit, this is the location closest to the corner at Wheeler Street facing the parking lot. It's set forth in the site plan here. That represents the smallest facade of the building. And so when the area calculation is done for this area (indicating), that particular sign exceeds the area permitted for that -- the size I should say permitted for that area by approximately five feet. So that particular sign is five feet larger in area than that area would permit. But in the conversations we had with the Planning Board and the Community Development staff, the notion was well, if you want to make a case for that, you should have a counterbalancing element. So you should look at other areas of the building where you can go below what's allowed. So in this case, this sign is five feet over, but the other two facades represent as much as 50 feet, 50 feet less in area. So that that's why

the total area on the building is at that -- is at 141 square feet. The total permitted on the building is 190 square feet. But that particular sign, because it is, it is the area of the building facing the parking lot is so small, it's slightly over by about five feet.

So the variance seeks relief for illumination larger than 30 inches based on the fact that portions of the building are included within the sign calculation. And the 30 inch requirement here is exceeded by about 18 inches? I think it's about 48 inches?

JOSHUA SWERLING: 42.

ATTORNEY JAMES RAFFERTY: 42. So 12 inches greater in the illumination. And the distance in that band that I've been referring to is almost 12, is 12 inches. So there's a 12-inch area contained within the sign that isn't lit, that could be lit, that is counting

against this calculation, this 30-inch calculation. So for illumination purposes, the sign is deemed not to meet the 30 inches, even though the individual letters do. Both the TD logo itself is at 28 inches. The letters TD. And the Bank lettering is below -- the Bank -- the letters Bank, B-a-n-k are considerably low. They're at --

JOSHUA SWERLING: 18 inches.

ATTORNEY JAMES RAFFERTY: So the letters Bank are at 18 inches. The letters TD are at --

JOSHUA SWERLING: 24 inches.

ATTORNEY JAMES RAFFERTY: 24 inches. So both of those are within the limitation.

So, it's a sign that has three components: The shield, the word Bank and the line underneath. When the 30-inch dimension is applied, the areas that do not include the sign are nonetheless

counted. So that's why we have the excess. It's a particular sign. It's a particular sign design. But --

TAD HEUER: Isn't that true with all sign designs where there are words on pieces of backing that we count the backing and where the shape of the sign would be? I mean, I understand your explanation, but it just seems in this case we have all signs. Otherwise we'd say here's the square footage of the letters used to make up the words, don't count the little portion inside the E or the A because they're not actually taxed.

ATTORNEY JAMES RAFFERTY: Well, no. I mean in some signs -- I mean, when -- illumination of this sign -- this could be sitting on a sign box that was totally illuminated.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: And you would have a glow coming out of this area.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: This particular application does not have any illumination in the area where the brick is.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: It's only on the sign. So you're right, but there's also many -- if you simply got a sign box, and if you look out there today, there's a sign box and you can have an internally illuminated sign box that takes up that whole area.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: These are applied directly to the facade in a design to provide an accent feature to the brick.

TAD HEUER: And this of course is based on the fact that this is the way TD Bank wants its logo to look, and that's the way their corporate design is. The

fact that it goes outside of the ordinance is, you know, we could ask them to push the green bar below Bank up, but they would not want to do that because it would destroy the logo; is that correct?

ATTORNEY JAMES RAFFERTY: That's right. The proportion of the bar to the lettering is a logo issue. So, yes, they would, they would not want to do that. And frankly they would not do that. They would probably pursue a different scheme. But when it -- you know, the sign ordinance with all due respect, Article 7 is one of the more challenging aspects of the ordinance. The calculations are totally arithmetic and don't, with some very small cases, don't really speak to what might be considered aesthetics or sign or appropriateness of certain signs. Neon lighting is treated the same as internally illuminated lighting. There's colors are not giving any -- and they're

all subjective qualities, or many of them are, so we can understand why that would be difficult. But the nature of the sign in some cases, depending on what it's advertising, and what it's being used for, can be -- that 30 inches can be a lot more imposing. This looks to maintain a certain dignified look that the bank has throughout its packaging. It was suggested today that -- well, they even took the word North out of TD Bank just to make the sign smaller. But I'm told that that wasn't directly in response to the limitation of the ordinance.

But, what we've tried to do based on the commentary for the Planning Board, is to do two things: Is to reduce the signs to the smallest amount possible. To be able to discuss with the Board a trade-off, if you will, of area of nearly 50 feet below what's as of allowed. Because as often the case we -- the

petitioner gets asked well, what's your as of right signage? What could you do here as of right? Well, what we could do here as of right is reduce the size of this sign by five feet and add another 45 feet in area around the balance of the building. And since it's this facade that faces into the parking lot, which is their main entrance, and it is the shortest facade that they have, they have chosen to reduce the signage along more public facades. This was -- once -- you see this once you're in the parking lot. This isn't a case where they're looking to have a billboard to get the motorists going by on the street. In fact, they've reduced signage on what is probably the -- probably the most high frequency view they have which is on the parkway, as well as coming down on Concord Avenue. Those are -- the areas of those signs have been reduced. But it really is the

illumination feature and the notion of it being internally illuminated versus external illumination.

And the difference from a sign perspective is that the internal illumination restriction which has been in place for decades, lighting has really become quite advanced and changed. And the use of LED lighting, uninterrupted light sources, you don't have the broken bulbs, the signs that you've see in some of the older signs you see -- and Mr. Swerling can speak to that. The technology represents a very, a very pleasing and not garish light. It's a constant light source that's contained within the sign.

And the relief is related to the fact that they are looking to have it be illuminated in a way that's more effective and consistent with the other lighting in the building. The projection at night, it

is open late at night. There are ATMs. There are people that they want to have a presence in that location. So, it's for that reason that they're seeking the relief.

TIM HUGHES: Questions from the Board?

BRENDAN SULLIVAN: And the hardship is?

ATTORNEY JAMES RAFFERTY: Well, with regard to the area, and this sign, as you recall, is five feet greater. The hardship there is that is the shortest facade, and the area calculation is the most limited. And it's an area that it's the most prominent entrance. And there's a trade-off of a reduction of some 50 feet from the balance of the signage on the building. So with regard to the area of the sign over the main entrance, that would be the nature of the hardship that the sign itself needs to be slightly more

prominent to feature the entrance of the building.

With regard to the illumination, it really has to do with a lot of lighting conditions at the location now. Most of the other signs are internally illuminated. The overall sign, packaging the building, the corner sign is internally illuminated. The whole aesthetic in -- effectiveness of the sign is limited with the external lighting. So, that's the nature of the hardship.

BRENDAN SULLIVAN: They've built a brand new building and now we're being asked to change the sign ordinance. I disagree with the sign ordinance in that I think it allows way too much signage anyhow. I think it should be linear footage. But, anyhow, that's another issue.

I don't know. I just have trouble granting anything -- I'm not convinced

that we should -- because there is an as of right solution which I think is probably something they should do anyhow.

ATTORNEY JAMES RAFFERTY: Well, to that point, Mr. Chair, I did have the sign fabricator make an as of right sign. This would be internally illuminated 30 inches as of right. Those would be channel letters. The length of them would not be limited in area. Those could all be lit going -- so this represents, and we were asked by the Planning Board, can you show us what as of right provides.

BRENDAN SULLIVAN: And this was facing the parking lot?

ATTORNEY JAMES RAFFERTY: That's all three facades of the building. And here's the other two facades. So as is often the case -- this is the facade facing towards the Wheeler Street (indicating), and this is the facade facing --

BRENDAN SULLIVAN: I guess in a perfect world we're -- I would have with a brand new building, with a new development going up, with the other stores coming on board, that there would have been a more cohesive and a more pleasing and pleasant sign package for that building. And we're being asked to do this piece by piece because I don't think that this is the only one coming down before us to exceed the ordinance.

TAD HEUER: I mean, I'm concerned because we were here not this, but on a similar issue on the same building, with a question about -- and this was with Chipolte about their parking. And we had a similar question about you're coming in, you're going to look for something. Someone else going to come in and they're going to look for something. Someone else is going to come in and they're going to be looking for something. And we had a

question there about what's going to happen with various entities moving in and out of this building and will the last person fill a certain space say well I need signage, and we'll say, well, you're out of space. And the owner doesn't -- may or may not care. And then they'll come to us and say well, we need an ordinance because we can't have a tenancy without signs. I mean, I guess I share some of Brendan's concerns that we're going down -- literally going down the row of this building signing it piece by piece by piece by piece. And soon it's going to be Sleepy's and Chipolte's is going to come back to us for a sign.

ATTORNEY JAMES RAFFERTY: Well, I appreciate the sign. Just for accuracy's sake, you're recounting of the history is not complete. Chipolte was a fast food use.

TAD HEUER: I understand.

ATTORNEY JAMES RAFFERTY: Where there was no parking relief obtained under Chipolte.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: It's a Special Permit for the nature of the use. But for Chipolte to be there, they needed a fast food Special Permit. This exceeds the minimum amount of parking required. And in fact, the push back for from the traffic department of the city was to constrain the parking supply.

TAD HEUER: Sure.

ATTORNEY JAMES RAFFERTY: So Chipolte didn't come IN here -- that doesn't represent AN example yet where this Board has been asked to do something different. It just happens that all across the city any fast food use requires a Special Permit.

TAD HEUER: Sure.

ATTORNEY JAMES RAFFERTY: So the

Chipolte reference frankly is simply not relevant here. There's nothing at Chipolte that doesn't comply either by way of parking or signage, and Chipolte is open and didn't seek any relief.

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: I am told that -- and there are other retailers that are open. I am told that there is an area of relief request coming from an adjacent tenant, and I'm not even sure if that tenant is open yet. And I can certainly understand that --

BRENDAN SULLIVAN: (Inaudible.)

ATTORNEY JAMES RAFFERTY: I believe that's the case.

So, it really was the case of trying to look at -- the hardship here in many ways is that the design of this building was driven by the new rezoning about the setbacks from the parkway and the like. And the requirement that there be an

opening on the parkway. That this building really has no back to it if you know the site. It was designed to -- it sits in the front. So it's parkway frontage, it shouldn't look like the back door. So it's got glazing. I don't think there's a high expectation that a lot of traffic will be coming that door, but a design requirement is make that front of the building, and it's obviously in the tenant's interest and the landlord's to make that as pleasing as possible. But the reality is there isn't probably going to be a lot of traffic coming in that direction from the front. So the other entrance to the building is on the other side, the back side. So we've got three facades to contend with. And we're trying to direct patrons, those who come by auto, who will obviously be coming into that parking lot and that's the place that they need to go. And so, the nature of the

building in the way it's cited, the building over here, the other building has the back to it. So its front is -- it's very well defined in its entrances, and like a lot of retail spaces it's up against the back. But the whole concept in Cambridge changed about ten years ago in these Parking Overlay Districts where they want the parking behind the building, not in front of the building. So, the Fresh Pond Shopping Center and the balance of this cite has parking in front, which retailers frankly prefer because they want people driving by to be able to see that there's parking. We reversed that concept in the rezoning and said put the building upfront, put the parking in back. And in many ways the building serves as a shield to the parking. So as a result of that, we now have facades that are public that we need to address. So, it is somewhat a uniquely cited building in that way with a

directive, a planning directive to "don't treat any one of these as a blank facade. Coming up with mechanical rooms and loading areas was a real challenge for this building because you have the four prominent facades. The facade that you can notice -- I think we call it the south or the west?

JOSHUA SWERLING: Can I offer one point of clarification?

ATTORNEY JAMES RAFFERTY: Sure, sure.

JOSHUA SWERLING: You had mentioned the last one in might be stuck with no signage. I just wanted to clarify that the allowable sign areas we're talking about are for the frontage of the tenant space only. It's not like we're using up somebody else's allowable area for our signage. It's just from demising wall to, you know, along the perimeter of our space. We're not counting area that

another tenant would be allotted based on their frontage.

TAD HEUER: Well, that's good. Glad to hear.

ATTORNEY JAMES RAFFERTY: Well, that's what the ordinance requires.

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: And the area calculation is by separate business entities. So it's not a case that if relief were granted here, someone else can come in and say well, they used up area that we would have been entitled to. The only area that gets calculated is the area under our lease.

TAD HEUER: Do you have a mockup of what it would look like if you had a by right signage on the smallest facade that you're asking for relief that's five feet over?

JOSHUA SWERLING: That's the by right. It's not a TD Bank by right, but

that's a by right sign.

ATTORNEY JAMES RAFFERTY: That's by right. That's 30 inches and it doesn't exceed the five feet. So XYZ retailer can put that sign up as of right.

THOMAS SCOTT: Why does the band signs have to be -- why do they have to be illuminated? I mean, these kind of -- these are illuminated as well, right, the band below the awning?

JOSHUA SWERLING: Just the channel letters and the symbol TD.

ATTORNEY JAMES RAFFERTY: Now, you may be looking at the earlier submission, because it did in the earlier submission.

THOMAS SCOTT: I don't think so.

ATTORNEY JAMES RAFFERTY: Oh, okay. All right. But -- so, the band was illuminated --

THOMAS SCOTT: So, there are two elevations where this is illuminated too, but you're saying just that portion of it

is illuminated?

JOSHUA SWERLING: Yes.

ATTORNEY JAMES RAFFERTY: Right.

JOSHUA SWERLING: And the open seven days over to the right.

THOMAS SCOTT: That's illuminated, too?

JOSHUA SWERLING: Yes.

ATTORNEY JAMES RAFFERTY: Yes.

And that complies. That's within the 30-inch limitation for illumination. Well within it. So there are -- there were other areas where illumination could have occurred on the building that were in the earlier scheme. So both in terms of area and illumination, the applicant was encouraged to do a trade-off. If they were going to seek relief, it might be worth noting that there are areas both in terms of area illumination where you could have more, but have done less in an effort to say we'd like to concentrate the

illumination in the area where we think it might be most effective.

JOSHUA SWERLING: One other comment to your question about what's illuminated on that facade. We, if we were to -- I had spoken with Les about the distinction and what would be considered sign, on the revised renderings where we have this light green stripe that extends over the window glass, those could be internally illuminated and not counted towards signage whatsoever. It would be an architectural element. We decided based on comments from the Planning Board that it probably wouldn't be appropriate to come to this Board and ask for the relief for the internal illumination on the channel letters over the doors and have this all lit up as well because of the -- it would be inconsistent with what their intent was. So the green raise -- the light green stripe beneath the TD Bank

where you were just asking about the illumination would not be entirely eliminated.

