

BOARD OF ZONING APPEAL FOR THE CITY  
OF CAMBRIDGE GENERAL HEARING  
September 24, 2009 7:00 p.m.

in

Senior Center

806 Massachusetts Avenue  
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Slater Anderson, Member

Tad Heuer, Member

Douglas M. Myers, Member

Thomas Scott, Member

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P R O C E E D I N G S

(7:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call the meeting of the Zoning Appeals on September 24th to order. And as is our custom, we're going to start with continued cases from prior hearings. And the Chair will call case No. 9729, 12 Mount Vernon Street.

The Chair is in possession of a letter from the petitioner Maria Ming, M-i-n-g and it states in relevant part, her request for personal reasons, she's in no position to entertain further activities with the Zoning Board at this time. So in other words, she is requesting a withdrawal of her petition.

All those in favor of accepting the petitioner's request to withdraw the petition, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The petition is withdrawn.

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

BRENDAN SULLIVAN: Is there anyone interested this that matter?

CONSTANTINE ALEXANDER: I should have asked. There has been in the past. People had good judgment not to come tonight.

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

(7:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will next call case No. 9811, 212-214 Fayerweather Street. Anyone here on that matter?

Please come forward. For the record, please give your name and address to the stenographer.

DANIEL LEVITT: Hi, I'm --

CONSTANTINE ALEXANDER: Excuse me.

Anyone interested in this petition or anyone who has trouble hearing given the seating arrangement, please feel to come to the front of the room or the side of the room to hear better.

I'm sorry, go ahead.

DANIEL LEVITT: I'm Dan Levitt from 212 Fayerweather.

ARIADNE VALSAMIS: And I'm Ariadne Valsamis, 212 Fayerweather. And this is our architect Bill Boehm B-o-e-h-m.

CONSTANTINE ALEXANDER: For the record, this case involves a request for a variance to renovate a two-family home by raising the roof, increasing the size of a rear porch and relocating existing windows on the right side. You were here before us before. There was some neighbor opposition and there were some concerns.

ARIADNE VALSAMIS: No neighbor opposition.

DANIEL LEVITT: No neighbor opposition.

CONSTANTINE ALEXANDER: There was opposition somewhere in the audience.

DANIEL LEVITT: No, that was another case.

CONSTANTINE ALEXANDER: No? Maybe -- I take it back. I apologize. There was concern by certain members of the Board as to the plans you had put forward.

ARIADNE VALSAMIS: Yes.

CONSTANTINE ALEXANDER: So we continued the case to give you a chance to reconsider it. I know you submitted new plans to the Board which are timely, and I should say also in our files. Take it from there.

ARIADNE VALSAMIS: Correct. Thank you so much. And let me just say thank you to the Board for allowing us to come back with some revisions. As was stated, we were here on July 9th. We presented a plan to the Board that proposed adding a third floor to our two-family home. The Board advised us to reduce our request and to come back with a redesign that incorporated the dormer guidelines. As was stated then, we have an existing third

floor attic space that is not functional at its current height. So to take advantage of that unusable space, we will need to rebuild the entire roof in any case. I wanted to say that we've really appreciated the Board's feedback that night. We've tried to really take your concerns to heart. We've looked carefully at a number of options to strike a balance. And in our revised plan, we're requesting a much smaller addition, and we've reduced the square footage that we're asking for. And we incorporated the dormer guidelines as the Board recommended. And I'll just go through that briefly.

We made every effort to comply with them by keeping a low roof line as is recommended. We put the addition toward the back. We limited the dormers to 15 feet. We have a setback in the front, in the back, as they request -- and we

lowered the height of the dormer below the roof ridge line. It's about a foot below that. There is one aspect of the plans that does not comply, and that is the placement of the dormer wall is in line with the load bearing wall from our first and second floors. And briefly, again, we looked at pulling this wall in, but that presents challenges. It pushes the stair in and constrains the liveable space that we're creating. The plan also has, by virtue of that modification, has some advantages using the load bearing walls for support. It makes the plan more financially viable. As I said, it allows for that efficient stair placement. And to compensate and to honor the spirit of the guidelines, we've extended the eave of the roof down below the dormer and continued it along the roof line to give that nice sight line and continue the roof that you see in the front from the street.

Again, that visual that I think that the dormers are -- sorry, the guidelines are seeking, trying to honor that spirit. So, we're looking for some indulgence on that point.

I think you have received letters from our four abutting neighbors. We have -- I don't believe we have any opposition. We have talked to all of our neighbors.

CONSTANTINE ALEXANDER: I will read the letters that we have at the appropriate point in the hearing.

ARIADNE VALSAMIS: Terrific. Glad they're there. I want to keep this brief. I want to honor your time and just close by saying we have very deep roots in our community. We're very fortunate. We have one of our abutters and two of our across the street neighbors are here if that would be helpful to the committee. And we very much want to stay in our house. We have two daughters, 7 and 10. We want to

keep them close to their school, close to grandparents who are in their eighties who they can currently walk to see. And so we're very devoted to this community and to this home, and we hope we can come up with a plan that will work for everyone. Thank you.

CONSTANTINE ALEXANDER: Thank you.

Just for the record, the -- you need three types of zoning relief. You need an FAR relief. And before you were taking the structure from .75 to .96. And now you're bringing it to .85. So you've reduced the FAR departure from our zoning requirements. There was also a rear yard setback issue which has not changed. You still have the same issues in the rear yard. You're going to want to go from 15 feet, three inches to 12 feet, three inches and your district requires a 25-foot rear yard setback.

And then the other area of zoning

issue, you're supposed to have 40 percent ratio of usable open space to lot area. And your addition will result in going from 34 percent, which is non-conforming now, to 32 percent. And that was true of your original submission and current submission. That's the issue before us. So, those three. You improved the issue on FAR, but not solved it. And the other two remain as is.

Questions from members of the Board?

BRENDAN SULLIVAN: Do you have the existing plans there?

CONSTANTINE ALEXANDER: The plans are all scattered. The one they submitted the first time?

BRENDAN SULLIVAN: Correct, yes.

TAD HEUER: I have a question while they're looking for these. Your new plan has some additional 396 square feet; is that right?

ARIADNE VALSAMIS: Correct.

TAD HEUER: How much of that comes under the dormer and how much of that is the deck addition in the back, if any?

ARIADNE VALSAMIS: That's a great question. Bill?

BILL BOEHM: The deck is adding 30 square feet. So the bulk of it is in the third floor.

TAD HEUER: Okay.

Is that deck being enclosed or is it just being extended back out into the setback?

ARIADNE VALSAMIS: No. It's just being extended out. At the moment you can't fit around a round table. So we're making it so we can sit outside. It has a roof but it's an open deck.

TAD HEUER: And what's behind you on your rear lot side?

ARIADNE VALSAMIS: We abut all three backyards. A lot of our issues are because we have the small piece of the

jigsaw puzzle for our block, and what's -- what makes our, I think, area in our house feel very comfortable is that on three sides we're bordered by backyards, and on the other side -- two sides. And on the other side by a driveway there. So we have quite a bit of space around it.

DANIEL LEVITT: Thirty feet or more actually. And there are multiple backyards that we're facing. There's no other house in line with our backyard for 50 feet at least.

ARIADNE VALSAMIS: And the backyard that runs along us is the property of Lucy and -- Patten and David Petty so I think they wrote in their letter about sharing that.

CONSTANTINE ALEXANDER: Brendan, questions?

Is there anyone here who wishes to speak with regard to this matter? Sir, come forward, give your name and address.

BEN MUMMIS: My name is Ben Mummis. I live at 316 Walden Street, technically the abutters of the abutters. And I just want to say that I completely support this effort. Ariadne and Dan have been our neighbor for quite sometime. I've known them for probably close to 10 years I think. They're tremendous neighbors, great part of the community, and we certainly hope that you'll see fit to approve their application because we love to have them continue in the community with their children. And living in a house that actually has a non-conforming dormer, I support those, but I certainly feel like they did a nice job of responding to the Board's questions and hope you will look in favor upon their application. Thank you.

CONSTANTINE ALEXANDER: Anyone else?

ROBERT JOHNSON: I'm up here

already. My name is Robert Johnson. I live at 219 Fayerweather Street. Been there for 47 years. And I'm glad to see these people in our neighborhood and watching their little children grow up. And I looked at the plans that they have, and I'm also a licensed builder for the State of Massachusetts, and a contractor for the City of Cambridge. And I looked at the plans and I like them very much. I have no problems with them at all or my family.

CONSTANTINE ALEXANDER: Sir.

LARRY RAYMOND: My name is Larry Raymond. I'm the immediate abutter to the west, and I'm just echoing Mr. Mummis's and Mr. Johnson's recommendation that I support this project. Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wish to speak?

(No response.)

CONSTANTINE ALEXANDER: No one

else. The Board is in receipt of a number of letters that I'll put into the public record in no particular order.

We have a letter from Sam Seidel S-e-i-d-e-l, on the letterhead of the office of the Vice Mayor who Mr. Seidel is. "I am writing in support of Mr. Levitt's and Ms. Valsamis's request for a zoning variance at their property at 212-214 Faywerweather Street property. While we need to pay close attention to the character, look and feel of the neighborhoods, it is also important to support the ability of families to remain in Cambridge as they grow. In my opinion, the proposed changes do support that goal with minimal impact. Furthermore, I understand that the four abutters of this property are writing letters on behalf of Mr. Levitt's and Ms. Valsamis's request. I ask that you give this application for a variance your full consideration your."

We have a letter from Henrietta Davis. It's not signed, but it purports to be from Henrietta Davis, Cambridge City Council. "I support the application of Ariadne Valsamis and Dan Levitt for a variance at 212 Fayerweather Street in order to raise the roof and two dormers to their home. Additional space is needed for bedrooms in order for them to remain in their home. I have often remarked that Cambridge should encourage development of apartments for more than two bedrooms for families that want to stay in the city. As more and more two-family houses are converted to condos, fewer families are able to remain in them. Additionally, the changes to the house will not be in the least add changes to the character of the neighborhood."

A letter from -- it's the same letter from Henrietta Davis. This is the signed letter. The one I have apparently

is a photocopy that got in the file as well.

I have a letter from a Lillian B. Spooner S-p-o-o-n-e-r, 329 Walden Street. "My house is along side the home of Ariadne and Dan Levitt and I have seen the new plan for adding room to their house, and I think they are fine. My family and I have lived in our house for over 80 years." Wow. "It's a lovely neighborhood, and this addition will enhance their property. I am pleased to support this."

We have a letter from Lucy Patten and David Petty who reside at 333-335 Walden Street. "We are writing in support of Dan Levitt and Ariadne Valsamis's variance application to expand the second and third floor living of their home at 212 Fayerweather Street. As abutters we have known Ariadne and Dan as long as they have lived there. We are happy to share

the property line the entire time to the point of taking down the fence that separated our yards several years ago. Before we had children, rented nearby loved this part of the city and made a choice to buy a house here to raise their family. This was our story as well. We moved into our house as tenants in the eighties and bought it in 1996. Rentals allow younger people a place to start out while helping owners afford their homes. A large number of condo conversions in our neighborhood recently have greatly reduced available rental property. Enabling families like Dan and Ariadne's allow them to stay in their owner occupied multi-family homes helps keep a stock of rentals, retains family friendly housing and may even cultivate future Cambridge homeowners in the process. We have scrutinized the expansion and endorse it. The design will enhance the house and the

neighborhood. In summary, we are in complete support of Ariadne and Dan's application and urge you to support it -- to approve it." I'm sorry.

A letter from Mr. and Mrs. Robert Johnson. They reside at 219 Fayerweather Street. "We live directly across the street from Dan Levitt and Ariadne Valsamis and we support their application for a zoning variance to add space to their home. We have known them for ten years. As the children are growing, we know they will need more space for their family. We have seen their plans and believe they fit well with our neighborhood. Many houses on the street have occupied third floors including our own, and their plans in keeping with the surrounding houses. We hope that you will approve their plan."

And we have a letter from Kathleen and Allen Johnson and Linda Johnson.

Johnson's spelled J-o-h-n-s-o-n. We own a home next-door to Dan Levitt and Ariadne Valsamis. We know our neighborhood extremely well. Three generations of our family have grown up in the house, with the youngest member now attending the high school. Dan and Ariadne are wonderful neighbors and we enjoy seeing their two young daughters grow up. We know that they need more space and we fully support their plans for expanding their home. We wanted to keep young families like the Levitts on our block. Their request has our full support and we hope the Zoning Board will approve it. Thank you."

I believe those are all the letters that are in the file. I thought there was one more.

ARIADNE VALSAMIS: There's one from Larry, but he's here.

CONSTANTINE ALEXANDER: He took the time to write, I should put it in the

record. Yes.

We have a letter from Larry Braman  
B-r-a-m-a-n, 210 Fayerweather Street.

"I'm writing to support an application for  
a zoning variance at the above referenced  
property which immediately abuts my own.  
The owners have shown me plans and  
elevations of the proposed roof build out  
down at the initial hearing and I have no  
objections. I do appreciate the Board's  
past diligence in regulating exterior  
renovations on our block preserving roof  
lines and setbacks and keeping the street  
from becoming a canyon. The modest  
renovation proposed for 212-214  
Fayerweather Street seems to preserve that  
street scape while accommodating the  
owner's needs of a young family."

Comments from members of the Board?

No comments. Before I put it for a motion  
we always approve -- if we do approve a  
request for a variance, they're on the

grounds that the project proceed in accordance with the plans that have been submitted. And these plans can't be changed. I want to make sure -- we have a lot of plans floating in this file and there's a lot of dates on them.

BILL BOEHM: Good, let's do that.

CONSTANTINE ALEXANDER: Are we missing anything?

BRENDAN SULLIVAN: I guess the only comments I would make, on the initial hearing on the initial plan, I thought that it was -- well, quite excessive and out of character, out of scale with the neighborhood. I think that what they have done in the interim is bring it down both in scale and character and I think it blends in well. And I'm also sympathetic to the letters in support encouraging housing for young families to be able to stay. So, I've switched from being opposed to the initial plan to be very

much in support of this particular plan.

CONSTANTINE ALEXANDER: Thank you, Mr. Sullivan.

Actually, I echo those comments as well. You did make a good faith effort to listen to us and scale the project down. And you are in a situation where you can't comply with the Zoning By-Laws, it seems, without a variance. I think you made a persuasive case to be granted a variance.

Tad?

TAD HEUER: I think I'm still -- I respectfully disagree with the Chairman. I believe this is a two-family house, the need is not in terms of requiring space that could not be achieved otherwise could easily be achieved by moving into the first floor unit. I understand that raises other issues of neighborhood dynamics. As a Zoning Board, I think we're supposed to be looking at what is required of physical structure, and here

there is ample space to accommodate the needs that they presented to us. And I don't believe that we need to grant further relief to go up and out particularly in a .5 district. We're not in a .75 district going to a .85. They're already over. So for those reasons I would oppose the plans.

CONSTANTINE ALEXANDER: Do we want to vote or other Board members want to express views? Okay. Let's proceed to a vote. Thank you, Mr. Heuer, for your comments.

The Chair moves to grant a variance to the petitioner to proceed with the renovations set forth in the petition. In so moving, the Board makes the finding that the literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. That hardship being the petitioner needs additional living space and can only

achieve that by the plans that are being proposed.

That the hardship is owing to special circumstances leading to the shape of the land, the structures and especially affecting such land and structures but not the district generally.

The Chair would not that this is -- or proposed that the Board find that this is an odd-shaped lot which the result meeting the setback requirements are extremely difficult, particularly since this is also a non-conforming structure, further adding to the problems of the special circumstances.

And that we can grant relief, the Board would also find that granting the relief requested would not be -- to create a substantial detriment to the public good or would not nullify or substantially derogate from the intent and purpose of this ordinance. I think one of the

purposes of our ordinance is to facilitate people to be able to stay in the City of Cambridge, to increase the amount of housing stock in Cambridge, to not change the neighborhood character when making additions. And I think all of those elements of our Zoning Ordinance will be satisfied by virtue which you want to do.

The Chair would further note that there is unanimous support, it would appear, from the neighborhood, including all of the abutting property owners.

And on the basis of all of those reasons, the Board would move to grant the variance on the condition that the work proceed in accordance with the plans submitted by the petitioner prepared by Boehm, B-o-e-h-m Architecture. They are three pages, A3, A4 and A5, all of which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Anderson.)

CONSTANTINE ALEXANDER: All opposed?

TAD HEUER: No.

CONSTANTINE ALEXANDER: One opposed.

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

(7:35 p.m.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

TIM HUGHES: The Chair will call case No. 9816, Nine Ash Street. Anyone here wanting to be heard on that case? Anyone that's going to speak, please identify yourself for the stenographer.

ALEXANDRA OFFIONG: Alexandra Offiong. O-f-f-i-o-n-g.

MOHSEN MOSTAFAVI: Dean Mohsen Mostavi, 48 Quincy Street.

TIM HUGHES: Go ahead. Let us know what you want to do here.

ALEXANDRA OFFIONG: Good evening. We're here on behalf of Harvard University. We're here to seek a use --

BRENDAN SULLIVAN: Identify yourself, please.

ALEXANDRA OFFIONG: Sure. Alexandra -- my name is Alexandra Offiong spelled O-f-f-i-o-n-g. We're here from Harvard University. We are seeking a use variance for the property at Nine Ash Street to allow institutional uses. And you'll see the property is here on the edge of Harvard Square. The current use of the property is an extension of the current owner's residence, and Harvard is interested in using it as an academic

center affiliated with the Harvard Graduate School of Design. And we are primarily interested in this property because of the strong connections to the Graduate School of Design because of its architectural significance. It's also known as the Philip Johnson House which Dean Mostafavi will elaborate on. The proposed activities at the Academic Center, we envision very small events. Occasional uses. Activities such as seminars, meetings, symposia, scholarly research on-site, and occasional overnight guests. And we envision that the activities would be limited in duration and would take place several times a week at most, five times a week, at most we're saying. But most weeks it will be far less frequent. And because of the historic preservation of this house is really the key to what interests the university and is really why we are

pursuing this. We, we will repair and restore this house. That is the university's complete and full attention in a manner that is consistent with the architect's original vision. We also, to that end, intend to undertake an historic structured report which will document the history and condition and maintenance of the house to support the long-term preservation. And we also agree to work with the Cambridge Historical Commission in our longstanding review protocol -- if we were ever to make any alterations, to advance the repair and restoration of this property, which is something that is unique to Harvard for any national registered properties.

As you know, we requested this case to be continued from the August hearing because we felt it was necessary to have continued communication with the neighbors. And in that time the Dean has

hosted several community meetings and has had lots of discussions and conversations. And we've done our best to clarify our intentions for the use of this property. And I hope that you received -- to clarify and define our proposed use more, we submitted a supplement to the application that is a letter that should have been received earlier this week, I have copies here, that tried to spell out more clearly what that use, what that intended use is.

DOUGLAS MYERS: Your letter dated September 16th?

ALEXANDRA OFFIONG: Yes. So, I'll bring it over to you.

DEAN MOHSEN MOSTAFAVI: Good evening. Thank you very much. My name is Mohsen Mostafavi M-o-s-t-a-f-a-v-i. I'm the Dean of the Graduate School of Design. I think it's very important to, of course, to say very briefly about the history of this house. This house was built by

Philip Johnson in the early 1940s when he was a student at the Graduate School of Design. He actually built this building as his design thesis. And this house then went on to become, in a sense, the precursor of a much better known house as the glass house which is the New Canaan, and now it's really one of the most significant residential modern residential buildings. So it's both a significant structure but it, it also has a very important historical dimension which connects it very much to the Graduate School of Design. It's a building that many of our faculty and students are aware of, and indeed, many, many people beyond Cambridge are aware of the importance of this particular building. I first really became aware of this in some conversations with the current owner Larry Tribe who felt very strongly that the Graduate School of Design would be really the

appropriate guardian to take care of house. Our primary intention is really for the preservation of the house. The house itself, as you know from the plans, is very small. It really is a very, very small residential property. And we feel that it would be a real shame if we didn't really take the responsibility of being stewards of this building, that it could potentially fall into disrepair. Already the current state of the house, because of its age, is relatively fragile and we believe that we are will need to consider the restoration of this particular project very carefully and make a strong commitment to it. I think also in terms of the activities, we of course want to be very much in keeping with the spirit of this as a house. As a very small house. We don't see this as a place where we are going to use it on a, you know, very regular basis. We basically want to use

it in a very, very modest way that is in keeping with the spirit of the house. Very small groups of our students and faculty on the very occasional basis, already you heard that the maximum that we've suggested in the letter is the possibility of one -- on one occasion a day, five days a week for a maximum of limited duration, which generally, if we have seminars and things, they don't last for anything more than three hours. So we have tried to be very limited in terms of, in terms of the way that we intend on using that. The old -- there may be dinners. And of course there may be times when we may have visiting faculty staying there, you know, as their regular house. But I think it's very important for us to link the improvements that we are planning to make to the celebration of the house. That's something that people also in very, very small groups find out about all the

time. So that's really our sort of emphasis on that, on the preservation with very modest use.