ATTORNEY JAMES RAFFERTY: And if you had a chance to see the earlier submission, that was all illuminated. And so that was to the point about there are places where illumination could occur in the building. And there was a question about flow and ambient light and how much light the building would throw off and the like. So, there was a concerted effort to reduce illumination in places where it would have been allowed. Namely, along these awnings (indicating). It's been removed where it would have been allowed as of right because it didn't exceed any of the 30-inch area. So, it was the same --

BRENDAN SULLIVAN: And is there any signage contemplated for the free standing poles?

JOSHUA SWERLING: We did.

ATTORNEY JAMES RAFFERTY: There is the, what might be called the monument sign that's out there, that's a conforming sign. That will have to be externally illuminated. It can't be internally illuminated.

BRENDAN SULLIVAN: You're talking about Ground Round?

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: Yes. No, I'm talking about the pole. The one that has the CVS on it and the other ones.

ATTORNEY JAMES RAFFERTY: Oh, for that?

BRENDAN SULLIVAN: Yes.

ATTORNEY JAMES RAFFERTY: Yes, we don't have any control over those.

BRENDAN SULLIVAN: Do you have any -- are you privy to any -- what they're doing with those at all?

ATTORNEY JAMES RAFFERTY: Oh, I

think in fact the CVS sign has been replaced, has it?

JOSHUA SWERLING: I have no idea.

ATTORNEY JAMES RAFFERTY: Just from riding by I think --

BRENDAN SULLIVAN: I think it's replaced with a new, but it's still on the pole.

ATTORNEY JAMES RAFFERTY: Oh, right. I don't think --

BRENDAN SULLIVAN: See this? There's the bank, are they going to put any signage underneath any of those poles?

ATTORNEY JAMES RAFFERTY: Oh, no, no, no, no. Not permitted to. They're only permitted to put these signs up under their lease. But I guess I'm trying to make the case that while the hardship is obviously the fundamental threshold question here, part of the hardship analysis I think does encounter ways in which as of right opportunities have been

removed both in terms of area and illumination. And because of the desire to create a concentrated area of illumination, we're asking for some excess. And we're with -- one might make the case it's somewhat modest. We're within 12 inches of what's permitted with a particular style of sign that has kind of classic letters, not particularly large, with initials. So, the hope is that we could be able to persuade the Board that that represented a reasonable trade off in the overall impact on the building by this relief was not at all incompatible with what was the intent of the ordinance which was to get an organized approach to signage.

TIM HUGHES: Any other questions from --

MAHMOOD FIROUZBAKHT: Yes. What about the other tenants in the building, the signage that they're using in terms of

the styles, are they also employing internal illumination or are they using the goose neck lighting in terms of the uniformity of, I guess, style what's going on with the other spaces?

ATTORNEY JAMES RAFFERTY: From my observation it appears that the Sleepy's has a -- I don't know of anyone that has external. There are five retailers, I believe, in this building.

JOSHUA SWERLING: If you look at a Sleepy's, again, it would start to look more like that alternate rendition. They have a longer name with channel letters that are all the same size. I mean, it's -- the fact that TD has an emblem TD and then small letters Bank, you know, it's inconsistent with what the other retailers are doing in the sense that they're doing the tall 30-inch letters and the word Bank isn't 30-inch letters or for TD because of the way their brand and logo is set up.

But I think the other -- some of the other tenants that have those long names are very comfortable with the 30-inch, you know, internal illumination because of the span of that sign and the overall massing of it.

THOMAS SCOTT: To answer your question, I don't think there are goose neck light fixtures over the other tenants.

(Cross-talking.)

THOMAS SCOTT: Chipolte's up and Sleepy's is up and there's no goose neck.

BRENDAN SULLIVAN: They're all applied, but it's a mish-mash. I mean, it's a nice building which is jumping.

ATTORNEY JAMES RAFFERTY: One can make the case --

BRENDAN SULLIVAN: A little editorializing. But at any rate, it could have been done with a little more thought and something a lot nicer. And I think

that the linear could have controlled the signage other than -- they're sort of like the guy standing behind the curtain, you know, saying to the tenants go ahead and put up your sign, you know, as opposed to trying to control that to make it look a little bit. So it doesn't look like a Fresh Pond Shopping Center across the street.

ATTORNEY JAMES RAFFERTY: Well, you know, Mr. Sullivan, that's a legitimate point, but I also think it's evidence of sometimes the as of right solution for which the Zoning as we know is a blunt instrument. I think one can make the case that of all the signs in the building, these represent perhaps the most tasteful we have yet to see on the building. But yet they require relief when some of these as of right schemes, and with all due respect to those other realtors, they lease their space and they

go down and they're told -- because I talked to a lot of them. They're told I wouldn't come in here with an expectation that you can get much in the way of relief. So they go down, they figure out -- they pay rent, what can we have here? They're told this is what they can have and that's what gets produced. So, I'm not aware, with the exception of the liquor guy, of anyone else who's tried to do anything otherwise. And I think all the other signage is in place. TD made it known early on that because of the relationship between this TD --

PAULA MANNING: Shield.

ATTORNEY JAMES RAFFERTY: -- shield. Thank you. And the letters, to shrink it to the 30 inches, then the Bank becomes -- the lettering becomes really small, and then it changes the identity that the bank is worked hard to create.

BRENDAN SULLIVAN: You know, you

see Trader Joe's coming down before us eventually -- well, anyhow.

TAD HEUER: What's the size of the Bank letters? The actual Bank, the word Bank.

JOSHUA SWERLING: 14 inches.

TAD HEUER: And what would it be if you had to bring it down to a 30-inch by right sign?

TIM HUGHES: 25 percent reduction.

TAD HEUER: Well, no, it's the strip.

JOSHUA SWERLING: Yeah. Let me, I don't know that I have that here.

ATTORNEY JAMES RAFFERTY: I don't know how you do it.

JOSHUA SWERLING: There's a very strange combination.

ATTORNEY JAMES RAFFERTY: This is the combination of the shield, the TD and the word Bank.

TAD HEUER: My overall point is it

would be greater than just that 25 percent reduction because you're dealing with this extra space underneath the shield as part of your overall --

ATTORNEY JAMES RAFFERTY: Right. So if the shield wasn't there and the line wasn't there and it said TD Bank, it would be compliant.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: And Bank could actually be ten inches bigger than it is.

TAD HEUER: Bigger, right.

ATTORNEY JAMES RAFFERTY: And for corporate branding reasons and identity, they don't want the Bank that big. They like the green stripe under it. And I think the question as to well, you know, if it was simply TD Bank, it would look like Sleepy's, big 30 inches TD Bank. That isn't the image or the look they want. So they've actually got letters

smaller than they could be, but because of the band and the shield, they exceed the 30 inches. So its admittedly a trade off, but I think when you look at it as a macro-view, I think the proportions and the relationship that the building was designed with an attempt to direct signage into a certain area, and you can see the masonry reflects an area that it would sit -- and these signs, they don't jump off the building. They're recessed rather flush with the building and lit, so they really have a much better relationship. And I would suggest they're more sympathetic to the classical brick nature of this building. When this building was first proposed, frankly linear was not planning on putting up a brick structure. And we met with Community Development and the planning staff, and it was suggested it was a common feature in Cambridge and they should consider it. And they had a

more traditional stucco that you see in some suburban locations. And the design guidelines says no, you have to modulate the building, so the building comes out in someplace and out in others. And don't have it flat. So they added these caps. And they added the corners. We had a lot of attempt to make the building have some interest and not be one-dimensional. And frankly I think this signage is respectful of that and it's an attempt to try to work within a branding objective, but it is very close to what's required and does have in some cases significantly less areas of illumination and area then could go there as of right.

MAHMOOD FIROUZBAKHT: How thick is the signage?

ATTORNEY JAMES RAFFERTY: I think it's -- how many?

JOSHUA SWERLING: The depth of the --

PAULA MANNING: The depth of the letters.

JOSHUA SWERLING: I think it's between three and a half and five inches, somewhere in there depending on the....

TIM HUGHES: Any other questions from the Board?

I'm going to open this up to public testimony. Is there anyone who wants to be heard on this issue. Can you step forward and identify yourself for the record?

LARRY WEINER: My name is Larry Weiner and I live at 21 Hill Street in Malden. And I've owned the Fresh Pond Liquor Store since 1982. And after 27 years we're moving next-door to this bank. And in that -- in the building there, and I'd like to speak in favor of it because that area requires signage to be seen. As you noted on me appearing before you in September and I also asked for a variance.

So if there are any questions -- there are four signs up there now: Chipolte, T-Mobile, Sleepy's and -- but we have a temporary sign.

TIM HUGHES: Thank you.

Is there anyone else that needs to be heard on this?

(No response).

TIM HUGHES: Seeing none, I'll close public testimony.

Final comments from the Board?

BRENDAN SULLIVAN: Is there correspondence, Mr. Rafferty, other than the October 5th (sic) which some of that does not pertain?

ATTORNEY JAMES RAFFERTY: Yes, there's a subsequent memo from the Board, a much shorter -- right there.

TIM HUGHES: This one here?

ATTORNEY JAMES RAFFERTY: Yes, from the Planning Board.

TIM HUGHES: This is from the

Community Development Department.

ATTORNEY JAMES RAFFERTY: Right.
It was a follow on to the -- I don't know
if
Mr. Sullivan has seen that one.

BRENDAN SULLIVAN: No, I have the
August 5th one.

ATTORNEY JAMES RAFFERTY: Oh, the
August 5 one? Right. There was the one
-- August 10th is the one.

BRENDAN SULLIVAN: I don't have
that one. Must have come in late.

ATTORNEY JAMES RAFFERTY: Well, it
came in in response to the session we had
on Friday.

BRENDAN SULLIVAN: Oh, okay.

ATTORNEY JAMES RAFFERTY: I mean,
in many ways this is an attempt to do just
what you were suggesting, Mr. Sullivan,
which is to try to tailor the signs a
little bit. I mean, the as of right
signage here as we see in some instances

here, doesn't yield I would suggest the most pleasing result. You can say, well, that's what the ordinance says and so be it. But the history of the Board has been that wisdom and judgment can sometimes fashion a better outcome than what an as of right remedy might allow.

THOMAS SCOTT: I want to go on record as saying that I think the signage proposed is tasteful and respectful of the architecture. The signs are placed in places that have been designed for them. They're not overstated. They're not -- I don't think they're larger than they need to be. I'm in favor of the solution, and I think it works with the building. In fact, I think it works better than some of the signage that I've seen, that as you've said, is as of right on the building today. Because I think they, they've just gone in and plastered the biggest sign they could possibly put on there without

any discussion about how it fits with the building and the architecture. And I think this is done very tastefully.

TIM HUGHES: I do have a communication here in the file from the Community Development Department that I'll read into the record.

"Community Development Department staff reviewed the changes dated 8/6 -- this is in response to the Planning Board's concerns about excessive signage, which I think has already been extensively addressed here.

"Community Development Department staff reviewed the changes dated 8/6/09 made to the sign variance application to the above-referenced site, and finds that the applicant's representatives have moved towards addressing the Planning Board's concerns as outlined to the Board of Zoning Appeal and the comments of 8/5/09. The reduction of the total amount of

signage on the site would bring the package in compliance with the total sign area allowed. The elimination of a number of signs significantly reduces the cluttered look that concerned many Planning Board members. A reduction in size of the two large illuminated signs on the north and west facades addresses those concerns of the character of the signage and intensity of illumination that troubled a number of the Board members. On this matter Board members have a variety of opinions, but the changes are a marked improvement.

Further comments from the Board?

ATTORNEY JAMES RAFFERTY:

Mr. Chair, I just want to note and I submitted this here, the comments that now complies with the area, I think it's worth noting, the area of signage on the building as proposed is 50 square feet below what is allowed as of right. And to

the notion of putting up the biggest sign you can and all that, that is not what's happening here. And it was -- it wasn't that way in the beginning, but there was an education, if you will, in the past week or two with the design staff that said well, if you want something, tell us what it is you're willing to trade off. So there's been a walking way of not just meeting the requirement, reducing it by 50 feet. And similarly with areas where as of right illumination would be permitted, that's been eliminated as well. So in two significant areas there have been as of right signage opportunities that are not being taken advantage of here.

TIM HUGHES: Further comments from the Board?

Brendan? Mahmood?

MAHMOOD FIROUZBAKHT: Yes, I understand Brendan's concerns about this building having signage that's planned and

more uniform as opposed to a hodge-podge effect which I'm not quite sure we can really deal with at this point. I might have been -- addressed better earlier on in the process. You know, I'd echo -- so in that way I think this is not done in the most ideal fashion, but given what it is and given, you know, what our I guess review would be limited to here, I think I go with what Tom says, I think it's very appropriate and, you know, the one facade where you do need some relief on size, it isn't towards the parking lot so that I guess more appropriate in terms of having that additional square footage there as opposed to the parkway. So, I think the design is appropriate and I'm supportive of it.

TIM HUGHES: Tad?

TAD HEUER: I think I'd echo with what Mahmood just said. I understand and I also echo the fact that this building,

with a number of different tenants, I would have hoped it would have had a better overall signage plan. As a Zoning Board we are dealing with the case in front of us. I think that TD Bank has done a pretty admirable job in taking into consideration the request of the development. I think the five extra feet on that one facade is a reasonable addition given that it faces inwards towards the parking lot as opposed to out towards the parkway. That it comes as a negotiated trade off with some as of right sign that could be put on the outside. Something I'm willing to live with. I think also as was pointed out in the presentation that construction of the sign that is going to be over being rather unique, it's not a single foot print. It's actually three different elements that combine moving to their perimeters that put you over. It's not that it's one

large internally illuminated lock that we're talking about. So the excess there isn't due to the lettering or is it the size of the perimeter precisely due to the structure of three different elements. Their put together with one single sign. I think that helps mitigate it. My only minor concern is that documentation arrived well, well after the time that we expected it to. But given the circumstances of the negotiations up to the last minute that's in front of us, the fact that the submitted documentation was a reduction from the original request, I think mitigates it in my view that I'm happy with it. Usually I would not be in favor of it.

ATTORNEY JAMES RAFFERTY:

Understood.

TIM HUGHES: Are we ready for a motion?