Thank you.

TIM HUGHES: Questions from the Board?

TAD HEUER: Could you explain to us what precisely an institutional use would allow you to do that you could not do with the current zoning?

ALEXANDRA OFFIONG: The property is located in a Resident A-2 District which allows residential uses. The university sees a residential use as someone who lives there all the time. And to function as an academic center, we don't think that that is consistent with holding a seminar once a week or hosting a dinner with faculty. We don't think that that is consistent under Zoning, and so we've taken it upon ourselves to pursue this so that we can be above board.

TAD HEUER: And is the use that you are -- when you say, you know, five times a week and other types of elements, when I read your application, I believe it said you want to limit your use to academic events, research, overnight guests as well as residential use five times a week. The word limit there sounded a bit strange because I wasn't sure what the non-limitation was. What won't you be doing? That seems like a significant amount of use for such a small space that would usually, as I understand it, if it's a one-bedroom house, would be maybe a maximum of two people being on the property with their occasional friends visiting for dinner or, you know, other types of events. But you're looking to significantly increase the usage of that piece of property.

DEAN MOHSEN MOSTAFAVI: I think that that we certainly don't want to use

the house in a way, as I said, that is not within the spirit of the size as you've mentioned. It's probably -- you're absolutely right, that I imagine that in most instances it will be very, very small groups of people. I think that, again, in the spirit of being completely open and upfront about this, we want to say that if we at some point did have a group of 8 or 10 people come for a meeting, we won't -- we don't want that to be as something that we have not declared. We envision that in most instances this would be used by very small groups of people. I have used the word solo in some ways, it is the idea of a small gathering of people really in the intimacy of the house. All the -- I mean, we definitely don't see this as a fulfilling of any kind of institutional space need for us that we are so short of space on Quincy Street that we go 15 minutes to use one little, one small room.

But we -- so we really want to honor the spirit of the space, and we are willing to discuss with you what you consider to be in a sense the appropriate parameters for sort of residential -- you know, for the use of a living room, for example, for small groups of people.

TAD HEUER: So if I can push you on that just a bit more --

FEMALE AUDIENCE MEMBER: Sir, can you speak up just a bit, please?

TAD HEUER: Sure.

To push you on that just a bit more, you know, the space is about 1100 square feet?

DEAN MOHSEN MOSTAFAVI: Yes.

TAD HEUER: Is that right? And you note in the application the FAR by right is 2400. I have two questions.

My first is: Wouldn't any change to the site at all that would add FAR require a variance because you're already -- if

I'm reading your dimensional form correctly, you're already under your usable open space. So you have to come back before us and everything else would be opened up again; is that correct?

ALEXANDRA OFFIONG: The house has several non-conformities: Open space, setbacks and the lot area. So there are -- I would think most any significant change would need approval from your Board.

TAD HEUER: Right.

So the second part of my question is: There's significant number of properties in Cambridge that are less than 1100 square feet that are in residential use all the time. The people who came in just before you have a two-family that's probably about -- I'm going to bet 2400 square feet, and they're looking for a bit more space, but they have people downstairs who are not a family of four

whose needs are just fine with 1100 square feet of space. I think I have about 1,000 square feet of space that I'm kicking around in. So can you explain why you can't have this as a residential use where it seems that Cambridge is full of 1,000 square foot residential uses?

ALEXANDRA OFFIONG: Oh, I think there's a few points we want to make. One of them is this property, we know there -- there could be a residential use. But we know that there are -- there's significant -- there could be significant pressure to redevelop this house because of its -- the value of the house compared to the value of the land. So we know that if anyone else were to buy this house and were not motivated with the preservation desires, that they, there could be a desire to do something else with the house to expand it.

TAD HEUER: Let me just stop you

there. That was why I asked the first part of my question. It seemed to me if someone had that desire to come in and, you know, make it a tear down, right? They come in, they level it. It's obviously a prime piece of real estate in the center of Cambridge, and they said I'd like to build something hideous but by right. They would have to come before us and we would have to go through this entire scenario again. And the argument that they would tear it down and be left with an empty lot. Because we almost wouldn't grant them a type of relief that they'd be asking. Or is it they would come before us and we would be inclined to grant them relief from open space and setback and other types of things.

DEAN MOHSEN MOSTAFAVI: I think one of the concerns is really the concern about preservation and about restoration. I think that the legalities with regards

to the development are of course there as part of the process. But I think the main concern is really that the house is a very important house, and that we feel that it's our responsibility and our duty to really preserve the house. That is something that I think is different from the question of development. And there is, there is a concern that if somebody else came to buy it as a single-family house, given the kind of values that it might have, the cost of renovation and restoration might be prohibitive. And, therefore, there is certain -- there's a certain concern that we have that we would like to make sure that, you know, we are here now. We have been approached by the owner. He has good faith in our commitment to the development, to the restoration of the house, and we are making that commitment to the neighborhood. We want to do it in the

good faith of believing in the lineage of the traditions of Philip Johnson. And so I think it's more the motivations about the preservation and restoration of the house that I think the guiding principle.

ALEXANDRA OFFIONG: And I'll just say one other thing, that the house itself, although it is 1100 square feet does sound like a very normal size house. There are some features that make it a little bit potentially impractical for a family to move in there. There's one bedroom, there's no basement. It's an open plan space. Very little storage. It's a very -- the value of the house is also very low according to the assessor's database. It's got about \$115,000 worth of building value versus more than a million dollars worth of land value. So all of those things together make it -- the layout plus the pressure make it kind of a difficult situation.

TAD HEUER: So on that issue of having a million dollar land value and this very small building value, a million dollars in land value right now is residential it's being taxed residentially, correct?

ALEXANDRA OFFIONG: I assume so.

TAD HEUER: And if it went into Harvard's gambit, it would not be taxed; is that correct? It would be granted you the institutional use?

MARY POWER: Harvard has a pilot agreement --

TIM HUGHES: Would you identify yourself.

MARY POWER: My name is Mary Power. I'm with the Community Affairs Office with Harvard University.

As a part of our payment in lieu of taxes agreement with the City of Cambridge we have established a practice through which when properties are taken off the

tax rolls, we make a tax equivalent payment. And that payment as per the most recent pilot agreement escalates by a percentage each year or by three percent each year. So the tax consequence of institutional use would not result in a revenue consequence for the city.

TAD HEUER: So it's an equal payment to the tax?

MARY POWER: We carry the current tax payment forward and escalate it by three percent a year. Is that right, Tom?

TAD HEUER: I have some more questions but I'm happy to let others.

BRENDAN SULLIVAN: No, no, go ahead. It's informative.

TAD HEUER: Have you considered what types of conditions we might be inclined to grant on this type of variance? Because certainly we're allowed to grant our variances with conditions. I think there are a number of neighbor

concerns. I don't know if these are things that are articulated in your most recent letter. Can you discuss with us the meetings that you've had with the neighbors between the time when we continued this hearing to now and whether those discussions, if any, impacted the types of considerations and conditions that we might be able to grant along with variances that we're used to granting?

ALEXANDRA OFFIONG: I think it's better if you talk.

DEAN MOHSEN MOSTAFAVI: I think we've had two face-to-face meetings that have been very informative. I hope that those meetings have put to rest some of their concerns which were probably expressed in the letters that you originally received. I think some of the concerns related to the expansion of the house. Would we want to build an additional story onto it? We explained

that it would be total against to us to try and acquire an historic house by one of our alumnae and then just add a story on top of it. Our whole reason for acquiring this house was to really preserve it as it is. We do not see expanding it, extending this house in any form or fashion.

There were some specific concerns about the fact that we would be using it at all times and at all hours. And we definitely don't want to do that. We are very clear about working out with you what would be a really reasonable, and I put the emphasis on a modest use, that doesn't mean go and conserve the house, lock the door and throw the key away. But some form of modest use that actually is in keeping with concept of celebration and institutionalizing it. As an architect, I'm very well aware of the fact that this is a house. And when we renovate it, we

actually want to renovate it as a house. We do not intend to renovate it as a classroom or a meeting room. We want to have furniture as a keeping so that when somebody moves into the house, we want them to feel actually the qualities of this house as a residential home. So I think all of those things are very important. We have emphasized the fact that we would be very quiet during the times that we were there. I think some people wanted specific assurance about the external appearance of this house. You cannot see anything of the house from the street. It's a very tall wall. We have given and are prepared to give full guarantees in terms of our willingness to actually deal with the upkeep of the external wall. There was some concerns about the planting that is there. We are completely willing to undertake responsibility for landscape -- of the

landscaping so that it's really kept to most excellent standards. So I think those were, those were some of the issues that I felt were real genuine concerns that we could respond to.

TAD HEUER: In terms of the number of individuals who would be on the property at any given time, obviously the house is small but it has a very large yard as you can see from the plans. Certainly in summer months that could be used for, you know, an outside gathering rather than inside gathering. And that seemed to be a concern that was raised in some of the letters that certainly you could have 12 people inside but it could be a perfect place outside for a 50-person donor cocktail party for example. Are those types of things that you discussed in the meetings with your neighbors?

DEAN MOHSEN MOSTAFAVI: Yes, we have. I think that, again, it's, we have

been trying to make a distinction between the number of people that we could have on the inside. Generally the number of people on the inside would be no more than ten people. But I would say, you know, on the whole it would probably would be more like six or seven people than having 10 or 15 people.

In terms of the outside, I think that there probably -- there would be events that maybe that would be about 20 people. Maybe once a year we could have a reception the same way that people in the Cambridge area have block parties. And maybe once a year they may have 30 people or 40 people. That could happen once a year or twice a year. But on average we never see the possibility of the courtyard having events that will have more than 20 people. And, again, that would be on a very, very occasional basis. This is not a party house for us. We are not seeing

this thing as somewhere where we're going to turn it into a sort of, you know, something that we want to use. The whole concept of conservation means that we will also be very aware of the impact of use on the house. As anyone who's restored their own house, you realize that if you restore a house and then you try to use it five times a day, of course you ruin it. So I think this -- we see that the future of this kind of house, to be honest, is more like a house slash museum. It's more in that kind of spirit. So it has to be treated with that level of respect, not just, you know, anybody going there. We have been very clear that we would never allow our students to be there by themselves. Wherever, whenever we did it, it would really be a small group of people going with a faculty member. They would be the responsible people.

There were some concerns about

parking. We assured people that we would not be parking in the neighborhood. We would be telling people if we had a reception once, that they could really park off site. And we would advise them about possible, you know, parking places. So that really, we do not envision us having any impact whatsoever in terms of the two parking spaces that we already have on-site.