The Chair would move that the

variance be granted in the case of internally illuminated sign at 211 Alewife Brook Parkway for TD Bank for the following reasons: A literal enforcement of the provisions of this ordinance would involve a substantial hardship financial or otherwise to the petitioner.

A literal enforcement of the ordinance would prevent the petitioner from being able to adequately identify the use of the space at this location.

The hardship is owing to circumstances relating to the soil conditions, shape or topography of the land, specifically the size and location of the lot fronting on an active commercial artery and having multiple points of entry with the main entrance offering the least amount of available facade for signage.

Desirable relief may be granted without either substantial detriment to

the public good. The proposed sign has been designed to be compatible with the architectural details of the newly constructed building, and that the amount of the illumination in an LED sign with 48 inches of lettering is equivalent to less than a fully illuminated 30-inch lettering using traditional lighting elements.

And desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the ordinance.

Proposed signage is part of an overall upgrade of the site that will bring it in conformity with the guidelines of the newly created Alewife Overlay District.

All those in favor of the granting the variance.

(Show of hands.)

TIM HUGHES: Four in favor.

(Hughes, Scott, Heuer,

Firouzbakht.)

TIM HUGHES: All those opposed.

(Show of hands.)

TIM HUGHES: One opposed.

(Sullivan opposed.)

ATTORNEY JAMES RAFFERTY: You probably want to condition on the date of those plans.

TIM HUGHES: The date of the plans, and I might even reference the time of the stamp 6:38 p.m.

ATTORNEY JAMES RAFFERTY: There's a three o'clock stamp there as well.

TIM HUGHES: The variance is granted on the condition that the work be done in substantial conformity to the plans as submitted and initialed by the Chair, dated August 13th, 6:38 p.m.

JOSHUA SWERLING: Thank you very much.

PAULA MANNING: Thank you.

(Whereupon, a discussion was

held off the record.)

(9:00 P.M.)

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

CONSTANTINE ALEXANDER: The Chair will call a case we recessed earlier, 34R Prentiss Street. Please come forward.

The record should show that the same persons who were here before -- you don't have to repeat. Okay, we sent you off. These are the new plans?

GAEL ULRICH: Yes. That's the one.

CONSTANTINE ALEXANDER: Okay. That's it, just one page. I just want to make sure.

So the skylight and dimension is 22 inches by 30 inches?

GAEL ULRICH: Yes. That's the rough end. I'm not sure -- the glass area is a little smaller.

BRENDAN SULLIVAN: It may not get one that size.

CONSTANTINE ALEXANDER: Right, right. Understood. The opening, if you will --

BRENDAN SULLIVAN: Well, yes. They may have to go 24, 32 or something like that. I don't know, you would have to pull out a catalog and see what's available.

THOMAS SCOTT: Does it match the size of that one?

GAEL ULRICH: Yes. The existing one -- it's the same as the existing one.

SEAN O'GRADY: Do you not have the skylight already?

GAEL ULRICH: Yeah.

BRENDAN SULLIVAN: Are they the Velux or the old wooden type?

GAEL ULRICH: Well, they're wooden. It's a wooden frame. Velux. It's a Velux.

BRENDAN SULLIVAN: They are Velux?

GAEL ULRICH: I'm not sure what the openings are.

BRENDAN SULLIVAN: That's all right. It's close enough.

CONSTANTINE ALEXANDER: Sean, have you seen these plans?

SEAN O'GRADY: Yes. That should do it for us.

CONSTANTINE ALEXANDER: You're comfortable with them? While you're looking, let me just go through the other parts of our drill.

Is anyone here wishes to be heard on this matter?

(No response.)

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

We are in possession of correspondence which I'll read into the record. We have letters from -- identical letters saying we have no objection to our

neighbors Laurel and Gael Ulrich installing a skylight in the rear roof of their house at 34R Prentiss Street. And the separate letters, one is from Bruce M. Scott, 72 Frost Street. Another is from Sarah Gallivan, G-a-l-l-i-v-a-n and Kadagathur Gopalakrishna, K-a-d-a-g-a-t-h-u-r, Gopalakrishna, G-o-p-a-l-a-k-r-i-s-h-n-a at 35 Prentiss Street. A letter from Steven Gilman, Steven, S-t-e-v-e-n, Gilman, G-i-l-m-a-n and Dorothy Gilman at 40 Prentiss Street. A letter from Jeffrey D. Peterson, s-o-n, and Jennifer J. Payette, P-a-y-e-t-t-e at 28 Prentiss Street. A letter from Peter Sullivan and Dianne Sullivan, 49 Garfield Street.

Questions, comments from members of the Board or are we ready for a vote?

TIM HUGHES: I'm good.

CONSTANTINE ALEXANDER: We're ready? Okay.

The Chair moves that a Special Permit be granted to the petitioner. Further, that the Board make the following findings: That the requirements to this ordinance cannot be met without the relief being sought simply because we're talking about a non-conforming structure, so that there's no way of -- unless they completely rebuilt the structure to build the skylights in.

That the skylight will not cause congestion, hazard or substantial change in established neighborhood character. In fact, the skylight will be to the rear of the structure. It will have no impact on the neighboring properties.

The continued operation of development of adjacent uses will not be adversely affected by the nature of the proposed use. Again, we're talking about a skylight which does not protrude on the privacy of other neighbors, of neighbors.

No nuisance or hazard will be created to the detriment of the health, safety and/or welfare of the occupant or the citizens of the city. Again, disclosed from the fact that we're talking about a skylight roughly 22 inches by 30 inches. And that the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this ordinance.

In fact, this modest piece of relief will increase the inhabitability of the structure. Will make the structure more accommodating both to the current petitioners and the subsequent owners of the property.

The Chair would move that the Special Permit be granted on the condition that the work proceed in accordance with the plans submitted by the petitioner, one page in nature, and initialed by the

Chair.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: At long last, you have your Special Permit.

LAUREL ULRICH: Thank you.

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

(9:10 P.M.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9824, 39 JFK Street.

Is anyone here wishing to be heard on that? You know the drill, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Indeed. Good evening, Mr. Chairman. For the record, James Rafferty on behalf of the

applicant American Express. Seated to my left is Diane Reposa, R-e-p-o-s-a.

Ms. Reposa has worked in this building since 1977. She's at American Express and she has long understanding of the sign and the history of the building.

CONSTANTINE ALEXANDER: The building we know well.

ATTORNEY JAMES RAFFERTY: Exactly. On this Board and perhaps --

TAD HEUER: Very recently.

ATTORNEY JAMES RAFFERTY: Yes. So maybe we should talk about that for a bit, because the building was sold two years ago and there was, to the extent from the -- there was a variance granted for a Kaplan sign. I don't know if the Board members had a chance to see the communication from -- directed to Mr. O'Grady from Michael Kyes.

CONSTANTINE ALEXANDER: I will read it into the record. I haven't seen

it. It came in late, but we do have a copy.

ATTORNEY JAMES RAFFERTY: He addressed the history of that.

But if the Board wants me to address that portion of it.

CONSTANTINE ALEXANDER: Frankly I don't. If other members of the Board want it addressed. It is what it is.

ATTORNEY JAMES RAFFERTY: I understand there was a variance granted.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: And lapsed or abandoned or not be being used.

CONSTANTINE ALEXANDER: I wasn't aware of that, but I'll take that --

BRENDAN SULLIVAN: What is the date of the variance? There has to be a talking point.

ATTORNEY JAMES RAFFERTY: No, it has nothing to do with this relief. I didn't know the case was here.

CONSTANTINE ALEXANDER: I'm sorry. Let me just address Mr. Sullivan's question. The public hearing was held on July 10, 2008.

TAD HEUER: One year ago.

BRENDAN SULLIVAN: Well, whenever it would have become effective beyond the appeal period one year, Sean?

ATTORNEY JAMES RAFFERTY: I would say the interpretation, one year from the filing of the City Clerk's office not from the appeal.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: The filing date is --

CONSTANTINE ALEXANDER: The filing date is August 4, 2008.

BRENDAN SULLIVAN: So it has lapsed.

ATTORNEY JAMES RAFFERTY: It has.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: That was

another tenant in the building. So, the big picture here is American Express undertook a significant renovation of the building, the before and after pictures are here. At the time you saw the prior variance the -- none of the facade improvements had occurred. So as the Board knows, the -- this location, Harvard Square, is located within a district, an overlay district --

CONSTANTINE ALEXANDER: I didn't mean to interrupt you. The record should reflect that Mahmood is sitting in on this case and not Mr. Scott. Just a slight change in seating that's all.

ATTORNEY JAMES RAFFERTY: The building because of its location, it's in a Base Business B District but it's in the Harvard Square Overlay District, and the Harvard Square Historical Overlay District, and in that section of the city pursuant to a recent Zoning amendment when

the district was created, a significant amount of signage relief was delegated to the Historical Commission. So this project, and the project involved, the creation of this new facade and new awning over here and new entranceway and a real improvement to the building. The building is a, I guess one can say a testament to the 1970's architecture, it's been there probably since the late sixties and early seventies. Well known as the Crimson Travel Building, for those of us -- and that's where Ms. Reposa went to work in 1977, for Crimson Travel, and she's been there ever since.

And in this case, the American Express or their design team met with the Historical Commission, came up with an overall sign package for the building, and it's what you see here. And that, that sign package was approved by the Historical Commission with one exception.

They approved the banners, but the banners themselves are located more than 20 feet above the ground level. And that section of relief there was no delegation to the Historical Commission. That is something that requires relief from the Zoning Board. So the focus tonight is really on the banners. It should be noted however --

CONSTANTINE ALEXANDER: I'm sorry. I'm rude, I know that. But why have three banners? Why three banners? Someone wants to go to Stanley Kaplan and they're planning to go to college or to graduate school, they need three signs to tell them where the building is?

TAD HEUER: On the wrong side of the entryway?

ATTORNEY JAMES RAFFERTY: Well --

CONSTANTINE ALEXANDER: I'm just curious why three? And maybe it's not relevant, maybe I'm just being a wise guy,

but I don't understand why you need three signs.

ATTORNEY JAMES RAFFERTY: Well --

TIM HUGHES: I would have thought the Trinity would have explained that.

ATTORNEY JAMES RAFFERTY: Well, if you look down the street in Urban Outfitters, there are three banners. The banners meet the sign area. So there's no relief on area here. So they are permitted. There are banners on the building across the street. I have to confess I don't know the origin of the thinking involving the three.

DIANE REPOSA: That's where the most pedestrian traffic is with the subway and whatnot, and that's why it's on that side.

TAD HEUER: Here's part of my concern which goes to that. The last time we were here for 9664, the justification that was given for that sign package was

that we needed to remove the signs that were confusing the Kaplan students who kept walking into American Express, and that's why we needed signage on the Mount Auburn Street entrance and that's why it was so imperative that we put it there. I would point out that the image of existing conditions as in here is certainly not the image of existing conditions because there's now a set of Kaplan signs over that door.

CONSTANTINE ALEXANDER: They're going to be removed as part of the --

TAD HEUER: No, they're not going to be removed.

ATTORNEY JAMES RAFFERTY: Yes, they are going to be removed.

TAD HEUER: The awning?

ATTORNEY JAMES RAFFERTY: The awning? No. The blade signs.

CONSTANTINE ALEXANDER: The two blade signs.

TAD HEUER: Right, the blade signs are, but there is most definitely an awning over that door that's not shown in what is represented to be the existing conditions.

ATTORNEY JAMES RAFFERTY: No, no, no, no.

TIM HUGHES: What's the nature of relief that you're seeking? Speak to the relief.

ATTORNEY JAMES RAFFERTY: That's the existing conditions before they redid the building. So the building has all been done. So everything you see here is done, with the exception of the banners.

TAD HEUER: Well --

ATTORNEY JAMES RAFFERTY: So when I say existing, I'm saying before the facade overhaul was done, that's the lower picture.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: So what

happened is the New Putnam Edge, the new awning, the new entryway, the new door, the new sign, including the scoop sign, all this was approved and conforms to Zoning. No Zoning relief was needed.

TAD HEUER: All right. Right. That's fine. I was confused over the term existing which I tend to be the position of the building as I can walk out and see it today.

ATTORNEY JAMES RAFFERTY: Well, I apologize for the confusion. You're correct. That would be prior --

TAD HEUER: So the new sign package except what's before us, which is the height.

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: Fine.

ATTORNEY JAMES RAFFERTY: But there's one other deviation from existing. And that is these -- there are two blade signs that are located by the entrance of

the current, the American Express entry.

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: I'm looking for a photo of them. And they are Kaplan signs.

CONSTANTINE ALEXANDER: Yes, if you look at the bottom on that page, Mr. Rafferty.

TAD HEUER: Yes, on the existing conditions --

ATTORNEY JAMES RAFFERTY: I even got a better one of it. But at any rate you're right. You can see at the top of it here. Those two signs are located below American Express. To be candid, American Express would prefer that they not be there. They confuse people. They obscure the new facade and the entrance and all that. So, they entered into an agreement with Kaplan and said what if we got you an equivalent amount of signage on this over here that didn't compete with

our signage, and we had our entrance. Now in fairness, the old variance, I think, is largely irrelevant. It's been lapsed. Kaplan was making the case at the time which we need that. But American Express hadn't come in with this package. So, with all due respect to Kaplan, they're sitting pretty. They say, hey, we got our thing and we got this, so we'll live with this. So, American Express has been charged with gee, couldn't we try to persuade design people in the city side that the outcome here with these banners, which still -- if these banners go up, these signs have to come down because the area then would exceed. So, if there was -- by necessity would have to be a condition or one simply -- they couldn't even put up the banners because there's no area relief sought in this application. The sole relief is the height.

Why at that height? Well, because

if you look at the signage that's in the building now, those banners would compete with the blade signs, all of which have been conforming and have been in the building for a very long time. So, the concept about the banners was the banner is seen as a little more pleasing sign for Harvard Square. It's a prominent feature. We've got a number of photos of buildings along JFK Street that have banners. They're a cloth banner. They're a highly finished vinyl. They can be repaired. No internal illumination on them. They -- they look better, frankly, than some of these two projecting signs. So --

TAD HEUER: But they are no where near the door, right? Like I guess --

ATTORNEY JAMES RAFFERTY: That's correct.