TAD HEUER: Is there -- and it's not clear from the application, is the arrangement with the current owner, is that a purchase and sale right now? Is your purchase contingent upon a variance here?

DEAN MOHSEN MOSTAFAVI: Yes.

TAD HEUER: Okay. And would -- the property would not be used for rental activities; is that correct?

DEAN MOHSEN MOSTAFAVI: No, it won't.

TAD HEUER: I'm all set.

TIM HUGHES: Doug, do you have any questions?

DOUGLAS MYERS: One question. If you're primary, overarching motive is to preserve the house, why isn't it sufficient to you then simply to buy the house, take it under your wing in terms of ownership but preserve its present single-family residential character under the existing Zoning law?

DEAN MOHSEN MOSTAFAVI: Well, because of the fact that I'm the Dean of the Graduate School of Design, and I am -- I do not run a charity for an individual to really live in a single-family house. In terms of my preferences and beliefs, we felt that our mission is exactly as you stated, but that it would seem to be more reasonable to the wider GSD community if there was some way in which a larger group of people than one person could benefit

from the qualities that this house really presents, and from our work that we are doing. So that fine balance between wishing to preserve, but also just have such a modest use of it so that in a sense it -- we -- this house just doesn't exist behind closed walls. This is a house that actually, its qualities and its value is important to share. It is not like any other house that exists in Cambridge.

This is really the precursor of the modern glass house in America. So in a sense as an educator, it's, it seemed to make more sense to me that we would actually have some scheme, some scheme where there is a modest way in which the qualities, the benefits, the beauties of this house could be shared, could be communicated to the next generation of architects. That was, that was the wish. At the same time we have said that it is possible for us to envision that, you know, we would have a

visiting professor and they would live there for a year. And the circumstances might be different, but that would be not the way in which we would really make sense to us in the long run to make this kind of investment without the possibility of having some sort of sharing of the values of the house with our students, with our faculty. It's that sense of the balance between sharing and preservation that I think is an issue for us to grapple with.

THOMAS SCOTT: If it becomes an institutional use, is there some way to condition so that the public or the City of Cambridge or anybody who wanted to go visit the house could do that? Maybe there are some times posted or something? It seems like if it becomes an institutional use, it becomes totally under your purview and it becomes private property that nobody can get to. Nobody

can see, nobody can experience except for architecture students.

DEAN MOHSEN MOSTAFAVI: I certainly hope that that is not the case. I feel that there are other examples of these kinds of houses in different parts of the world. I have some experience of those houses. Actually, it would be, it would be delightful for us to have the possibility if, for example, the neighborhood wanted, if the City of Cambridge wanted, under specific agreements to open the house for view by those who are interested. This is what happens with the glass house, you make appointments. There are certain times when it's available. I don't think that it should be that any time anybody wants to go.

THOMAS SCOTT: No.

DEAN MOHSEN MOSTAFAVI: But I do think there is a sense, for example,

during the summer months when our students are not there, the weather is good, there may be times when, you know, on a periodic arrangement that everybody feels that that's suitable. This actually would be very much in keeping for us with the -- of how we think this house should be presented and should be shared.

THOMAS SCOTT: As an architect with no affiliation to the GSD or Harvard, you know, I would love to go and visit the house.

DEAN MOHSEN MOSTAFAVI: Well, we would love to have you come.

TIM HUGHES: I wish you could speak to the hardship involved in your application.

ALEXANDRA OFFIONG: Yes.

The hardship we -- as we've said before, we really see it -- the hardship as a literal enforcement of the ordinance would impact the long-term preservation of

this property. And it goes back to the practicality of the house as a single-family residence and the pressures for redevelopment. And really the guarantee that the university can make for its preservation, long-term preservation and the stewardship that we would offer for this very, very significant property.

DOUGLAS MYERS: Are you prepared to offer this evening any evidence other than your own statements regarding likelihood of development of this area or market limitations imposed by configuration and size of the house?

DEAN MOHSEN MOSTAFAVI: I'm not sure what that means. What is the question?

DOUGLAS MYERS: What is your evidence aside from the statements that you're making now, what is the evidence on these two points?

ALEXANDRA OFFIONG: I think the --

we look at the value of the building in relation to the value of the land, and it's the \$115,000 according to the Assessor's office versus more than a million dollars worth of the land. And that's a relationship that is not typical of the building to land. But I don't think we have the other evidence.

TIM HUGHES: No further questions from the Board?

I'll open this up to public testimony. I will remind the members of the public that since this is going to be a long evening, I can tell there's a lot of people from the letters that were written, that if you could keep your comments brief and don't necessarily repeat something that's already been said. And if you've already sent a letter, can you just give us a synopsis of the letter, because I will be reading some of these letters into the file later. Come forward

and identify yourself for the stenographer. Yes. It's not necessary to use a microphone if you can make yourself heard.

LINDEY HESS: Sure, I think I can make myself heard. Hi. I'm Lindey Hess. I live at 11 Hawthorn Street and I'm here representing myself and my husband William Appleton who couldn't be here tonight.

We feel there's too big an institutional imprint in our fragile residential neighborhood. We live in between the Mormon Church which is planning to rebuild, and 15 Hawthorn Street that was just given to Harvard. We don't know its use yet. In the same one block area is Cronkhite Center and this will be the fourth institutional building in a small neighborhood. Although we appreciate the spirit of the letter that Dean Mostafavi sent to the neighbors, we don't feel it offers us any real

protection. We want to be assured that Harvard could not rent the property. Harvard rents most of its property today because of space shortage and fiscal problems. There's been a parking lot in Radcliffe Yard rented to trucks. So we need this in writing. This house could be rented frequently for parties, and unfortunately the Dean's denials may not translate into action since they would have no legal standing. We would want limits on the number of times, and more than 25 people could be in the house. Parking is very difficult without another institutional presence. And although I appreciate the Dean's offer to inform visitors that there's limited parking available, this really isn't a solution to the parking problem. As a legal matter to sustain this variance, Harvard needs to show there is no economic use of the property. Since I oppose the change in

use, I would make the point that it can readily be sold and lived in as a single-family house. It always has been, and in fact, I believe there's a neighbor who would like to buy the house, restore it and live there. Harvard makes a compelling argument tonight that only Harvard would restore and maintain the house. And that argument is, I think, unproven. Would someone else tear it down or destroy it? I don't think so. That's the whole reason someone would buy such a historic house. And is there any reason to trust Harvard over others? I would not ask the citizens of Allston that question at this moment. So the Appletons oppose Harvard taking the house.

Thank you.

TIM HUGHES: Anyone else? Just come forward.

TIMOTHY HYDE: Good evening. I'd like to speak in favor --

TIM HUGHES: Identify yourself, please.

TIMOTHY HYDE: Oh, I'm sorry. I'm Timothy Hyde H-y-d-e, architectural historian and I'm a resident of Cambridge at No. 4 Union Street. And I'm speaking in support of the variance. I'm speaking as an architectural historian. I am a member of the faculty of the Graduate School of Design. I'm also a member of the Board of Directors of the Society of Architectural Historians New England Chapter. And I sent a letter and I won't recite all the points of the letter. The one I'd like to underscore, however, is my belief that the preservation of the house which I believe is vital, is better guaranteed by institutional rather than by residential ownership. You have heard several points in that regard already this evening. One I think I would add is that I can't imagine many changes that a

residential owner would be entitled to make that would effectively destroy the historical value of the house. For example, replacing any of the interior which would not be covered by any kind of historical preservation issues and would not come under your purview, would represent from a historian's perspective a destruction of the historical value of the house. It is part of the original design. Another example would be any transformation of the walls. Simply the physical replacement of exterior walls which are one of the earliest examples of industrial prefabricated construction in the United States. That would also constitute from a historian's perspective a destruction of the historical value of the house. However, a residential owner would be entitled to do that without coming under your purview. A third example, just one more, would be any

change to the glass wall that fronts the courtyard from the inside of the house. Again, that would not come under your purview, but would constitute the demolition of the historical value of the house. I can rehearse others, but my simple point is that I think institutional ownership with a demonstrated desire to preserve the house in its historical value in all respects, not simply its appearance, but the construction techniques as well, represents the best guarantee for the house to be maintained in the future as a historic monument. Historic monument both physical value to Cambridge but also a cultural value to Cambridge.

Thank you.

TIM HUGHES: Thank you.

Is there anyone else?

RICHARD DENEUFVILLE: Yes, I'm Richard Deneufville. I'm from 10 Acacia

Street and I'm here with my wife Virginia.

DOUGLAS MYERS: Would you repeat your last name again please.

RICHARD DENEUFVILLE: It's one of those unpronounceable names. It's Deneufville D-e-n-e-u-f-v-i-l-l-e.

So I'd like to make some statements and then some recommendations if I may. So, first statement is our small residential neighborhood is very vulnerable right now. This would be the second property within the residential neighborhood that Harvard would acquire in the period of six months. It's a lot of pressure, and I'm very glad to hear the previous case, the discussion about how the role of the Board of Zoning Appeals is to maintain the place in Cambridge for residences and families.

Second statement is, I don't think that Harvard has any hardship as claimed in this petition. That is, there are

people who are willing to buy it. There are people that have expressed that desire that feel that they would like to live there. It's been lived in before. It is a very nice place for a retired couple, for example. They don't all have families. It is a very plausible residence.

Thirdly, we've been asking over a month since we've learned about this that Harvard give us some guarantees as soon as possible. We've asked several times. They've given assurances, they've given good intentions, they have not given any guarantees. So, this is -- I mean, they've said things that they might do this, they might do that, but there's no guarantees. The Community Affairs Office and the lawyer for the General Council of Harvard have steadfastly refused to say anything else. They have no legal standing, they're not enforceable. The

notion that there's limited duration, limited duration could be anything that somebody wants from a legal point of view being from not six in the morning to midnight is a limited duration. It is not one limited duration, it's another limited duration.

Also Harvard, in its original petition, which it doesn't talk about now, talks about housing people for overnight guests in a sense, depending how many they have, they're proposing to have a guest house which is a prohibited use in a residential neighborhood let alone anywhere else unless it's owner occupied which it wouldn't be. This is a kind of use which should not be in any kind of preservation mode. Certainly if I were preserving it, I wouldn't want miscellaneous transient going through. It's an easy thing to give, but we have made requests along those lines and have

had no responses, no guarantees.

So, my request is that the petition for institutionalization be denied since there's no particular hardship. On the other hand, if it is, if a variance is given, I would like it to be, if possible, with some conditions. For example, that the notion of limited duration be in fact put into some form. We've been offered three hours of various times, but right now it is any time, five days a week, any time they want of an unlimited amount. We'd like some guarantees that it's not going to be rented out to third parties. Because a standard that we have experienced for a long time, the standard at Harvard is to rent things out to third parties for a variety of uses, for seminars, this, that and the other. It may not be the Dean's intention. And the Dean may not be the Dean in some limited duration of time, and Harvard will do what

it wants to do. The Dean's assurances, which he is a wonderful person and I admire him, but his assurances and intentions do not bind Harvard for the period for which they want the variance which is forever. And I'd certainly like the condition to be that not be available for transient overnight guests. Renting it out for a year or six months for a visiting person would live and being a resident, is not the same from having it be there for transient guests. A rich donor comes and would like to have the experience, yes, please, come over for the football weekend and be there for a while. There's certain limitations that would seem perfectly consistent with the Dean's objectives that could be put on there, but have not been volunteered, and I think should be part of it. I'd really like it that if a variance, if not denied, at least be continued so those could be

worked out in a reasonable way.

Thank you for your time.

DOROTHY ZINBERG: Good evening.

My name is Dorothy Zinberg. I am the only true abutter of all of these people. My house is -- the entire east wall abuts Ash Street.

Let me say a couple of things if I may. I have lived in Cambridge for well over 50 years as a student and as a faculty member and I have watched the destruction of the city's architectural history over all of these years. We can talk for hours about buildings that once were that should have been preserved that have no longer been preserved. I am in favor of granting a variance to Harvard because I think it is the only chance we have of preserving this house. But I do think that Richard Deneufville's requests should be addressed. So that, for example, one of the things I've seen over

many years here, we have -- I'm on the faculty of the Kennedy School. A wonderful donor gave us a great room for the faculty. We all had keys to it. And then gradually over the years people began to say, gee, this is a great space. I think -- what about using it for a seminar? What about having a dinner there? The room is used 24 hours a day now. The faculty no longer has access to it. The intentions of the donor gone. So I think that some of Richard Deneufville's important questions have to be asked, but at the same time I think this is a rare opportunity to preserve that house and to maintain its character and its role in the history of architecture in our country even though I have to say it's not my favorite house. I think we should struggle to keep it and to encourage the Dean and the school of architecture to work out some of these details with us so

that we do have the best of all possible worlds.

THE STENOGRAPHER: Ma'am, can you spell your last name, please?

DOROTHY ZINBERG: Yes,  
Z-i-n-b-e-r-g.

RINA SPENCE: Hi. I am Rina Spence. I'm here with my husband Gary Countryman and we live at 7 Acacia Street, and I'm also speaking on behalf of Susan Payne who's at 90 Brattle. I believe she sent a letter in. And we are in support of Harvard having the variance, because I think we feel that Harvard is best suited to really take care of the property. And actually I certainly feel that we have more leverage with Harvard than we would have if a private person took over the house. I do think that an individual would be more likely to try and seek some changes and that it would be much more difficult to sort of try and

deal with those variance requests than it is to deal with the university. So I think we're just speaking on behalf of the closer neighbors saying we would be delighted to see the university -- I do agree with some of the points that others have brought up in terms of having some limitations, and so we would hope that the Zoning variance would include some limitations. But I think that Harvard understands that as well.

JUDITH DORTZ: My name is Judith Dortz. I live at 36 Ash Street and I have for 25 plus years, and I've seen a lot of things happening in the neighborhood. So I'm speaking now in opposition to the variance to be done. We've been talking about this historic house. I've lived there for over 25 years. I have never seen it. It's enclosed by a very high fence on four sides, and I've never seen it. I've never even peeked in. I've

never -- I've tried to look through the door in the mail slot and I don't get in. So much for historic houses. You know, I have no idea what it is.

It's based really on trying to maintain Cambridge neighborhoods. And Harvard has been moving in gradually and picking up buildings along the way. All along Ash Street for many blocks, from 140, which is a triplex housing, housing a lot of financial houses; State Street Global Market, FDO Partners, Crimson Summer Academy, Windham Capital Management. These are all along Auburn Street and Revere Street. It's been mentioned about the Cronkhite Center at 6 Ash. I get mail from 6 Ash Street often. That takes up a whole block. They've already removed parking in front of it and the parking in that neighborhood is very dense. All I see in this neighborhood is people coming with their cars, taking up

spaces, getting variances, putting up signs saying Special Event Reserved Parking. I have come to that every day there are special event reserved parking. The neighbors and the residents have no access to it. There's a triplex house on the corner of 23 Ash and Mount Auburn which a woman left to Harvard which is now housing three separate housing units in there which is just one more piece of Harvard. It's sad to see because people who stay there come and go. Their allegiance is to the university and not to the neighborhood and not to Cambridge as the city.

We've already talked about coming off the tax rolls. I question that we really get tax money equivalent to tax money in lieu of that. I mean, I don't know where to begin. I was hearing some more of this.

There are many historical houses in

this neighborhood, and they all have plaques on it. D.S. Elliott lived here. Longfellow we know lived there, and they have not been destroyed. They have been maintained. It is a historic neighborhood. The Neighborhood Conservation District, we watch closely of anything that's -- any changes that go on in the neighborhood and that is closely monitored. And I doubt if this house would be able to get some variance, and if it did, it wouldn't make any difference because you can't see it anyhow.

As far as opening it up to the neighbors, maybe one afternoon a week they'll have it, the neighbors can come in and walk through. I question that. There are -- there's no value to the Cambridge community to turn this house over to Harvard for institutional use. I just don't see it. If it's a small house as they say, they have seminars and meetings,

I don't know, you don't have small houses, don't go there. They talk about what an important house it is. There are a lot of important houses in this neighborhood. And again, someone said Harvard may decide to improve it. Their main thought here seems to be the preservation of the property. That to me is not really a good reason to get a variance to make it into an institutional use. It's also -- I'll tell you living there for so many years and watching Harvard buy up more and more property, it's difficult to have a sense of we when you live in Harvard's shadow. It really is. It's, you're just not part of it. You're kept out of the way and it's really not a nice feeling to be -- not belonging to your own neighborhood.

Anyhow, so I am obviously in opposition to this variance and hope you'll take that under account. I had sent a letter in.

TIM HUGHES: Got it.

JUDITH DORTZ: Because I couldn't make the last meeting.

THE STENOGRAPHER: Spell your last name, please.

JUDITH DORTZ: D-o-r-t-z.

WILLA BODMAN: I am Willa Bodman and I live at 18 Ash Street. And I -- my husband and I wrote a letter. I do not support the change of variance. I would like to see the variance remain residential. I feel that if Harvard is really interested in preserving the house and that's their main concern, then let them keep it as residential and preserve the house.

THE STENOGRAPHER: Spell your last name, please.

WILLA BODMAN: B-o-d-m-a-n.

TIM HUGHES: Anyone else? Please come forward.

STEVE BLACKLOW: I am Steve

Blacklow B-l-a-c-k-l-o-w. We live at 16 Ash. This is the D.S. Elliott House.

JUDITH DORTZ: Nice to meet you.

STEVE BLACKLOW: Nice to meet you.

Dean Mostafavi, with all due respect I'd also like to go on the record as being opposed to the variance request in its current form. If your intent, your honest intent is preservation first, then I think there should be a genuine effort to reach agreement with the neighbors with regard to what the scope of your intended use is. I would offer that with an intent of preservation in a residential neighborhood that the impact should be equivalent to that of a residential neighbor. There would be tremendous pressure with expanded institutional use on parking, on traffic down Ash Street which would have great impact on our household, our household and the Bodmans who have young children. So that kind of an impact extends to families

in the City of Cambridge and in that neighborhood. So what I would offer is that we try to reach some level of agreement where we have impact equivalent to that of the residential neighbor within a residential zoning area. And I hope that we can follow through on prior discussions which I was not able to attend, to reach a meaningful compromise with that level of impact would be achieved.

Thank you.

JIM HENDRICKSON: Hi. My name is Jim Hendrickson H-e-n-d-r-i-c-k-s-o-n. I don't think we're being offered anything as neighbors so I want to agree with my other neighbor who just spoke, and say that if in fact Harvard means to have this property converted from residential use to institutional use, it should come with a guarantee for the residents of the neighborhood of what they intend to do

with it and what they will not do with it. We have heard nothing but intentions. There's been no guarantees. Can't there be a guarantee that the house will be used -- will be maintained as a -- is that Harvard promising or just the school of design's intention that it will be used as in effect an historical exhibit? Is there anything that says that Harvard will not change their mind and tear the building down or build a second story on it or convert the building into something else? I think those guarantees ought to be written in, otherwise why are we here?

Thank you.

PEBBLE GIFFORD: My name is Pebble Gifford, and I live at 15 Hilliard Street. And I'm in an odd position tonight because I'm wearing maybe four different hats as far as I can see.

No. 1, I'm in the neighborhood. I live on Hilliard Street.

Two, I'm an ardent preservationist.  
And, three, I'm a friend of the  
owner Professor Tribe.

And fourthly I'm a real estate  
broker. And I've been consulting with  
Professor Tribe about this house for many  
years. When he acquired it, he used it as  
an office and moved all his scholarly  
books in there, and it was a very pleasant  
environment. But he felt very strongly  
that he wanted something as historic value  
and he wasn't going to take that lightly.  
So, when he came to me about what to do  
about it, I said well, I think we need  
some expertise here because I am not an  
expert on this particular style of  
architecture. I knew about the glass  
house and a little bit about Philip  
Johnson. So my suggestion was that we --  
he retain Brian Pfeiffer. Now, I think  
some of you may be familiar with Brian  
Pfeiffer. He's a resident of Brattle

Street. He's a local, very strong historic preservationist. His career -- he's been (inaudible) and now historic mass. And we asked him to evaluate the house in the light of its history, its connection with Harvard, and other similar houses throughout the country. So, he did an exhaustive study, and some of it was surprising to us.