TAD HEUER: Here's my question, that the last time we were here the whole argument was we need to step over the

Mount Auburn Street side because things nearer the JFK Street side were confusing and they were problematic. Now, we're putting -- you're asking for signs even further away from the door. I guess I'm not understanding how that directs anyone toward the Mount Auburn Street side. It seems like they're on the physically same building, but they're no where near what people want to access.

ATTORNEY JAMES RAFFERTY: Well, there's some truth to that. But I think you can make the case, often times with banner signs that they're not particularly -- they're not over doorways. And this would be no exception.

TAD HEUER: Well, sure but Urban Outfitters' are over Urban Outfitters.

CONSTANTINE ALEXANDER: I think the answer to the problem before the Kaplan signs were so close to the entrance of American Express people assumed, they

saw the Kaplan blade signs, one on each side, you must go into that front door.

DIANE REPOSA: Absolutely.

CONSTANTINE ALEXANDER: Now we take the blade signs off from there and all you see is Kaplan banners. No one is going to rush into the American Express entrance. They're going to come around, look around the sides oh, there the Kaplan banner, that's the way into Kaplan.

TAD HEUER: Really?

ATTORNEY JAMES RAFFERTY: Well, it's the same concept, which is that the -- frankly, the only way we're going to be able to get the Kaplan signs by the American Express entrance away, removed, because they've been there for 30 plus years, is Kaplan has agreed if that the banners were there --

CONSTANTINE ALEXANDER: They'll take them down.

ATTORNEY JAMES RAFFERTY: They'll

have to -- American Express will take them down. So the trade off is, okay, at the end of the day, the Kaplan sign, it's interesting, a Planning Board member in supporting this noted that the banners were in the area where Kaplan is because they're on the third and fourth floor of the building. And he found them to be an appropriate location. Admittedly those signs are not intended to direct people to enter the Kaplan space, but they are to let people know that Kaplan is in that building. Their thinking is and the Historical Commission has concluded that, the Planning Board has concurred, is that -- is that these banners strategically placed on the building, on the main thoroughfare on the thoroughfare that contains lots of banners would work. And if they were lowered, they would be as of right. They wouldn't look as good. It would impact the thing, and you'd still

have three banners and the same issues. So it's true.

Now what was said in the earlier variance, I didn't represent them. I don't have it. But there was not a partnership between American Express and -- there are only two tenants in this building. There was not a partnership between the two tenants to get together and say let's work on this. So American Express spent a great deal of time and effort trying to really reposition the building. And their objective has been to make it a flagship for American Express, install the new awning, the new entrance, the doors and all that, and how can we, frankly, remove these two Kaplan banners that they have lease rights to -- these two Kaplan signs that they have lease rights to, they've been there for a long time. And Kaplan has agreed, well, that we can live with this. And that's what

they can live with. So, I think the variance needs to be looked at in the contents of the overall improvements of the building, that's certainly where the support for it and the favorable commentary from both the Historical Commission and the Community Development derives from, which is the fact if this were just the case of slapping some banners higher up on the building without any improvements had gone one, I would say it's a less worthy candidate for the type of relief that's being pursued this evening. But this is the final --

TIM HUGHES: What kind of relief is being -- you know, how high is too high? Can we get to the chase here? What kind of relief are you looking for here?

ATTORNEY JAMES RAFFERTY: These are 29.

TIM HUGHES: I know it's not the placement this way, and it's the placement

this way.

ATTORNEY JAMES RAFFERTY: I think they're 29 feet high. They can't exceed 20 and they're at 29.

CONSTANTINE ALEXANDER: 21.

ATTORNEY JAMES RAFFERTY: They start at 21 --

CONSTANTINE ALEXANDER: They start at 21 and go up nine feet.

ATTORNEY JAMES RAFFERTY: Right. But we go as high as 29 feet and we can't go over 20.

CONSTANTINE ALEXANDER: Yes. It's a height issue.

ATTORNEY JAMES RAFFERTY: That's right.

BRENDAN SULLIVAN: Home Goods -- is the Home Goods that's further down the street?

TIM HUGHES: Thank you.

DIANE REPOSA: Urban Outfitters?

BRENDAN SULLIVAN: Is that further

down the street?

TAD HEUER: Urban Outfitters.

BRENDAN SULLIVAN: Urban Outfitters. And they're obviously compliant.

ATTORNEY JAMES RAFFERTY: I didn't look at them. They might be. The ones across the street?

BRENDAN SULLIVAN: You referenced other banners on that block.

CONSTANTINE ALEXANDER: Pizzeria Uno has banners on the block.

BRENDAN SULLIVAN: Across the street.

CONSTANTINE ALEXANDER: Across the street.

ATTORNEY JAMES RAFFERTY: And the garage building has banners on it, some of the photos show it. Whether they're above 20 feet, I can't see the photos, but perhaps you're right. But that's what the nature of the relief is. And the relief

is because there are blade signs in the area where the banners are. So, at the 20-foot level so they're looking to go to the next level. So it is, it is to have a banner at greater height within 20 feet.

BRENDAN SULLIVAN: Sean, do we know if Kaplan presently is in violation.

CONSTANTINE ALEXANDER: I don't think we should go there. I'm sorry.

BRENDAN SULLIVAN: Well, it's just --

CONSTANTINE ALEXANDER: I mean, there's no enforcement order out there saying they're not in violation. Therefore, I don't think you can make a determination right now whether or not they're in violation.

ATTORNEY JAMES RAFFERTY: But what would be the theory that they're in violation, of what?

BRENDAN SULLIVAN: Of the existing ordinance. Whether they're --

ATTORNEY JAMES RAFFERTY: In what way? Their use?

BRENDAN SULLIVAN: No, that -- all of those signs are they as of right.

CONSTANTINE ALEXANDER: I don't mean to cut you off, Mr. Sullivan, but I'm not sure it's relevant.

ATTORNEY JAMES RAFFERTY: We do. We have a signed certification from Mr. Barber with regard to the area of the signs that are on the building now.

BRENDAN SULLIVAN: For Kaplan? For all the signs?

ATTORNEY JAMES RAFFERTY: For the building as a whole, correct.

BRENDAN SULLIVAN: All right.

ATTORNEY JAMES RAFFERTY: Right. These two signs -- it's curious because, Mr. O'Grady, I don't know where that story came from, but Ms. Reposa was remarking to me that these -- if we have a photo.

BRENDAN SULLIVAN: You've answered

my question then basically. That's all. That's what I was getting at.

ATTORNEY JAMES RAFFERTY: But those signs, just to let you know how the -- those are the signs that used to have flights to Cancun, and they have been there since 1977, since Ms. Reposa -- it came as a surprise to me the other day when Mr. O'Grady said, well, there's no permit for those signs. I said, the sign's been up there. And so I confirmed it with American Express. We actually had Ms. Reposa. She said those signs used to -- Kaplan only came here two years ago. So they swapped, they swapped in the Kaplan blade. But Kaplan didn't have to go get a sign permit to put up the sign. They just slipped in and -- their sign fabricator slipped in a new shield. So they wouldn't have -- Kaplan wouldn't have had to come in and apply for a permit so....

BRENDAN SULLIVAN: Yes. No, no, it was a generic question, so you've answered it.

ATTORNEY JAMES RAFFERTY: No, no. I appreciate you raising it because I do think there was an undercurrent earlier in the week when I heard about this, those signs should be down. And you why aren't those signs down? I was just --

BRENDAN SULLIVAN: It was just a thought, that it was my own thinking as I sat at the light there, and I'm looking and all you see is Kaplan, Kaplan, Kaplan, Kaplan and it shouts at you, that's all. I mean, it's just --

CONSTANTINE ALEXANDER: But can I -- the relief you're seeking tonight is a condition or part of getting the relief to put the three banners up, the two blade signs will come down.

ATTORNEY JAMES RAFFERTY: Exactly.

CONSTANTINE ALEXANDER: That's the

trade off if you will. That's what the Planning Board bought into and that's what the Historical Commission bought into.

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: As part of their certificate of appropriateness.

ATTORNEY JAMES RAFFERTY: That is correct.

CONSTANTINE ALEXANDER: And the only question I have for you, when I come to framing the motion is, we could go about this two ways: We can say -- if we're going to do this. Grant you the relief on the condition that the signs, the two blade signs be removed, that's one way. And we've done that in the past on other projects around the town and we often get burned, because what the people don't do is they don't remove the other sign and an enforcer needs to go around and check every week to make sure. And so

we have the worst of all possible worlds.

ATTORNEY JAMES RAFFERTY: I can fix that for you, but go ahead.

CONSTANTINE ALEXANDER: And my second solution, and maybe this is what you're going to suggest as well. Is that you cannot put up these banners until the blade signs have been removed.

ATTORNEY JAMES RAFFERTY: That's correct. And as a matter of law, we couldn't because when you combine the area of the blade sign with the area of the awnings -- the banners we would be over.

CONSTANTINE ALEXANDER: To be sure. But also, also if we granted the motion the way I first suggested it, you'd also be in violation. But the trouble is there's no one out there to go out and find out that you are in violation. Mr. O'Grady has better things to do than to check signage every other day. That's why I want to make it very clear, and I

think you have no problem with it, that you cannot put up these banners until the blade signs have been removed.

ATTORNEY JAMES RAFFERTY: But to be clear, the process -- and I appreciate the concern and that's appropriate. But in fairness to the mechanisms that exist in the city, to get the permit to put up a banners, a certification would have to be done by Mr. Barber. So it would have to be shown to Mr. Barber what the area calculations is. And they're going to have to put the signs off to meet that. It's only after you get the certifications that you then come to the building department and get a building permit to install the signs. Having said all that, a (inaudible) approach is fine as well.

CONSTANTINE ALEXANDER: That's not -- I can debate that with you, but it's not worth it at this hour of the night. We're all in agreement where we're going

to go with this.

ATTORNEY JAMES RAFFERTY: And the whole impetus, and I'll be quite candid, American Express has a very strong interest in seeing the Kaplan signs go down. They're not going to pay and install these banners for Kaplan and then allow the Kaplan signs to remain. I can say that what Ms. Reposa -- it won't be the city that will have to rely upon --

CONSTANTINE ALEXANDER: Anyone wishing to be heard on this matter?

(No response.)

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

Let me read into the record the fact that we have a letter from the Planning Board dated August 5, 2009.

"The Planning Board has reviewed the sign variance requested of projecting signs on the JFK Street facade and has no objection to the banner installations at

about 29 feet above the street. The applicant has prepared a coherent and comprehensive signage plan for the entire building that will include the removal of the existing Kaplan signage, and the location of the new banners in a manner that will relate well to the location of the tenant within the building. The entire package of signs have been reviewed and determined by the Cambridge Historical Commission to be appropriate within the Harvard Square Conservation District."

The Chair also notes that there is a certificate of appropriateness from the Cambridge Historical Commission with regard to these signs subject to the number of conditions as set forth in the certificate, including the removal of the two blade signs of Stanley Kaplan.

And lastly, we have a letter dated August 13th and addressed to Mr. O'Grady

from Michael L. K-y-e-s, the project manager. "Dear Mr. O'Grady: I appreciate the time and attention you have given to review the current and anticipated exterior signage at 39 JFK Street. As discussed, there has been some confusion regarding the intent of the comprehensive building signage package.

This letter is written at your request to summarize the issues for you and the Zoning Board of Appeals. Birdmeyer (phonetic) -- and I would note Birdmeyer is the project manager doing the construction.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: "Birdmeyer has been working alongside Big Red Rooster, an Ohio-based design firm to renovate a portion of the interior for American Express Travel Services. Along with this scope was a renovation of the exterior corner entrance and replacement

of exterior signage. Since the existing condition had a multitude of tenant signage at the entry, our client partnered with their co-tenant at Kaplan Test Prep and the building owner to take a comprehensive look at exterior signage for the building. The comprehensive building signage is shown in the architects's rendering included with the ZBA application package and has been reviewed and certified in cooperation of the Historical Commission and the Community Development Department. It has been reviewed by the Planning Board. It consists of demolishing all signage with exception of JFK Street oval signs for storefront tenants and adding a combination of projecting signs, fabric awning at Kaplan's entrance, permanent canopy with pin letters at the Am Ex entrance, and fabric banners at 20 feet above the JFK Street sidewalk. All the

proposed signage has been permeated and installed with the exception of the fabric banners. These banners will have to be reviewed by the ZBA because they're positioned more than 20 feet above the sidewalk." And there's a citation to the Zoning section. "Pending the outcome of this meeting Kaplan has requested that the two existing corner projecting signs remain in place. Anticipating a positive outcome, these signs will be removed. Les Barber of the Community Development Department has certified that both the present conditions and the proposed conditions fall within the permitted signage area. A major issue that has complicated this process has been a ZBA variance, case No. 9664, that was requested directly by Kaplan and granted prior to partnering with Am Ex and the building owner. This resulted in a sign installed in April of 2009 surprising the

current project team. The existence of the variance itself was later found to be a surprise as well. The intent of the present partnership is to respectfully abandon that variance in favor of the comprehensive signage package. Likewise, the sign has been removed. The following -- I'm not sure what he's referring to.

ATTORNEY JAMES RAFFERTY: He means in April, believe it or not, unbeknownst to anybody one day a sign installer arrives and puts up a sign pursuant to that variance for Kaplan.

CONSTANTINE ALEXANDER: Oh, and then he took it down.

ATTORNEY JAMES RAFFERTY: And they were like, what's this? And they took it down within a week or two. So, I don't know why -- likewise is not the right word there.

CONSTANTINE ALEXANDER: Yes, I was a little confused.

Continuing: The following application package consists of the application photos and relevant approvals and backup to record the history of the design and approvals processed to date. We are confident that the design and location of the requested banners complement the prized electric character of Harvard Square where our building is located and respectfully submit for your consideration."

Questions, comments from members of the Board?

TIM HUGHES: I'm good with it.

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

TAD HEUER: I have two questions.

CONSTANTINE ALEXANDER: I'm sorry. Go ahead.

TAD HEUER: They relate and may not relate but I just want to ask them since you're here.

The first one is on the JFK Street side, there's the blade sign right next to the entranceway and then there's the awning?

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: The way that's set up right now if you were approaching going east on Mount Auburn Street, you cut the blade sign in half with the awning. Is there -- I mean, you can do it but it seems kind of non-sensical. Is there a reason that it looks like that?

ATTORNEY JAMES RAFFERTY: Well, the blade sign had been there. It's funny, I made the same observation to Ms. Reposa. It's the way -- so, the blade sign is less efficient as you approach from the east because it is somewhat obscured by the awning. But the awning is approved. So yes, that is correct.

DIANE REPOSA: But the majority of the foot traffic comes (indicating).

ATTORNEY JAMES RAFFERTY: Comes from the other direction.

DIANE REPOSA: And you see it.

TAD HEUER: Okay.

The other is when we were here last, there was a request that was actually denied for the sign in the second window. I think that was again they have this concern about identifying Kaplan as opposed to American Express. I just want a confirmation -- and they then, once we denied the exterior window sign, it was right there, they retained an interior window sign that took up essentially the entire window anyway. Have they agreed that now that they're having a system of signage on the building, that that's not -- that they won't be putting interior window signs that will essentially be giving them additional signage? We were concerned about that before that's why I ask.

ATTORNEY JAMES RAFFERTY: To that point I don't think it's permitted because when we met with the Planning Board one of the CDB observations was that some of the other tenants, including Whitney's, had signs that well exceeded the temporary exemption. So with the new building ownership, Mr. Herzfelder who is here today, went and had all the tenants take out all the non-conforming signs. Not exterior, but interior signs. So, I think there would be -- it's in the permitted. And the building owner is very committed to having this signage conform. So if that was up there, I wasn't aware of it, but it wouldn't have been permitted.

TAD HEUER: It's not up now. I just wanted to make sure that with this new signage package, that it wasn't something that they'd be allowed to stick in and then slip around the maximum they were allowed.

ATTORNEY JAMES RAFFERTY: Right. I don't think -- I think there's a whole new focus on the facade of the building now given the new treatment and all the work that's gone into it.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: In making the motion I'm going to tie the motion to the plan prepared by Birdmeyer, and this photo simulation, which is this one right here (indicating). So I want to make sure that -- that's what I believe you presented to the Planning Board.

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: And also it does not show any internal signs that Mr. Heuer has referred to.

ATTORNEY JAMES RAFFERTY: I just wants to make sure.

CONSTANTINE ALEXANDER: Yes, I want to make sure we're all on the same

page.

ATTORNEY JAMES RAFFERTY: Yes. I think one of the better images that I've seen would be here, which --

CONSTANTINE ALEXANDER: That's the same one. It is the smaller version.

ATTORNEY JAMES RAFFERTY: That's what I mean. That one is bigger. And it identifies where the relief is and it also shows the other signs removed.

CONSTANTINE ALEXANDER: Can I put this in the public file?

ATTORNEY JAMES RAFFERTY: You want to just take the sheet?

CONSTANTINE ALEXANDER: Oh, yes. The sheet. I don't need the rest.

ATTORNEY JAMES RAFFERTY: And I think that's the most accurate depiction of --

CONSTANTINE ALEXANDER: I would note again to Mr. Heuer's point that there are no internal signs shown here. So you

would have to enforce, and I'm sure you will.

BRUCE HERZFELDER: Yes, will do.

CONSTANTINE ALEXANDER: Are we ready for a vote?

The Chair moves that a variance be granted the petitioner to install three projecting banners set forth above the sidewalk higher than the 20 feet permitted by our Zoning By-Law.

The Chair moves that the Board find that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. Such hardship being that there is improper identification of the Kaplan -- the location of the Kaplan tenancy in the building without the signage given the plethora of other signs on this building and in the area.

That the hardship is owing to circumstances relating to the -- basically

the shape of the structures. It's on the street side. There is not much room for signage. And considering that the nature of the tenant -- at least so long as Kaplan is there, there will be people traveling to the site to take classes, and this type of signage is necessary to allow strangers to the Harvard Square area to be able to identify where the Kaplan structure is located. And once they locate the structure, there is adequate signage on the Auburn Street -- on the Mount Auburn Street side to identify the actual entrance.

And that there would be no substantial detriment to the public good or nullification or substantial derogation for the intent or purpose of this ordinance. In fact, aesthetic considerations are one of the areas of concern for the Zoning By-Law, if you look at the purposes of our Zoning By-law, and

this will improve the overall aesthetics and comprehensive signage for the structure as witnessed by the support both by the Cambridge Historical Commission and of the Planning Board.

The Chair would further note there's been no opposition to the petition further indicating that there is no derogation from the intent or purposes of this ordinance.

Such relief would be granted on the condition that the work proceed in accordance with plans, two pages in length, prepared by Birdmeyer dated -- I don't see a date. Anyway, they're numbered 1 and 2, and initialed by the Chair. And further in accordance with photo presentation, also initialed by the Chair, as part of the record. It is a same photo preparation that was given to the Planning Board and Historical Commission.

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

(Aye.)

ATTORNEY JAMES RAFFERTY: You want a condition on the removal of the Kaplan signs?

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY JAMES RAFFERTY: They don't appear on the image, but I think you may want to explicitly note that.

CONSTANTINE ALEXANDER: I think you're absolutely right. Thank you, sir.

And on the further condition that the erection of these banner signs cannot commence until the removal of the two blade signs identifying Kaplan on either side of the entrance that's on the corner of Mount Auburn Street and JFK Street.

ATTORNEY JAMES RAFFERTY: Thank you.

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

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

(9:40 P.M.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9826, 80 Kirkland Street.

Is there anyone here on that matter?

Okay. You're here for a variance for various dimensional relief mostly relating to a new dormer?

JOSEPH TATONE: Correct.

CONSTANTINE ALEXANDER: I'm sorry, for the record, you have to identify your name and address, please.

JOSEPH TATONE: Yes. I am Joseph Tatone. I'm the architect for the project. 178 Park Street, North Reading, Massachusetts.

HARRIET TRAPANI: I'm Harriet Trapani, I live at 80 Kirkland Street.

GIORGIO TRAPANI: I'm Giorgio Trapani, I'm her husband.

CONSTANTINE ALEXANDER: And you're here before us because you have an FAR problem?

JOSEPH TATONE: Yes.

CONSTANTINE ALEXANDER: That's what I have from your dimensional form.

JOSEPH TATONE: That's correct.

CONSTANTINE ALEXANDER: Right now you're a non-conforming structure. You're .937 in a .75 district and you're going to go from .937 to .956.

JOSEPH TATONE: That's correct.

CONSTANTINE ALEXANDER: So a slight increase in the non-conformance?

JOSEPH TATONE: That's correct.

CONSTANTINE ALEXANDER: My characterization anyway, but go ahead.

JOSEPH TATONE: The desire for the dormer is for two purposes: There is currently no bathroom on this third floor attic level, and there is no way to get a bathroom on that third floor without increasing the FAR, without extending beyond the footprint that's allowed, you know, that counts as FAR, the five foot

headroom in the attic space. The other reason, there are two existing stairs that go up to that attic space, finished attic space. One is about, I don't know, it's less than 30 inches wide. I think it's 27, 28 inches wide. And that goes down to a common corridor that's not within this second slash third floor space. And the other one that is wider only has five-foot-six headroom. And that's the area that we're looking for additional headroom for that stairs. So they can actually walk up those stairs without having to bend over in a crouch. So that -- those two components dictate the size and shape of the dormer.

We've also gone before the Mid-Cambridge -- excuse me, I have to look at the names. Mid-Cambridge Neighborhood Conservation District Commission on August 3rd. They had a few comments.

One, the main point of which was to

just simplify the dormer, make sure the eave lines match with what was existing. We assured them that all the detailing and so forth is going to match what's existing on the house. And the drawings that you have in front of you which were resubmitted Monday by Fed-Ex.

CONSTANTINE ALEXANDER: These are the drawings you're asking us to approve?

JOSEPH TATONE: Yes.

CONSTANTINE ALEXANDER: They're dated 8/07/09?

JOSEPH TATONE: Yes, they are. That's correct.

CONSTANTINE ALEXANDER: And you understand if we are to grant approval, we do it -- you have to proceed in accordance with the plans. These are the final plans. They're not sort of --

JOSEPH TATONE: Right.

CONSTANTINE ALEXANDER: -- if you're going to modify them, you have to

come back before us.

JOSEPH TATONE: Right. I understand, we understand that the plans that are represented here --

CONSTANTINE ALEXANDER: Are it.

JOSEPH TATONE: -- are it.

CONSTANTINE ALEXANDER: All right.

JOSEPH TATONE: Like you said, not having to come back before you.

TAD HEUER: How long is the new dormer?

JOSEPH TATONE: The new dormer is 13 feet long. And if it helps, I have a copy.

TAD HEUER: Are the shakes on here, is that just illustrated that's new or is that a different siding?

JOSEPH TATONE: That's just to illustrate that that is new --

TAD HEUER: Okay.

JOSEPH TATONE: -- in relation to what's existing.

TAD HEUER: And is there a reason that you've gone with the flat roof on the gable?

JOSEPH TATONE: Yeah, there's a couple of different reasons. As you look at this, if we were to bring this up to a point -- we're trying to match the existing roof pitches.

TAD HEUER: Right.

JOSEPH TATONE: So if we were to try to do that and bring it to a point, it would come up above the existing ridge line. Originally what was brought before the Mid-Cambridge Commission, we actually had a line in this portion step back about, I think it was 18 inches or something. I can't remember the exact number. And we had a different pitch on part of it so that we could have it peak on this piece that would similarly match what's on the front on the opposite side. But they thought that the step backs, the

changes in the roof planes were too complicated and asked us to simplify it. And what was discussed is can we just make the three phases of the proposed dormer the same pitch as the existing roof. And they didn't have an issue with doing a flat portion roof there as long as it was kept below the existing ridge line.

TAD HEUER: And is there a reason why this one can't go to the same symmetrical peak as the one on the opposite side?

JOSEPH TATONE: Yeah. Because of the width, these are, I think like seven-foot-nine, the overall width. So because we're going wider, it would increase the length of the slope as we're trying to maintain the same roof pitch.

TAD HEUER: Right.

JOSEPH TATONE: The gross square footage only increases 90 square feet. With the existing gross floor area is

5741. So the relationship of, you know, what the percentage increase is very small.

CONSTANTINE ALEXANDER: Is this part of our dormer guidelines, the proposed work that you're going to do. We have a dormer guidelines.

JOSEPH TATONE: Yes.

CONSTANTINE ALEXANDER: And your dormer will conform with this?

JOSEPH TATONE EFT: Yes. With the exception of the length I think you have -- I'm trying to remember what the allowed --

CONSTANTINE ALEXANDER: 15 feet.

JOSEPH TATONE: Okay. So it is under the 15.

CONSTANTINE ALEXANDER: It is under the 15?

JOSEPH TATONE: Yes.

BRENDAN SULLIVAN: Well, one of the key dimensions is coming up the roof.

Is it 18 inches or so?

TAD HEUER: Yes.

BRENDAN SULLIVAN: I guess what they're asking is not to have it line up with the wall, exterior wall.

JOSEPH TATONE: That's right.

CONSTANTINE ALEXANDER: We have another set over here.

TIM HUGHES: Two out of three ain't bad.

BRENDAN SULLIVAN: Have you seen these dormer guidelines?

JOSEPH TATONE: I've read through the regulations. Is there a graphic that describes --

BRENDAN SULLIVAN: Yes.

JOSEPH TATONE: -- what the regulations are? Then that portion I hadn't seen. I actually pulled what I have seen off the internet.

BRENDAN SULLIVAN: It says here page five: Setting the front wall of a

dormer flush with the main wall underneath is not recommended. They really ask for one-foot-six setback from that plane.

JOSEPH TATONE: Yeah. That would be an issue on the area where we have the stairs, because the stairs, as they come down, they come right to the exterior wall.

BRENDAN SULLIVAN: So it would impede the --

JOSEPH TATONE: It would impede our headroom issue. I mean --

BRENDAN SULLIVAN: What about on the other side?

JOSEPH TATONE: The other side with the bathroom, we could make accommodations with the bathroom, but again the issue with the Mid-Cambridge Commission is they would like to see that all as one plane to try to keep the massing of it as simple as possible.

BRENDAN SULLIVAN: Well, here's

the graphic on it. It may not work with this.

TIM HUGHES: Is this replacing a smaller dormer or an existing dormer?

JOSEPH TATONE: No, there is no dormer there at all.

TAD HEUER: How far is the peak of the plateau of that dormer setback, centered down from the peak, the ridge line?

JOSEPH TATONE: Right now in the horizontal dimensions it's probably about six inches. So -- but that's something that we could modify and drop that down. Because we have a flat there, and I can just increase that area of that flat to make it in conformance with the one-foot drop down from the ridge line.

CONSTANTINE ALEXANDER: Are you going to have to modify these plans to do that? You can do it right now.

JOSEPH TATONE: Yeah, that would

be appropriate. That way everything is clear.

BRENDAN SULLIVAN: You know --

CONSTANTINE ALEXANDER: Is it the desire of the --

BRENDAN SULLIVAN: Well, you know, I guess architecturally I think it's sort of a nice, large, grand house and I'm not sure if complying with that word-for-word and intent-for-intent is applicable here I guess.

Tim, what do you think?

TIM HUGHES: I concur. Well, you know how I feel about the, you know, the face of the dormer and the side wall. And in this case it's obviously justified because of the staircase is already below the eave and it's hugging the exterior wall. And my opinion about that hasn't changed, because structurally it just makes more sense to me. As far as coming down off the ridge, it's, you know, the

farther you come down, the farther you're off the ridge board. The more costly it is to build and harder it is to construct. It's not impossible, but it's harder, you know. And you're right about the size of this house.

BRENDAN SULLIVAN: I think it can handle. I think what you've designed is appropriate.

TIM HUGHES: It looks fine.

CONSTANTINE ALEXANDER: I think it's appropriate. I think it's fine for the house.

BRENDAN SULLIVAN: You did a good job.

JOSEPH TATONE: Thank you.

BRENDAN SULLIVAN: I think those guidelines do not comply with this house.

CONSTANTINE ALEXANDER: The Chair would not there's no one in the audience who wishes to be heard in this case, for the record. And for the record, I will

confirm that there is a certificate of appropriateness in the file from the Mid-Cambridge Conservation District Commission. Subject to conditions that are in the certificate of appropriateness, and you've represented that these plans conform with those conditions.

JOSEPH TATONE: Yes. These are modified to --

CONSTANTINE ALEXANDER: Modified to reflect the conditions.

JOSEPH TATONE: -- to reflect the conditions that they had requested.