First of all, a lot of these houses have been bulldozed and torn down. Not necessarily Philip Johnson houses, but houses of the same period, because there was no will in the community to save it or preserve it. And then you have a good example in the glass house in Connecticut that he designed, which is, as I understand it, off and on a house museum. So we went back and forth and back and forth in establishing a value, the value of the house of this sort was very difficult. So to make a long story short,

Professor Tribe decided to put it on the market at a set price that I can't even remember what it was, I tell you. And we did advertise it for about a month. It was advertised in the Harvard Alumni magazine with a picture, and we got a number of inquiries but no offers. And at this point I think the dialogue has started between Professor Tribe and the Dean of the Graduate School of Design and gradually things evolved and it made all the sense to Brian Pfeiffer and his recommendations that Harvard acquire this house. And that Professor Tribe should make that possible both in accommodating a price that they could pay and that Harvard would reach out and try and meet a price. So I think everybody compromised on the price. And I think it's fair to say -- and it's a -- it will be a public number when it sells. So I won't go on about that. But it seemed to be a match made in

heaven. And from my perspective I was worried having seen what's happened to houses like this, how quickly it is for someone to come along with a lot of money, buy it with a single end user and have great intentions. The last year's been a good example of that. Oh, I'll preserve it, I'll endow it, I'll do this, and then they, they're Madoff investors and they go bust. The house is put on the market to the lowest bidder. And often in Cambridge I think it's disingenuous to say that it would be torn down because of the demolition permit. I think it would probably be land marked before that would happen. But it could be changed in the inside. Someone mentioned earlier, I thought it was interesting, I've been in the house many times. Everyone here was very aware it was developed by Philip Johnson when he was a student at GSD and it was his senior project -- thesis. And

another bit of information I got was that his friend Mies van der Rohe. First of all, I think he lived in the house when he was in school once it was finished, and his colleague Mies van der Rohe also lived there with him, and designed some of the interior features which have been pointed out to me. I think like the wall around the bathroom if I'm correct. The only wall in the house. And I think he probably may have designed some furniture. And so Professor Tribe and I would talk about wouldn't it be wonderful if we could get some of the original furnishings back that Mr. Van der Rohe had something to do with?

Anyway, the whole thing seemed to make an awful lot of sense. And then of course Harvard was in hard times and it wasn't clear how much of a restoration or preservation they could do of it. But I think it should be, and I hope there are,

commitments that when they are better financed and have the funds available, that they will do what needs to be done to this house. As I recall, as there are some structural problems with it and it needs some heavy investment. But I came away having convinced to trying to sell it that there was no way of selling it to an end user. First of all, it only sleeps two people, one bedroom with a double bed in it. I don't think a king size even fits. You're limited with guests or owners, you're limited to two people there at night unless they want to share a bedroom. So, a couple a night. So with that in mind, we decided that Harvard, making it work with Harvard was the most important thing happening and that took a lot of time. Professor Tribe put hours into that and a lot of people were involved. It wasn't a lot of feel to put together. There were negatives on both

sides, but I think everybody felt this house of all houses should go to the GSD given its history with Philip Johnson and the connection with the school.

And my community role, and I've told Harvard this, I think the issues are intensity of the use by Harvard and I made that clear. It's been my position with the neighbors is that it's one thing to have a seminar for eight students, it's another thing to have a fundraiser for 50. And parking problems have been addressed. So my suggestion was that there be a finite limit. And I thought the City of Cambridge would have their limits in their fire codes or building occupancy limits. But inside the house there is a built-in limit. But when you get into the gardens, which are beautiful, you could pack a few people in there. So maybe there could be an agreement on that.

And the second thing I think that

should be very firmly understood is the parking. If there is an event there that's by invitation, that Harvard should make it very clear on that invitation where you can go and park. And they've done this in Mid-Cambridge. Maybe you're aware of it. Sanders or the museums have a function, they're told -- you're told in the invitation you can go to the Broadway garage and get a permit and park there. And I've done it many times, and it's free. So similar arrangements could be made for whatever garages you can identify in our side of town. I think that has to be very explicit. If you're coming here for an event at the Johnson house, here's where you can park. You don't search the neighborhood for a parking space. So I think if those could be put into writing and the conditions of the permit, I would be comfortable with it in all my hats.

Thank you.

TIM HUGHES: Anyone else who would like to take advantage of public testimony?

(No response.)

TIM HUGHES: Seeing no one, I will close public testimony. I was seeing no one, but I guess I'm seeing someone now.

GINGER LYONS DENEUFVILLE: My name is Ginger Lyons Deneufville L-y-o-n-s D-e-n-e-u-f-v-i-l-l-e. Just wanted to make one other comment in terms of the parking.

We frequently have parking on both sides of our street which is illegal. Often that happens on Sundays in particular because of people attending church. We had an incident with someone whose house is in the middle of Acacia Street. I live at Ten Acacia Street, where they had a potential fire, and the fire department could not get its truck down the street because of the parking.

And I think that regardless of what anyone can say about Harvard's request for people to park somewhere else, I think that's a pretty empty promise. That how people get to any function is gonna be what the participant wants to do and not what the host suggests that they do.

TIM HUGHES: Step forward, please.

JANET AMPHLETT: Hi. My name is Janet Amphlett and I live at Eight-and-a-half Ash Street Place.

TAD HEUER: Spell that.

JANET AMPHLETT: A-m-p-h-l-e-t-t. And I have felt very torn by this all along. I feel that there is a compelling case for preserving the house and for it to go to the Graduate School of Design. But I have also felt that there really doesn't address the loss of a neighbor. And I think what is a neighborhood? It's our neighbors. And I've gone back and forth on this in my own mind whether it's

in our interest as a neighborhood for this to happen, and partly it's the nature of the house. It's a very forbidding, unfriendly structure. And I'm trying to imagine how we would even have back and forth or develop a relationship, which I think was mentioned early on in the process. I'm shaking because even as I am here speaking feeling a need to speak because I love this neighborhood, I'm really not sure what to do. So, that's my statement.

BRENDAN SULLIVAN: You're not helping us at all.

JANET AMPHLETT: I know. I know. I don't think a standard has quite been met yet that offers the neighborhood something. Maybe I will say that. That we're here as neighbors for a neighborhood, not as people who want to preserve a very beautiful artifact which I also feel is compelling but.... Can I add

one other thing?

TIM HUGHES: Why not?

JANET AMPHLETT: Well, maybe I won't. Sorry.

Thanks.

JEROLD KAYDEN: Sorry about extending this. My name is Jerold Kayden. I'm a resident of Cambridge.

TIM HUGHES: Spell your name.

JEROLD KAYDEN: J-e-r-o-l-d K-a-y-d-e-n. I'm a resident of Cambridge. I've actually lived in Cambridge since 1971, and my house is fairly nearby this house on Clement Circle. I've been a student at Harvard, a student at the Graduate School of Design as well as at the law school, but now I'm a professor at the Graduate School of Design. And I rise to speak because I do want to emphasize from the point of view of the petitioner, which after all is the Harvard School of Design, Harvard University, seeking to

gain access to this house. How important it really is to us and how much of a hardship in a funny way it really would be for this house and this opportunity to be lost to us. As a faculty member, not the Dean who has already spoken I think quite eloquently about the need, but I want to emphasize as a faculty member and as a student at the school, the notion that we could be neighbors, you know, of yours which is something to be worked out as things go forward. Good neighbors in this neighborhood. Not disruptive neighbors. Not neighbors that would create unhappiness let alone hatred, but instead good neighbors, good stewards and good stewards are finally good neighbors. So I simply rise to say the idea that we, the Graduate School of Design could become stewards and good neighbors of this wonderful asset in Cambridge in this neighborhood could not be a better

testament to the future of this place. Legal guarantees to be sure, put conditions in, whatever is finally dealt with. But beyond that, there is a spirit here. I cannot imagine a better real steward than this design school where Philip Johnson was a student, where he completed his senior thesis effectively by doing a house. Not something that many students do. And that we as faculty and students can see living with into the future in an enormously excited kind of thing and a good neighbor.

Thank you.

TIM HUGHES: Is there anyone else?

(No response.)

TIM HUGHES: Seeing no one, I'm going to close public testimony. Give the petitioners a chance to respond, rebut anything you were listening to.

DEAN MOHSEN MOSTAFAVI: Just a couple of small points of clarification.

I, first of all, I really appreciate this spirit of the comments that are being made about us working things out. I mean, it's a pity that you missed those two meetings because we entered those meetings precisely with the spirit of trying to work things out. Some people want us to work things out with them individually. And we have entered that in the spirit of the communal conversations, but we've always also understood the recommendations, the agreements, the legalities are with you. It's hard for us to basically figure out an arrangement with each individual resident in terms of what their preferences are or what they consider to be acceptable levels of use. So, it's not that we have tried not to in fact go exactly towards the direction that you were saying. We felt by stating that something like five times a week for a limited duration, which we kept saying our

durations are two to three hours, they're not six to seven hours. That we were talking about on average something like 10 to 15 hours a week in total in terms of what we could use there, why we could use the house. Those were the sort of terms that we were generally trying -- that was the spirit of the conversation.

I think also Richard has spoken about the question of hardship. I don't think we ever denied that people could -- somebody would come along and buy the house. I think the purchase of the house has never been a question. I think we want to again emphasize, and I think most people have spoken about this, it was really the very specific manner of preservation, the precision of that, the way that we have already entered into a conversation and agreement with Charles Sullivan in terms of our intention to actually have a survey done which

precisely establishes the current condition of the house. What is wrong? What is not? What is authentic? What should we do? This is really not just some promise in the future. This is an expression of all things -- these are kinds of things we are actually waiting to do.

People also spoke about the fact that neighborliness and the idea of the neighborhood -- and at the same time they speak of the fact that this has got a wall around it and they haven't seen anybody around for a long time. So I don't really consider that to be necessarily a sign of anything neighborly. I think the point that you were making about the openness of the house, the idea that in fact as neighbors, we would welcome whatever the neighbors felt would be the appropriate level of communication in terms of having meetings there together, having receptions

with the neighborhood, having events that would be really for the wider Cambridge community. It's through those specific types of things that one actually constructs neighborliness. It's not just simply by having people that you don't see.

Also, we were very precise, and we would be very happy to work with you on this in more detail, what is the relationship between our use and the concept of what somebody would be living there would use the house. And so it's actually with that in mind that we tried to be as modest as possible in some way not to see our use as anything that would be having any kind of significant impact with people coming in and out of the house.

MARY POWER: I will briefly add to that that the letter that we submitted that you have dated September 16th was

submitted to you with the very expectation as raised by some of the residents that it could be incorporated into the decision in some way so as to be a guarantee. And I think what we've heard is perhaps some request for clarification, which I believe we'd be prepared to offer to you tonight.

DEAN MOHSEN MOSTAFAVI: So, I think that the concern, again, something that Richard mentioned, we are making a full commitment not to rent the house in any form or fashion. This is not our intention to -- outside of our own people. Yes, out of Harvard use. To guarantee not to expand the floor area, including not adding any upper floors or making any additions. We would be willing and happy to actually make a commitment to limit the number of times that we are using the house. No more than 25 guests at any one time. And as we said, no more than -- for no more than five times. Five times a

year, yes.

ALEXANDRA OFFIONG: I think just to clarify the Dean's statement. I think that on average there would be more something like 10 to 15 guests using the house at any one time, but maybe five times a year the university would be allowed to have a slightly larger number of people up to 25.