CONSTANTINE ALEXANDER: Okay.
Ready for a motion?

The Chair moves to grant a variance to the petitioner to add a new dormer along the left side, left slash easterly side of the roof to add a bathroom and to allow the code required headroom over an existing stairway and hall.

The Chair moves that the Board find

that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. Such hardship being that the ability to use -- to have a bathroom and to comply with the code with regard to existing -- required headroom is the hardship. They need relief to allow to satisfy this hardship or to deal with it.

That the hardship is owing to the circumstances relating to the shape of the structure. The structure is an older structure. Probably built prior -- before the Zoning code had been adopted. And there is no way of dealing with the solving the problem that the petitioner needs to solve without the relief that is being sought. And it would be -- we can grant relief without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the ordinance.

Granting this relief would not have any impact on adjoining properties. And, in fact, it would satisfy one of the purposes of our Zoning By-Law which is to secure safety from fire. And also to allow the petitioner to have a state building code compliant stairwell.

The variance would be granted on the condition that the work proceed in accordance with the plans submitted by the petitioner prepared by Joseph Tatone, T-a-t-o-n-e and Associates, LLC. They are dated August 7, 2009. They're numbered A-100 through A-105. The first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance is granted. Thank you for your patience.

JOSEPH TATONE: Thank you.

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

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

(9:55 P.M.)

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

CONSTANTINE ALEXANDER: The Chair
will call case No. 9827, 191-195 Prospect
Street and 203 Prospect Street. You're
here on the petition?

LAUREN CURRY: Yes, I am.

CONSTANTINE ALEXANDER: You know the usual drill.

LAUREN CURRY: Yes. My name is Lauren Curry and I'm here at -- C-u-r-r-y. I'm here on behalf of Just-A-Start, a perspective purchaser of 203 Prospect Street. The owner of the parcels presently is Cambridge Affordable Housing Corporation. I received a call this morning from Kerry Dumulous who is director of development for them who was supposed to be here tonight. A death in her family has prevented her being here, but Greg Ross the head of the Cambridge Housing Authority did send a letter explaining their part in this situation which I think was submitted to the file today.

CONSTANTINE ALEXANDER: We do have that in the file. I'll get to that in due course.

LAUREN CURRY: Okay. But in any

case what we are proposing, and I think it starts just -- they own both of these parcels. They bought the formerly Casterbridge Nursing Home (phonetic), that had been turned into multiple family housing in 1999. I think somebody tried to make it a go of it as a condominium, couldn't. Sold it to the Cambridge Affordable Housing which is -- as rental housing. In conjunction with that purchase, they also purchased another small 100-year-old building house on an adjacent parcel which was owned by a separate trust which they also intended to convert to affordable rental housing use. That has not been possible. Basically they had -- they done a number of feasibility studies. There's some work that has to be done for it to be usable at all in terms of there's a structural piece that needs to be corrected where somebody extended out beyond a foundation, and

other -- other needs. They found that they could only use it as affordable rental if they put substantial work into it and change into a larger number of units, and ultimately found that the financing wasn't possible to make that happen. So, right now it hasn't been used since they acquired the property in '03. And we want to put it back into use. They are willing to transfer the property to Just-A-Start. We would do someplace between close to a gut rehab, but keep it as a single-family house which is what it has always been. We would through our Youth Build Program -- we would have to have some other contractors, too, but to do the structural work, but basically keep the house very much as it is. Reconfigure it so that instead of a two-bedroom, it would be a three-bedroom and sell it in the City of Cambridge, first-time home buyer affordable housing program to a

relatively, basically moderate income family. The threshold problem is that they bought them both in their same entity and so they now are merged for Zoning purposes, and what we would like to do is get your approval for a subdivision back to the pre-existing condition which had been in place essentially since the 1930s in terms of what the configuration of the properties was. So that we'll need Zoning relief because the two separated parcels don't meet all of the dimensional requirements.

CONSTANTINE ALEXANDER: That's the variance.

LAUREN CURRY: That's the variance.

MARK BOYES-WATSON: It triggers the -- and then we're doing some -- I'm Mark Boyes-Watson from Boyes-Watson Architects. It's a minor modification to the building.

CONSTANTINE ALEXANDER: That's a Special Permit.

MARK BOYES-WATSON: And the thing that triggers this variance is the --

CONSTANTINE ALEXANDER: I want to focus on that variance for a second, and I want to put it in context at least for members of the Board and myself. On the surface it's just a matter of you say we're going back to where it was before and what you would be asking us to do is create a substandard lot of roughly 3700 square feet which is the old lot which has now been merged. But if we were to grant that relief, we're doing more than granting a variance just for having a substandard lot or an undersized lot. As you point out in your application, because there is a structure on that undersized lot, we'd also be granting a variance from the minimum street frontage. We'd be granting a variance from the minimum lot

width, minimum lot size, front yard setback, side yard setback, floor area ratio, and rear yard setback, and others. So you're looking for a substantial amount of relief. It's not simply a matter of going back to just dividing a lot in half.

And put it into a different context for me at least, if you came before us, or any petitioner, not you, any petitioner came before us with a conforming lot and say we want to build a structure on this lot and we want relief, a variance for minimum street frontage, minimum lot width, minimum lot size, front yard setback, side yard setback, blah, blah, blah, we would have -- we would be very hard pressed, it seems to me, to find the basis for a variance to satisfy the statutory conditions. So I want to understand why we should in this context grant the variance? Because the variance is substantial in terms of the departure

for what the Zoning By-Law requires.

LAUREN CURRY: Right. And I think with the hardship requirement, one of the hardships is financial. And I mean the hardship is because we're not asking you to just create a new empty lot. This house is there. It's actually a lovely house. It should be in housing use. Financially nobody can do that without either in rental housing, having to develop it into a larger number of units, which I think is not the direction that I would think that people would want to go in. To not have the financial hardship of an empty -- I don't know, it's about a 2,000 square foot building, which has financial value which can't be realized unless it can be returned to its --

CONSTANTINE ALEXANDER: Why is that so? I mean, you can't -- you're the buyer. Why can't you stay with the Cambridge Affordable Housing and one lot,

why couldn't you -- you wouldn't have a problem with FAR and all the other requirements.

LAUREN CURRY: The stream, the stream of income from two or three affordability restricted rental housing to pay for the construction, it's just -- it doesn't throw -- to tell you the truth, because we're here in an affordable ownership half, but we do affordable rental, too. Unless you have massive subsidies, affordable rentals doesn't throw off any income whatsoever to pay that service. It pays operating expenses.

TAD HEUER: This may be a silly question, and coming from the Housing Authority's perspective, but are they mandated by law to make it affordable? Must everything they do under their ambit be affordable? Or could they use this as a market rate property, which as noted, was created by their own error years ago

in not creating a separate corporate entity to take the land in and, therefore, they've merged it through their own fault.

LAUREN CURRY: I'm not -- yeah, I mean -- I'm sure it's through inadvertence more than anything.

MAHMOOD FIROUZBAKHT: Or the problem, the funding that was maybe used to buy the entire project may have come with strings attached.

LAUREN CURRY: There is no affordable housing restriction on the entire parcel because there was trusts -- city affordable housing trust in the acquisition.

MARK BOYES-WATSON: So there is.

TAD HEUER: Right.

BRENDAN SULLIVAN: Lauren, what is the legal status of the house right now? Yes, the legal status.

LAUREN CURRY: It's --

CONSTANTINE ALEXANDER: Legal

non-conforming.

LAUREN CURRY: I think it's as far as --

BRENDAN SULLIVAN: Well, I mean is it single, two-family, three-family.

LAUREN CURRY: It's a single.

BRENDAN SULLIVAN: It's single-family house?

LAUREN CURRY: Yes. And it's always been used as a single. But it has been in continuous residential use since I think about 1905. And there was a -- you know, the whole -- this whole configuration here historically -- I don't know. I don't know if you want to go back into this stuff, but the reason that this all came about, these lots is, there used to be a hospital here.

BRENDAN SULLIVAN: Right.

LAUREN CURRY: And Cambridge -- not this structure, not this nursing home, but, you know, like in the twenties or

something, a hospital during the depression it looks like they had mortgaged their whole parcel and they couldn't pay their mortgage and so their solution was they split their property and gave this piece here to the, I don't know the Somerville National Bank or something. You know, and so it's gone through -- and so that's the point at which the passage way was created and the, you know, the various easements were created. So it's since then labored under those. And then in the forties this piece was subdivided off this piece. But, again, there were existing structures on them.

BRENDAN SULLIVAN: Yes. So the practicality and the reality of the situation is that it cannot be developed and continued as a single-family unless it is separated from the adjoining lot?

LAUREN CURRY: Yeah.

BRENDAN SULLIVAN: Which goes back

to some little bit of case thought where it says that hardship is not being -- hardship can be found. Where it is not being reasonably able to use the property for the purposes or in the manner allowed by the municipal zoning requirement due through circumstances, but technically affecting that property. The conditions that start to effect that hardship are reverse. Substantial hardship, financial or otherwise, is found where under unique circumstances it is not economically feasible or likely that the locus would be developed in the future for a use permitted by the Zoning Ordinance or By-law. That's sort of Cavanaugh versus Furmuri (phonetic).

And this sort of other cases where the courts have found that there is an inherent and practical hardship not to be -- to not develop the property, not to its fullest potential, but at least to its

potential.

MARK BOYES-WATSON: And second to that I think it is notable that -- that the historic use was a single, and there's no enlargement, there's no enlargement of the use. It actually has a slight reduction in the size of the building proposed here. So really it's a continuation of the purpose to which it was previously put, the land.

BRENDAN SULLIVAN: And I think going back to your original statement, that it's not just drawing a line but you're really asking for all of the sacred thresholds to be done away with. And the numbers, by doing this, really become quite small, every single one of them. And I think that if it were a vacant lot and somebody were coming down and asked can we build this house there, it would be a non-starter obviously. But I think under the circumstances even though the

numbers look very small, they have always existed while it was under two owners. That it's a quirk in the Zoning that a common ownership for two adjoining lots is considered as one lot. In all the years that I've sat on this Board I have always felt that a structure should always sit on its own lot for the very reasons that they're here tonight; for marketability, for being able to work, but, whatever, that's my feeling.

TAD HEUER: This is more of a historical fact, the building that actually has the street frontage, do we know -- was that pre-existing non-conforming?

MARK BOYES-WATSON: This one -- this one is not part of the current parcel. The current parcel, and correct me when I go wrong.

LAUREN CURRY: Yes.

MARK BOYES-WATSON: Is there

(indicating). This was out parceled before.

TAD HEUER: Right.

MARK BOYES-WATSON: What happened when they bought this, they allowed these, this line to disappear because it disappears. Because they took these in the same ownership.

TAD HEUER: Right.

MARK BOYES-WATSON: So, yes, the frontage that's on our dimensional form as existing is this frontage (indicating). This is that easement.

TAD HEUER: So the easement currently splits the adjoining --

MARK BOYES-WATSON: Both the ones in this ownership and the one not in this ownership.

TAD HEUER: Okay.

MARK BOYES-WATSON: It's halfway across both and leads to our property. It's actually interesting to know then if

you look at the photograph from Google Earth there's actually another house adjacent to our house. It's actually in the same kind of condition as this single-family.

LAUREN CURRY: It's like set in the -- ours is the red roof house.

MARK BOYES-WATSON: We're the red roof one.

LAUREN CURRY: And then you can see behind -- just running neck and neck with it is another house which again is set in the backyard. The only access to that house is from Amory Street, a pedestrian pathway that just walks back there. You know, I mean it's not --

MARK BOYES-WATSON: Right.

TAD HEUER: I was just curious as to how they got frontage for that building and I understand it now.

LAUREN CURRY: This one here?
Yeah.

TAD HEUER: This one. They took it from that building.

MARK BOYES-WATSON: Originally it was all working off this lot. So actually in the old days, as it were now --

LAUREN CURRY: Actually we were confronted --

CONSTANTINE ALEXANDER: One at a time. She can't take it all down.

MARK BOYES-WATSON: The front yard, I mean, what happens when you re-subdivide is, right now it looks as if you're going, the required front yard would be here on Prospect to here (indicating).

TAD HEUER: Right.

MARK BOYES-WATSON: But when we subdivide, the front yard is from this line back here, etcetera. So what happens is as you subdivide, all the rules suddenly pertain to these new lot lines and it looks pretty bad on the dimensional

form for sure.

TAD HEUER: No, it's because you will have no frontage on Prospect Street, correct?

LAUREN CURRY: Right.

MARK BOYES-WATSON: Right.

TAD HEUER: Just easement access.

LAUREN CURRY: Right.

MARK BOYES-WATSON: Exactly.

LAUREN CURRY: Yes.

MARK BOYES-WATSON: And in fact one of the reliefs requested, actually if you go back and unravel all that is to created a shared driveway.

CONSTANTINE ALEXANDER: That's the second part of the case.

LAUREN CURRY: Right.

MARK BOYES-WATSON: Right.

LAUREN CURRY: Which, again, has existed since about 1937.

CONSTANTINE ALEXANDER: Is there a building right now -- I'm sorry. I didn't

mean to interrupt you.

MARK BOYES-WATSON: I was just going to say we're actually more confirming an existing condition by asking for that relief not to have omitted something that might be required.

CONSTANTINE ALEXANDER: The single-family home now, is it vacant right now?

LAUREN CURRY: It is vacant.

CONSTANTINE ALEXANDER: How long has it been vacant?

LAUREN CURRY: Since '03 when Cambridge Affordable Housing Corporation acquired this site. Previous to that it had been owned by a trust who had rented it out to a couple, you know, for I think a year or so. I learned this from the abutting neighbors to the back and discussions with them. And then before that a man lived there who's family had held the property for a number of years.

So when they moved in he was --

CONSTANTINE ALEXANDER: So Cambridge Affordable Housing bought it, they were planning to renovate that building?

LAUREN CURRY: Yes. And they did actually a number of feasibility studies to convert it into different number of units and things, but you know.

CONSTANTINE ALEXANDER: As it turned out an economic thing.

LAUREN CURRY: Right.

MAHMOOD FIROUZBAKHT: How is it not uneconomic for Just-A-Start then to develop it?

LAUREN CURRY: You know, basically we will have a low acquisition cost from them. We will have some contribution from the city affordable housing trust. I don't know how much that will be. But basically a key to our cost will be that we will be using Youth Build labor. We

run a Youth Build program, which is out-of-school youth, 18 to 24, training in carpentry and other building trades. So we kind of will be using it partly as a site for --

BRENDAN SULLIVAN: Something that the private sector does not have access to?

CONSTANTINE ALEXANDER: Why couldn't the Cambridge Affordable Housing do the same thing though? Why do they need to sell it to you to get access to the -- help from the city and other -- this construction team?

LAUREN CURRY: Well, because the point is that this is not going to be rental housing. It will be home ownership. So somebody needs to get it into a title that a homeowner can buy. And we're in a better position to do this work before you than some potential first-time home buyer is.

MARK BOYES-WATSON: So that was the thing about economic feasibility was the acquisition, development and then the on-going -- the actual -- the mortgage that the buyer takes out is a very important part of the financial viability of the development.

LAUREN CURRY: Yes.

MARK BOYES-WATSON: Which you can get in if you get into the first-time home buyer program. It generates the debt service.

CONSTANTINE ALEXANDER: Comments or questions at this point?

Let me read into the record some correspondence that we have. First of all, there is the Mid-Cambridge Neighborhood Conservation District has reviewed the project and approved the application in addition to a certificate of actually non-applicability --

LAUREN CURRY: Actually two.

CONSTANTINE ALEXANDER: -- I'm sorry, certificate of appropriateness. You're right. Sorry.

LAUREN CURRY: It's very hard to see from the street, so they just kind of gave appropriateness for things you can see from the street. But most of it you can't see from the street.

CONSTANTINE ALEXANDER: That's right.

And there's a letter addressed to the Board on the letterhead of the Cambridge Affordable Housing Corporation dated August 13th. "When the Cambridge Affordable Housing Corporation acquired the former nursing home at 195 Prospect Street, they purchased the adjacent house at 203 Prospect Street. The cost to renovate the house has been prohibitive for CAHC. In response CAHC has worked with the Just-A-Start Corporation and signed an agreement with that organization

for the rehabilitation of 203 Prospect Street into new low income housing for first-time home buyers. In support of the renovations planned by Just-A-Start at 203 Prospect Street, we urge the Board of Zoning Appeal to grant the requested variance for the subdivision of the property into two lots and to grant a Special Permit for the installation of new windows on a non-conforming face of the building and to provide common driveway access. Thank you for your consideration."

I don't believe there's anything else in the file supporting or opposing the petition.

Further comments, questions from members of the Board are we ready for a vote on the variance?

TIM HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that a variance be

granted to -- is it you, Just-A-Start Corporation? You don't own the property actually.

LAUREN CURRY: We have applied in the name of the owner. We have put in the ownership --

CONSTANTINE ALEXANDER: Let me just say to the owner of the property. I don't need to --

LAUREN CURRY: Yes, that's fine.

CONSTANTINE ALEXANDER: That a variance be granted to the owner of the property at 191-195 Prospect Street and 203 Prospect Street to divide the property into two lots. One lot would have a -- do you have the information handy just to save me the time of looking it up?

MARK BOYES-WATSON: Just what are you --

CONSTANTINE ALEXANDER: The size of the two lots. One's going to be -- I have it now. One lot will be 21,181

square feet, and the second lot will be 3,708 square feet.

MARK BOYES-WATSON: That's not what we have.

CONSTANTINE ALEXANDER: That's what I have here on your --

LAUREN CURRY: Yes, it's right. These two together.

MARK BOYES-WATSON: Oh, yes, you're adding those two together.

LAUREN CURRY: Yes.

CONSTANTINE ALEXANDER: Okay?

MARK BOYES-WATSON: Excellent.

CONSTANTINE ALEXANDER: Such variance would be granted on the basis that or the Board makes the following findings with respect to granting the variance:

That a literal enforcement of the provisions of the ordinance would provide a substantial hardship. Such hardship being that if the parcels are not

subdivided, the present option of preserving the building on the smaller lot as a single dwelling unit for home ownership cannot be accomplished. So the project will allow a now vacant, vacant since 2003, residential structure to be put into use again.

That the hardship is owing to circumstances relating to the soil conditions, shape or topography of the land or structures.

The hardship is due to the shape of the parcel in which the house is located, which has a multisided irregular boundary and lacks any frontage. And that -- and also that the hardship results from a merging of two separate -- previously separate owned lots on -- presumably as a result of an inadvertent by the Cambridge Affordable Housing Commission.

And that substantial detriment -- well, relief can be granted without

substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this ordinance. In fact, allowing the project to go forward would satisfy a number of the purposes of our Zoning By-Law; namely, to encourage housing for persons of all income levels, and to conserve the value of land and buildings, including the prevention of light.

Do we have a plan that shows how the -- I know we must have it somewhere.

MARK BOYES-WATSON: I'm hoping you have this one in your file.

LAUREN CURRY: You have a copy of this one. We had a surveyor prepare the subdivision plan. I believe it's in the file.

CONSTANTINE ALEXANDER: Is this the one?

LAUREN CURRY: They're both the same.

CONSTANTINE ALEXANDER: Well --

LAUREN CURRY: No?

BRENDAN SULLIVAN: There's a -- I don't know this is a proposed site plan.

MARK BOYES-WATSON: Yeah, that's just of the one parcel. This one is correct.

LAUREN CURRY: This blue one is the subdivision.

CONSTANTINE ALEXANDER: The variance will be granted on -- oh, I'll give you a chance to look at that.

MARK BOYES-WATSON: May 29th. It's actually just an oddly different color. It's the same.

LAUREN CURRY: Yeah, that's the same. This is the original and the blueprints are copies.

MARK BOYES-WATSON: So yes, this is the original.

CONSTANTINE ALEXANDER: Let me work with the original. It's easier to

read.

MARK BOYES-WATSON: And they're identical.

CONSTANTINE ALEXANDER: On the condition that the subdivision be accomplished in accordance with the plan submitted by the petitioner, prepared by AGA Engineering dated May 29, 2009 and initialed by the Chair.

All those favor of granting the variance on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Variance granted.

Okay. Let's move on to the Special Permit. It's actually in two parts the Special Permit. One is the driveway, the common driveway, which is to grant by

Special Permit pursuant to Section 6-something or other. And the second is with regard to windows in a setback as I recall.

LAUREN CURRY: Yes.

CONSTANTINE ALEXANDER: New windows on a non-conforming --

LAUREN CURRY: Alterations to an existing non-conforming.

CONSTANTINE ALEXANDER: On the latter part, on that second part, I'd like to jump ahead. I couldn't find anything in our files that really, adequate drawings with regard to that. I didn't see any elevations. I didn't see anything that showed the dimensions of these new windows.

LAUREN CURRY: We should -- we provided a full --

MARK BOYES-WATSON: They should be in your file.

LAUREN CURRY: We provided you --

CONSTANTINE ALEXANDER: If you can find them for me.

LAUREN CURRY: That should have elevations and the --

CONSTANTINE ALEXANDER: It looks like it does. Hold on. Let's see. This is the existing floor plan. This is the second floor. This is open space. Proposed. These are interior.

LAUREN CURRY: There are no facades with the original package.

CONSTANTINE ALEXANDER: This is the last page.

TAD HEUER: It goes to seven and your proposed start on eight.

LAUREN CURRY: No, we submitted a full set that went out to -- we've submitted a set that went up to 12. And then we added 14 by a letter of that same day. This was all back at the original filing. Today I brought in a new set because one problem on the set plans that

we had submitted to you is that about on three-quarters of the page is the dimensional scale was wrong. How it was written was right, but here's the package.

TAD HEUER: I'd say I have the same question as the Chairman did because I didn't see those either.

CONSTANTINE ALEXANDER: It wasn't in the file.

LAUREN CURRY: I know we submitted a full set. This is -- this is a copy an exact copy of what was submitted to you. You know, I'm beginning to feel like we didn't have the, you know, I apologize. I think all of the elevations went to the Mid-Cambridge District.

CONSTANTINE ALEXANDER: Yes, we don't have it. And I didn't see anything that had the window dimension size in the packet we had in the file. It just shows -- this is all we have in the file.

MARK BOYES-WATSON: It just shows

the plans.

LAUREN CURRY: Yeah.

CONSTANTINE ALEXANDER: And that's not the basis -- we have these new plans you're giving us tonight I guess. This is what you handed us tonight.

LAUREN CURRY: Those are -- they were put in today.

CONSTANTINE ALEXANDER: Or today. Okay.

LAUREN CURRY: Yeah. But I put them in --

CONSTANTINE ALEXANDER: I don't know, are the members of the Board satisfied with going ahead with these elevations and plans that were put in the file today?

TAD HEUER: I guess my question would be, Sean, are even these sufficient for what you need?

SEAN O'GRADY: These are the ones from today? And we're talking simply now

about window placement, right?

CONSTANTINE ALEXANDER: Yes. We haven't gotten to the issue on the driveway yet.

TAD HEUER: Right, eight photos. Or nine.

LAUREN CURRY: I can show you the areas where there will be change if you want me to do that.

SEAN O'GRADY: Oh, yes, that will -- it looks like we're losing windows.

LAUREN CURRY: Yes. There's --

SEAN O'GRADY: And then the door changes. Yeah, no, that's plenty for me.

CONSTANTINE ALEXANDER: Should be. I'm assuming it is.

SEAN O'GRADY: Oh, yes. That's fine.

LAUREN CURRY: I apologize for that. Because I -- I think what happened is that I -- when I came to file it, I was sent upstairs to the Historic --

CONSTANTINE ALEXANDER: Well, often, you know, we would throw you out on the basis of this.

MARK BOYES-WATSON: What I was just trying to quickly play catch up on was all of the windows that we're changing, which of them require relief, right? And the non-conformity created by the subdivision, the non-conformities are indicated on 14 of these new -- on sheet 14 of these packages you only just received. And it indicates a front setback requirement of ten feet. Which means that any, any changes on this front facade would have needed --

CONSTANTINE ALEXANDER: I'm sorry, which is the front?

MARK BOYES-WATSON: That's what the building department thinks is the front yard.

CONSTANTINE ALEXANDER: Existing blacktop to remain, that's the front side?

MARK BOYES-WATSON: Exactly. And actually no changes are proposed on that facade.

LAUREN CURRY: Right.

MARK BOYES-WATSON: So the front yard setback there's no relief required. So we are making changes, just for your information, to the facade. The back L, that's where we're reducing the size of the building, but it doesn't require relief in the sense that it's not in the front yard setback. I know once you're in a variance situation, everything is kind of important. But it doesn't specifically require relief.

Similarly we are creating a door, and you see the new front door? Again, if you look at the existing blacktop remain and you go up the page, that front door is a change actually, but it's not within the front yard setback. So it actually doesn't require relief. We are altering a

window on the left facade. You can see the required left side setback requirement is eight feet. We're making a change there, but it actually does not require relief. You see the double window in the sort of the study type area, it looks almost like a kitchen but it isn't. Oh, it is the kitchen. That's probably why it looks like a kitchen. That does not require relief. However, the window that does -- the window change that does require relief is indicated on the rear facade that has only a seven-foot-four setback. And the window to the right of that chimney, that joint chimney stack, that window is new and requires a Special Permit to be created in that location.

CONSTANTINE ALEXANDER: The purpose of that window?

MARK BOYES-WATSON: You know, the room -- the little windows -- if you look at the sheet -- it's to do with adequate

lighting and ventilation to the room. Because if you look at the front facade, which what looks like generous windows in the plan, if you look at sheet 11, the windows that look so generous in plan are actually modest. See those along the horizontal -- yeah. So actually what happens in that room is that it needs that window.

CONSTANTINE ALEXANDER: Wait a minute, I'm confused. These two windows are going to stay though.

MARK BOYES-WATSON: They are.

CONSTANTINE ALEXANDER: Where's the front elevation, the old front elevation?

LAUREN CURRY: Here, it's very -- because it's so tight in there, it's hard to stand there and get a picture.

MARK BOYES-WATSON: This is the existing.

CONSTANTINE ALEXANDER: Page

eight. This is the existing -- this is still the front elevation.

MARK BOYES-WATSON: It is. Existing front elevation. You want to see where that new window is?

CONSTANTINE ALEXANDER: Yes.

MARK BOYES-WATSON: Beg your pardon. Yeah, yeah, sorry. That is sheet 10.

CONSTANTINE ALEXANDER: Page 10.

MARK BOYES-WATSON: For your existing.

CONSTANTINE ALEXANDER: Right.

MARK BOYES-WATSON: And sheet -- sheet 13 for your proposed.

CONSTANTINE ALEXANDER: Okay.

MARK BOYES-WATSON: This is really, it's not -- the rub of this Special Permit is right here on the sheet is the elimination of a window that was here and --

CONSTANTINE ALEXANDER: You're

moving it to the other side of the chimney?

LAUREN CURRY: Yes.

MARK BOYES-WATSON: Yes. And actually a slight reduction in the size of this window.

TAD HEUER: Right.

MARK BOYES-WATSON: Which actually we don't need a Special Permit for, because you can reduce a window --

CONSTANTINE ALEXANDER: Just out of a curiosity, why are you reducing the size of the other one?

LAUREN CURRY: It's going to end up in a bathroom.

MARK BOYES-WATSON: It's a bathroom window.

LAUREN CURRY: And we'll be probably shading that one, too. And I have a little interjection here. We sent letters to 30 neighbors and abutters, including you know, everybody surrounding

and all the people who live in the condominium in the front. We got one response and a second person was here tonight and she had some questions mostly about what would be happening during construction period. But I talked with her. And she was one of the condo owners named Jennifer Brewer. The people who were in touch with me in response to the letter that we sent out describing everything that we're going to be doing, were the people that were in that other backyard house that runs right along. And they -- you know, they have -- the concern that they have nice new neighbors and all of that, but they're happy to see it being put back into use. Their one thing was that the new window will be pretty much across from a kitchen window of theirs. They said -- you know, we discussed it. I told them what the dimensions were. They are not going to object to it happening,

but I did make a concession to them that I hope could be included as an alternate in your -- and I just finished my discussions with him last night -- that as an alternate if we end up taking the chimney that runs along that back side of that house, down, I said that we would put the new window where the chimney is now to have it not be right across from them. So they understand that if the chimney stays, the window will stay where it is proposed. But I ask that if we take the chimney down, we be allowed the leeway to move it to that place so it won't be across from their kitchen. And that's -- I'm asking that because I told him that we would try to accommodate them in that way if it was possible.