DEAN MOHSEN MOSTAFAVI: That's when we were mentioning the outdoor garden.

ALEXANDRA OFFIONG: Yes.

THOMAS SCOTT: How are we going to address parking in that situation if you have 25 guests?

ALEXANDRA OFFIONG: In the letter that was sent on the 16th of September we will most certainly tell all visitors and guests to the house, inform them about all of the parking available in Harvard Square. And we can perhaps designate a

lot in the area. There are several large lots in the area. And we could designate one of those as the lot that is used.

FEMALE AUDIENCE MEMBER:

(Inaudible.)

TIM HUGHES: I'm sorry, I've closed public testimony. I have letters to read into the file. Do you want Board comments at this point before I read some of these?

BRENDAN SULLIVAN: You can read them.

TIM HUGHES: It's going to be redundant.

I have letters from Lindey Hess, Robert Deneufville -- Richard, Judith Dortz, Steven Blacklow and Jimmy Hendrickson who have all testified. So I'm not going to read the body of these letters, just to say as the matter of the record that the body of these letters is pretty much in keeping with their

testimonies.

And I also have a letter from Curtis Polari, a landscape architect. It says, "Dear Mr. Alexander, Members of the Board, I'm writing to object to Harvard's intent to convert 9 Ash Street from a residential to institutional use. I have been an owner at 24 Ash Street for 50 years and have been active in creating the Conservation Preservation District and was president for one term. The Cronkhite Center is the only anomaly to the residential character of this area. None of the intended possible uses of the property by Harvard fit neatly into the residential character of the area of which the neighbors have organized and maintained as letters similar to mine will attest. I sincerely hope the Board will deny the Harvard petition." Curtis Polari, 24 Ash Street.

I have a letter from Tim and Marcia

Shaw at 147 Mount Auburn Street. "We're writing to a special acquisition to express our opposition to Harvard's intent to convert Nine Ash Street from residential use to institutional. We live around the corner from Nine Ash Street at 147 Mount Auburn, which we have owned since 2006. As 35 year residents of Cambridge, we understand and value its unique mix of uses within a small densely populated city. The Ash Street neighborhood is a particularly good demonstration of this with shops mixed in with houses along Mount Auburn Street and several Harvard and other institutional buildings along Brattle Street. It is however a delicate balance, and once a property is changed to institutional use it's difficult to imagine it ever changing back to residential. Harvard's argument of hardship in this case is difficult to understand. At 1100 square feet the

house, although small, is similar in size to those along Foster Street several blocks away for which there is a brisk demand. As far as pressure from the developers, we can't see any except from Harvard itself. But we respect and admire Harvard as an institution, it is difficult for us to conceive of a definition of the hardship that would apply to Harvard University. We urge you to reject this ill considered application which is not in the best interest of the neighborhood or the citizens of the City of Cambridge." Again, that's Tim and Marcia Shaw at 147 Mount Auburn Street.

And there is a form letter from Willa and Taylor Bodman. Willa, who spoke, and it's been signed by Willa and Taylor Bodman. And there are other copies of the letter that have been signed by different people. Signed by Grenil and Bruce Scott at Eight Ash Street Place;

John and Robert Parker at 13 Ash Street; and Ryan Owen at Eight Acacia Street. The bodies of which is pretty much the same in opposition of testimony we've heard so far.

FEMALE AUDIENCE MEMBER: Don't you get to read that anyhow?

TIM HUGHES: I could. Do you want to be here until midnight?

FEMALE AUDIENCE MEMBER: Well, I'd like to hear what those people have to say.

TIM HUGHES: It's one letter, but it's not separate letters by all the people. They've all signed a letter that was constructed by the Bodmans.

FEMALE AUDIENCE MEMBER:  
(Inaudible).

TIM HUGHES: "Dear Mr. Alexander, Members of the Board, we're writing to express our concern over Harvard's intent to convert Nine Ash Street from

residential to institutional status. We reside at 18 Ash Street" -- and including the other people that I have mentioned -- "which we have owned for eight years. In our opinion, the proposed institutional use is inappropriate to the design purpose of the house and sensitive to the home's particular location and unsympathetic with the surrounding neighborhood. The house was built as a private residence by an architect who knew well the difference between residential and institutional purpose. Since Philip Johnson put it up for his own private use, the house has been a private residence or latterly an extension of the adjacent private residence of Five Ash Street for 67 years. The house is Sited on Ash Street, a narrow one-way street with parking on one side. Ash Street is the most direct alternative to Harvard Square as a means of going from the river to Cambridge Common.

Consequentially it is actively used by taxicabs, shuttle buses and other through traffic. Interruptions to the smooth flow of Ash Street, for example, by a delivery truck, quickly backed traffic up the length of Ash Street often spilling over to Mount Auburn and on occasion back to Mount Auburn's intersections with Hawthorn Street in one direction and Brewer Street in the other. Residents are acutely aware of this problem and take care to minimize frequency and impact. Personal consideration to neighborly relations is essential as it is a general mindfulness to the potential repercussions to others by home maintenance by tradesmen, delivery, social gatherings, etcetera. When in 1942 Philip Johnson designed his residence with a nine-foot privacy fence around three sides, the house faced undeveloped land across Ash Street. Thirteen years later Harvard erected the

three-story three quarter high Cronkhite Center and dormitory, which is, according to Harvard, an architectural history. The least successful of all Radcliffe buildings as urban design. That was a quote. Cronkhite broke away from the inward facing arrangement of the skillfully designed Radcliffe yard. Instead it was built to face west and through residential Ash Street. This cannot be undone, but would it be appropriate to award Harvard a variance so that it may further institutionalize the neighborhood? Apart from the Cronkhite Center, the area around the Johnson house now listed as the Ash Street National Registered Historical District is entirely residential. Harvard's description of hardship is disingenuous. First the Johnson house is presented as impractical as a residence. In fact, it is the smallest and least expensive home on one

of Cambridge's most desirable streets. A few blocks west sits Cambridge's designated Marsh District with diminutive houses of pride. Even closer to the north, south and east apartments of a similar size are among the city's most sought after and priciest per square foot. Many of Cambridge's diverse citizens live in comparable spaces including professors, retirees, single sex couples without children, etcetera. Some choice properties in Cambridge are second and third residences for their owners. It is confounding to think that Harvard cannot find or build meeting rooms on its campus without removing a tax paying residents. Harvard overstates its case in asserting there is significant pressure for redevelopment and expansion of the property. Harvard is the only developer in our neighborhood. Other than Harvard's Cronkhite Center there has been no

development or even significant exterior alteration on Ash Street between Mount Auburn and Brattle Streets since the Johnson House went up 67 years ago. But more to the point pressure for redevelopment of Nine Ash Street is a phantom issue that reveals Harvard's arrogance. The architectural significant Johnson house cannot be changed and developed without an extraordinary change in the principles and practices of the BZA and Cambridge Historical Commission. Harvard's variance application makes no reference to another property whose treatment could shed some light on appropriate non-residential institutional use of the Johnson House. Walter Gropius, a professor at Harvard's Graduate School of Design built his residence in nearby Lincoln in 1938, four years before GSD student Philip Johnson designed the Ash Street home. Under the stewardship of

Historic New England, formerly the Society for the Preservation of New England Antiquities, visitors to the Gropius House are limited in many ways to preclude uses such as Harvard intends for the Johnson House. For example, HNE requires protective shoe coverage, prohibits food or drink in the building. It strictly limits use of the tour among other preservation measures. HNE sensitive restrictions are enforced despite the fact that Gropius House is located off the road in a bucolic setting and has twice the interior square footage of the Johnson house. Such is the respectful treatment of this similarly noteworthy house and such as the considerate restraint shown to a neighborhood by an institution with incomparably fewer resources than Harvard. Harvard's application demonstrates none of this sensitivity nor commitment to thoughtful restrictions nor any more

concern for the character of the neighborhood. And when the Cronkhite Center went up with an in-your-face approach. In 2004 Harvard's Graduate School of Design secured a long-term lease from the university for the property at 23 Ash Street. This too was a privately owned residence in the Ash Street National Historic bequeathed to Harvard six or seven years ago. Harvard has kept the use of the home and near to it's original and appropriate purpose by lending it out to -- excuse me -- visiting low fellowship scholars and their families. According to James F. Stockard, Jr., curator of the Low Fellowships, the house will greatly simplify search for housing each year and will cap our housing prospects by getting us out of the outrageous Cambridge marketplace. Such a use for the Johnson House could not be thought of as a hardship. The Johnson house is a

valuable, unique and useful aspect for Harvard as it is. In any case, the property's residential status is the status quo and rules that were made to restrain just this kind of encroachment would need to be overruled to change it. We would not wish to underestimate Harvard's immeasurable contributions to the City of Cambridge nor its political influence given its institutional nature. Awarding Harvard the variance would be inalterable and perpetual. In our view that would be an unfortunate insensitive and preventable break from the spirit of the Johnson House and the character and smooth functioning of the neighborhood." And once again that was signed by Taylor and Willa Bodman. And copies of it were signed by Joan and Robert Parker and Ryan Owen and Grannel Bruce and Bruce Scott. And there was one other copy signed by Natalie and Charles Reid who have since

rescinded that with an e-mail that said that they were in full support.

All right, I'm going to start reading the other letters that were in support of the -- I hope you got time -- in support of the petitioners.

This is from Timothy Hyde. He spoke tonight. I won't read that one. It's just repeating his testimony.

Leland D. Cott. After his name there are the initials F.A.I.A. I'm sure somebody knows what that means. I don't know what the F is. I know what the others mean. "As a resident of Cambridge for more than 40 years, and a member of the Harvard Graduate School of Design faculty, I'm writing to voice my strong support for this variance. Harvard's intention here [\[align\]](#)s with the interest of the community and is in an interest of long-term preservation of an important modern historical landmark. The Graduate

School of Design's intention is to use Nine Ash Street selectively and for small gatherings of the most important nature. This use will not generate automobile traffic or parking issues so critical to the neighborhood. Nine Ash Street is within easy walk of the Graduate School of Design a few blocks away. This proposal ensures that all exterior changes to the property are sensitive and in keeping with the architect's original design. As a founding partner of my firm and as a contributor to the Cambridge cityscape since 1972, I can attest that this is an opportunity that should not be missed. The stewardship of Philip Johnson's wonderful house, now and into the future by the Harvard Graduate School of Design is appropriate and in keeping with everything that makes the community special." Leland D. Cott C-o-t-t.

I'm just getting warmed up.

MALE AUDIENCE MEMBER: You're doing great.