CONSTANTINE ALEXANDER: And I see the window would be the exact same dimension -- if you move it toward the chimney, the dimension would not change.

LAUREN CURRY: Yes.

MARK BOYES-WATSON: The same window, right.

CONSTANTINE ALEXANDER: Just shifting it.

LAUREN CURRY: Right.

CONSTANTINE ALEXANDER: Any Board members have a problem with approving the plan on that basis?

LAUREN CURRY: And those are the same as Walter Silver and he lives at 48 Amory. I met with him a couple of times.

CONSTANTINE ALEXANDER: Want to talk about the common driveway? Because you need a Special Permit for that as well. Is this the plan, I'm going to tie it again to a plan. Is this the one we're going to be using?

MARK BOYES-WATSON: I think you can use the subdivision plan better, because it's a certified survey --

CONSTANTINE ALEXANDER: The one

with the variance?

MARK BOYES-WATSON: And that has a more accurate dimension of the driveway.

CONSTANTINE ALEXANDER: And just for the record and members of the Board, under our Zoning By-Law we do have the right under 6.43.6 to by Special Permit to allow, through mutual easements the right of a common driveway.

MAHMOOD FIROUZBAKHT: I'm sorry, can we go back to the windows for a minute?

CONSTANTINE ALEXANDER: Yes.

MAHMOOD FIROUZBAKHT: On the plans that were submitted to the file, and I don't know if you have a copy of those plans --

LAUREN CURRY: Yes, I do. Yes.

MAHMOOD FIROUZBAKHT: I'm just trying to just reconcile what's on sheet 4 with sheet 14 of the plans that were submitted today.

LAUREN CURRY: Okay. Sheet 4 is the proposed.

MAHMOOD FIROUZBAKHT: Right. And I'm looking in the upper left-hand corner of that. I guess that would be the kitchen.

LAUREN CURRY: Yes.

MARK BOYES-WATSON: Yes.

MAHMOOD FIROUZBAKHT: And I'm seeing there a new window being proposed, and then an existing window being blocked. And I'm not seeing that on the new, I guess, the more recent plans.

MARK BOYES-WATSON: Yeah, it --

LAUREN CURRY: Yeah, that.

MARK BOYES-WATSON: -- that's existing. It was an existing.

LAUREN CURRY: It was a proposal to have the window in the kitchen rather than the living room.

MAHMOOD FIROUZBAKHT: It's almost like you're asking for less relief.

MARK BOYES-WATSON: Yeah, I hear you, because it seems to appear in the plan and now it doesn't.

MAHMOOD FIROUZBAKHT: Exactly.

MARK BOYES-WATSON: Nor on the elevation.

LAUREN CURRY: Yes, I think I was

--

MARK BOYES-WATSON: It was an idea that came and went?

LAUREN CURRY: Yes, yes. And we decided it was more important to have the cross ventilation.

CONSTANTINE ALEXANDER: These are the plans.

MARK BOYES-WATSON: We would like you to approve it based on these plans with the caveat about the chimney.

MAHMOOD FIROUZBAKHT: So you are still blocking that existing window --

LAUREN CURRY: Yes, definitely.

MAHMOOD FIROUZBAKHT: But not

adding a new window that the previous plans would indicate.

LAUREN CURRY: Right.

MAHMOOD FIROUZBAKHT: Okay, thank you.

CONSTANTINE ALEXANDER: No problem. Tad?

TAD HEUER: What we're being asked to look at tonight, but you are not asking right now for a variance for the front yard parking, right?

LAUREN CURRY: We are not -- we're not parking in the front yard.

TAD HEUER: I'm just looking at the overhead.

MARK BOYES-WATSON: You're looking at the as filed in there.

TAD HEUER: I'm looking at all the cars that are parked in what is now the front yard.

LAUREN CURRY: Right. The proposed site plan No. 14 shows where we

intend to have the parking. Right over here (indicating). Which is not the front yard setback.

MARK BOYES-WATSON: The existing blacktop to remain is more a monetary thing and it is not the desire to have a car parked there. There's two cars parking proposed in the back. It's actually only seven-foot-three but that's big enough for a small car.

TAD HEUER: It looks big enough for a pickup truck. Whatever Google has.

MARK BOYES-WATSON: Well, Google Earth. Don't trust those shadows. There is a big pickup truck in it, yeah.

LAUREN CURRY: In truth, though, that black truck is parked on two different parcels. The parcel we'll be acquiring or hope to acquire, and the front condominium parcel that's unrelated to this. That's something from the condominium, and it's parked part on their

property, part on the property that we hope to own. So nobody will be parking there because the separate ownership will be in place.

TAD HEUER: Well, it will be in place but there are plenty of ways for me to park over an invisible survey line. I mean, nobody is going to go out and ask the boundaries be marked to stay for the afternoon.

MARK BOYES-WATSON: There is. And I think if you look at this, Lauren, I mean that vehicle that's depicted by Google Earth looks like it's pretty close to the easement line. So it is -- I think it is -- it's sort of interesting -- it's not our intention to allow parking in that area.

TAD HEUER: Right. I'm just concerned that it will be a very attractive nuisance to a person seeking parking.

CONSTANTINE ALEXANDER: The problem is once you sell the property, it's not your intention but once the property owner --

MARK BOYES-WATSON: Right.

CONSTANTINE ALEXANDER: -- and given the nature of the property and the nature of the -- its likely use, parking there is a substantial concern, nothing you can do about it.

LAUREN CURRY: Yes. And we are not asking for permission. So, I mean it would be a Zoning violation.

CONSTANTINE ALEXANDER: Exactly. If someone wants to take action to enforce the Zoning law.

TAD HEUER: It's more a question I would ask that you make it prominent to whoever buys it, that that is not a parking space. And that they should not use this even though it is not evident because of the shape of the lot.

LAUREN CURRY: The truth is that most of our purchases from these first-time home buyer units are one car households. And so the fact that we've already given them two, should meet their needs basically.

TAD HEUER: And there's no desire to have you build or rip up some asphalt?

LAUREN CURRY: You know, we actually have looked at the different -- because it is one piece of asphalt that now serves the condominium, the apartment house and this house, I mean, I think to sort of rip up one piece is -- the other thing is we actually had been looking at that in some detail.

TAD HEUER: It's not allowed to serve you anymore.

TIM HUGHES: I think the short answer is there's no training benefit in having Youth Build rip up the asphalt.

LAUREN CURRY: Right. We actually

had looked at it because we really would like to make it a little greener there, and we are going to add a green in sort of the backyard area. If you take a look at 14 again, you'll see three sort of semicircles facing you in that front yard setback. What those are is window wells for three basement windows. And what we have tried to -- we kind of -- projecting that there would be drainage problems if we took up the asphalt and tried to --

CONSTANTINE ALEXANDER: My view, for whatever it's worth, that's going to be used as an illegal parking space over time. Okay? But unlike most front yard setback parking, this front yard is way back from the street. It is not front yard on the street. So if people choose to do it that way, they're going to be in technical violation of the Zoning By-Law and there's going to be a problem. I don't think there's anything we can do

tonight. Even if we rip up the asphalt, people will park on the grass or whatever is there. I just don't know what we can do to deal with the problem.

TAD HEUER: I'm just saying it is a problem that will exist.

CONSTANTINE ALEXANDER: Oh, it will. I agree. I'm acknowledging that.

LAUREN CURRY: You know, if you go back there right now, you know, you see something that doesn't -- you know, there's no trespassing, there's like a lot of different -- it doesn't look like somebody's home right now. I really anticipate that by the time we complete the work on this and somebody buys it and makes it their home, it will have a different feel and a different, you know, I don't think that we keep people from parking. Also right now the door's here. The door's going to be over there. I don't see that they'll be letting people

park right in front of their front door. They'll have two parking spaces. I don't see them welcoming somebody else putting their car there.

CONSTANTINE ALEXANDER: I hope you're right, but I don't believe it. Anyway, we can't solve that problem tonight. I don't think we can solve it at any time. That's for a future Board to deal with. Ready for a motion?

LAUREN CURRY: And I don't like to bring problems to your attention, but part of that is that that is and always has been nine and a half feet.

MARK BOYES-WATSON: Which driveway?

LAUREN CURRY: The access driveway.

MARK BOYES-WATSON: This thing?

LAUREN CURRY: Yes.

MARK BOYES-WATSON: So whatever this thing, the shared driveway, the

dimensions on the plan are 9.5.

LAUREN CURRY: Yes.

MARK BOYES-WATSON: It says nine foot here.

LAUREN CURRY: Oh, I'm sorry. You're right, it is nine feet. Four and a half feet on each side.

CONSTANTINE ALEXANDER: Do we have a right by Special Permit to modify that, because it's got to be at least ten feet wide, isn't it?

SEAN O'GRADY: Yes.

LAUREN CURRY: I put that on the variance for part of our request.

MARK BOYES-WATSON: Oh, on the subdivision?

LAUREN CURRY: Yes.

MARK BOYES-WATSON: Oh. Ouch.

LAUREN CURRY: It's on the subdivision. It's part of the existing condition of the access to that subdivided lot.

MARK BOYES-WATSON: That would work. So it's actually a variance for it to be a fine foot right of way.

CONSTANTINE ALEXANDER: You're saying when we grant the subdivision variance, we grant a lot of sub-variances as I pointed out at the outset.

LAUREN CURRY: Yes.

CONSTANTINE ALEXANDER: And one of them is the size of the driveway.

LAUREN CURRY: Yes.

CONSTANTINE ALEXANDER: Although it's not quite right, because that --

MARK BOYES-WATSON: She should have created the shared driveways first. Well, kind of why this comes up is because it's kind of just confirming the existence of this shared driveway. I guess because there was already -- well, maybe it's this way. There already was a shared driveway between these two properties, right?

CONSTANTINE ALEXANDER: That's

right. It's not a shared driveway, it's one driveway.

MARK BOYES-WATSON: So, actually we're not creating the shared driveway. That was there. So, the new sharing is between this property and that property.

CONSTANTINE ALEXANDER: That's the answer. And that we can do by Special Permit.

TIM HUGHES: By the time you get to that part of the driveway, does it get bigger than nine feet?

LAUREN CURRY: Yes.

MARK BOYES-WATSON: The whole thing is bigger, but it doesn't actually on paper get bigger.

LAUREN CURRY: The easement is nine.

BRENDAN SULLIVAN: The deeper we look into this the more the --

TAD HEUER: Who allowed them to create a substandard easement?

BRENDAN SULLIVAN: Let's make a motion and accept it as planned and get out of here.

CONSTANTINE ALEXANDER: Yes, you got it.

LAUREN CURRY: The all existed before Cambridge Zoning --

TAD HEUER: The easement --

LAUREN CURRY: I put that in the package. I put a 1937 plan in there with the easement on it.

MARK BOYES-WATSON: No, that was already there. That's the thing --

TAD HEUER: Our zoning is --

MARK BOYES-WATSON: Which year is zoning?

SEAN O'GRADY: It's evolving since --

TAD HEUER: Years.

SEAN O'GRADY: Twenties.

CONSTANTINE ALEXANDER: Yes.

LAUREN CURRY: Probably didn't

have driveway dimensions.

SEAN O'GRADY: Yes, yes, something like that, sixties for parking.

MARK BOYES-WATSON: Sixties was the driveway.

TAD HEUER: How about the use of easements?

SEAN O'GRADY: I don't know, you guys are killing me.

TAD HEUER: 1962. It's the common law concept.

BRENDAN SULLIVAN: 1923 Zoning came in.

SEAN O'GRADY: I think that was the first year we saw it, yes, yes.

BRENDAN SULLIVAN: I didn't sit on that Board.

MARK BOYES-WATSON: Actually, if you really want to get to Tim's point, if you really want to get there, it looks to me on the plan is that by the time we get to our property, we could provide ten feet

because we can just move this line on our property one foot. We don't need it, though. We're already in our property by then. I'm not sure we need this.

BRENDAN SULLIVAN: He thinks the gentleman should just allow for a motion.

CONSTANTINE ALEXANDER: I think you already have it through the subdivision approval.

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: And the Special Permit on top of it.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: The Chair moves, finally, that a Special Permit be granted to the owner of the property I guess. Anyway, Special Permit be granted to install new windows on a non-conforming face of the building, and to provide a common driveway access. Such Special Permit and in granting a Special Permit, the Board makes the following findings:

That the requirements of the ordinance cannot be met without -- there's no way of dealing with the driveway issues given the fact that you have two separate lots created by the variance, and that the structure itself is non-conforming as to the setback. So any modification of the windows requires a Special Permit.

That the traffic generated and the patterns of access and egress would not cause congestion, hazard or substantial change in the established neighborhood character. And the windows themselves do not by their -- they're modest in change. Actually, one window change to the rear of the structure, and that the common driveway, in fact, improves traffic to the area because it now allows cars to depart the street not have to park on the street, leave the structure and the newly created lot to be without parking.

This will have no impact on the

development of adjacent uses. And no nuance or hazard will be created to the detriment, health, safety and/or welfare of the occupant or the citizens of the city.

The new window will not create privacy problems for the adjoining properties. And, in fact, the driveway will not in any way create a safety problem.

And that the proposed use would not impair the integrity of the district or derogate from the intent and purpose of the ordinance.

Again, as we did with the variance, I would point out that the -- what's proposed, in fact, furthers the purposes of our Zoning Ordinance.

The Special Permit would be granted on the condition that the common driveway be in accordance with the plans submitted with respect to the variance, and which

have been initialed already by the Chair with respect to granting of the variance.

And on the further condition that the work proceed in regard to the location of windows, in accordance with the plans submitted by Boyes-Watson Architects.

Multi -- many pages in length. The first page being a Google Earth map which has been initialed by the Chair.

But on the further condition that although the work has to proceed in accordance with these plans, that if the chimney on the structure as shown on the plan is removed, that the petitioner may relocate the proposed window to the area where the chimney once was, provided that this window does not increase in dimension from the window as shown on these plans.

Is that everything?

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

LAUREN CURRY: Thank you very much.

MARK BOYES-WATSON: Thank you.
(Whereupon, at 10:45 p.m., the meeting was concluded.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

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

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

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

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

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

My Commission Expires:
April 23, 2015

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