TIM HUGHES: "Dear Mr. Alexander, and Members: As I am unfortunately unable to attend, I write in advance of the September 24th hearing in regard to Philip Johnson House, Nine Ash Street Zoning Variance. I live at Three Ash Street, two houses from No. 9, and one of three houses that would be most impacted by this variance. The other two being Five Ash Street owned by Carolyn Tribe who with her former husband Larry owned Nine Ash Street. And Dorothy Zinberg who is an abutter of Nine Ash Street on Acacia Street." We've heard testimony from. "In a letter to you dated August 4th I wrote voicing some concerns in asking for an opportunity for the community to have dialogue with Harvard regarding the Zoning change. That opportunity was granted. I am strongly in favor of the Harvard GSD

application and the house is of valuable of mid-20th century architectural asset. It's the first courtyard house built in America in the international style. It should be preserved and restored to its original condition. In my opinion, the reason for doing so, is the availability to the academic world and scholars interested in the international style. The house represents great historic significance and deserves to be available as a teaching resource. I feel that Harvard, in conjunction with the GSD, with its Overlay of the Zoning Board and the Cambridge Historical Commission is the best steward for the neighborhood and the Philip Johnson House. To see that this house remains as it was originally intended, Harvard was guaranteed -- has guaranteed the phase restoration and upkeep of the house both its interior and exterior. Given the conditioned report of

the house, and it's clear that the present owners have not made an effort for continued upkeep and repair that the house will always require. Private ownership of this property would always run that risk. It would be tragic if this house were lost due to neglect.

"I hold Harvard to their word of appreciating the fragility of this neighborhood and their stated desire to honor and respect the residential aspects that we who own and pay taxes here work so hard to maintain. This is not a temporary relationship being undertaken, but one that extends into the future. Harvard's future needs and desires must not abandon the agreement presented to this meeting of the Board of Zoning Appeals which I certainly hope will be accepted. Thank you for your time and consideration. Sincerely, Susan W. Payne." Once again, Three Ash Street.

There's a letter addressed to Mr. Singanayagam, the Commissioner. "As a long time resident of the City of Cambridge and a member of faculty at the Harvard School of Design, I want to offer my strongest possible support for the Zoning Variance referenced above for Nine Ash Street. This home which has a long and distinguished history" -- we've heard that. "I am not a residential neighbor of the Philip Johnson House but I am keenly aware of the issues which often concern neighbors in Cambridge when an important property changes hands. I have served on the Cambridge Housing Authority Board of Commissions since 1974 and was a founding trustee of the Cambridge Affordable Housing Trust. The variance will assure the site continues to be a good neighbor. First, the GSD has the means, the knowledge and the motivation to maintain the property in historically accurate

condition. It would be very sad if the house were renovated in, quotes, in a way that removed or obscured the important design features that Johnson built into his home in Cambridge. The GSD will not let that happen.

"Secondly, the building will be used for advanced study and research. Nothing could be more appropriate for this modest home situated as it is within the steps of several institutions of higher learning and designed by one of the great architectural thinkers of the 20th century. There would be only a few people involved in the work at the house since Cambridge's resident parking permit regulations are in effect on Ash Street. And because of the proximity of the property to the GSD, any visitors and regular scholars of the house will need to come by foot, so there should be no change of traffic or parking intensity in the

neighborhood.

"In the 1980s I served as Chair of our town committee convened by Mayor Alice Wolf. Over a number of months we discussed many ways that universities and the City of Cambridge could be stronger relationships. This effort by the GSD to preserve an important home in our city and to make it a center for the advancement of knowledge, was built environment is an excellent example of the major institution acting as a good neighbor. I hope you'll agree and grant this variance. James G. Stockard, Jr., curator of the Lowell Fellowship Graduate School of Design."

"Dear Mr. Ranjit, as a faculty member at the Harvard Graduate School of Design and as a resident of the City of Cambridge, I'm writing to give my strong support for the requested Zoning variance that would permit the GSD's use of Philip Johnson House at Nine Ash Street. As you

are aware, the house is "-- yes. I think we're all aware that it's a historically significant house. I think we've already referenced that the Walther Gropius House. And I think I'm going to skip that paragraph because it only took me half as long to say that as it would have to read that paragraph.

"Given the historical and architectural value of this property and the fact that its origins are immediately tied to the design school seems appropriate that Johnson House should once again play a role in the educational mission of the GSD. I therefore urge the Board's support of this variance request. K. Michael Hayes, Eliot Noise, Professor of architecture theory."

I have the letter from -- that went out to the neighbors from you. But I don't think I need to read that. And then I have one more correspondence from the

Cambridge Historical Commission.

"Dear Mr. Singanayagam: I'm writing with regard to Harvard University's application for relief of institutional use in an A-2 zone at the above referenced property. The house at Nine Ash Street was designed by Philip Johnson in 1941 as a student project and built for his own use. It consists of a single story house surrounded by a nine-foot wooden wall."

Where have I heard this before?

"It creates a private courtyard. While the design is notably unfriendly to the neighborhood, it is a significant early work by one of America's most important 20th century architects. The house is probably no longer practical for continuous residential occupancy. It has been used for many years as an accessory office and guest house by its current owner the next-door neighbor. The Harvard's Graduate School of Design used

the building to support its academic mission in a manner consistent with its current use. However, the Philip Johnson House presents a difficult preservation issue. The structure's greatest significance lies in its courtyard with the open range of rooms prefigures the architect's famous glass house in New Canaan which is now preserved by the National Trust For Historic Preservation. The house is included on the National Register of Historic places, but under a longstanding agreement with Harvard we can protect only the publicly visible exterior of the building. We cannot protect the interior without the owner's intent. Harvard wishes to preserve the house, but there is currently no mechanism to ensure that they do so. I urge the Board to grant the relief requested on the condition that upon Harvard's acquisition of this property, the university agreed to

add Nine Ash Street to the 1986 review protocol between the Cambridge Historical Commission and Harvard with the provision that the advisory review with the CHC's executive director also apply to the interior face of the privacy fence, the courtyard area and exterior walls of the house of the courtyard. Thank you for your support. Historical Commission of Cambridge, Charles M. Sullivan, Executive Director."

That's the extent of the correspondence. Open it up to the Board, comments and questions.

BRENDAN SULLIVAN: Could you just go through the legal hurdles if you could? I have great sympathy for your mission in life, what you're trying to do with the house. It is significant as we have heard. To me it's always been a fence. But, what I'm legally wrestling with is the -- your meeting the legal standard of

granting the variance. Notwithstanding your mission which again, I applaud and have sympathy of. It's that legal standard which I'm not sure you've come up to that yet.

So you're seeking relief under 4, 5, 6. If you could just sort of briefly touch on that, just let me know what we're dealing with as far as the relief being requested.

ALEXANDRA OFFIONG: We are seeking the use variance under Article 4.56.C6 and that is the category of other college or university facility. And within that we are requesting the use of specifically -- we're calling it an academic center, whose activities would be meeting on-site scholarly research, seminars, small events, such things. The hardship that we --

BRENDAN SULLIVAN: If I can just make a -- okay. We're going at 4.56,

Section C. And then go down, and it's Section 6?

ALEXANDRA OFFIONG: Yes.

BRENDAN SULLIVAN: Other college or university facilities. And outside the institutional overlay district the existing lot status would be one?

ALEXANDRA OFFIONG: Residential, yes. One.

BRENDAN SULLIVAN: One. Okay. Which is a lot which contains a residential unit listed in Subsection 431, and which is vacant and which within the 24-month period prior to the date of a permit application but subsequent to March 23, 1980 contain such residential use.

ALEXANDRA OFFIONG: So we would consider it as having a residential use right now.

BRENDAN SULLIVAN: Okay. And under our table of uses it is not permitted. So that's what generates your

--

ALEXANDRA OFFIONG: Variance.

BRENDAN SULLIVAN: Okay. So then carrying it one step forward, the standard for granting of the variance, the legal standing?

ALEXANDRA OFFIONG: As we stated earlier, we see a literal enforcement of the zoning -- of the Zoning Ordinance would jeopardize the long-term preservation of this property because of the fact that -- because of the configuration and size of this house, that the institution would provide a much more of a guarantee of the preservation of the -- of this house. It's in its totality, in its interior, it says exterior.

BRENDAN SULLIVAN: Can't that be dealt with by a deed restriction?

TAD HEUER: Right. Why can't that be dealt with with a deed restriction?

BRENDAN SULLIVAN: And Friends of

Philip Johnson House or something like that?

ALEXANDRA OFFIONG: Well, what I do know is that the university would be in a different position because of what the Cambridge Historical Commission has put as a condition, and we are very happy to agree with, is that we would subject ourselves to scrutiny over changes to the building, to its exterior. And as the GSD is the steward of the property, it would ensure that the interior of the building would, would be appropriately treated consistent with Philip Johnson's vision. I think that's the whole point of the vision.

TAD HEUER: You can have a deed restriction on whatever you like. Mr. Tribe can sell it to you as long as you run up and down Mass. Ave. twice a year wearing a red hat, right? He could put a deed restriction saying, I will sell

this to any buyer, not just Harvard, as it doesn't move a single brick, single blind, every piece of furniture remains in the house and shall not be moved. I mean, that would be possible, right? I mean, I guess part of my question is it would be valuable quite frankly to have Mr. Tribe here to have his side of the story. Is he only selling to -- and this kind of goes to the previous question is he only selling to Harvard on the condition that it will be an institutional use? That he will not sell it to Harvard in its current capacity as a residential use? Is that what I'm hearing?

BRENDAN SULLIVAN: If I could just -- I mean, let that hang. Is that woman here? The question I was going to ask her, when it was offered up on the open market, were there any conditions of that sale, you know, perspective sale? And I guess that never got answered. Which sort

of leads to your --

DEAN MOHSEN MOSTAFAVI: If I may offer from our side, because I think that if it's a two-way situation. One is that Mr. Tribe, of course, felt very strongly that we would be good stewards of this house. He knew about its history and he felt that that connection was important. But he also felt that we would take care good care of it. From our perspective, we're also now very much aware of the incredible opportunity that this house offers, and the idea that if this house was not made available to us to actually help improve it, it may, under the current rules or regulations as I understand it, let's say, Mr. Tribe would have the right to sell it to whoever he wanted. But actually we feel as petitioners that we have a responsibility to preserve this house. And the hardship, as far as -- I'm not a lawyer, but the hardship, as far as

I understand as a Dean, is that the hardship is the loss of that association with history to me. It has very little actually to do with Mr. Tribe. It has to do with what I as the Dean and we as a school feel we would lose a very important association with the history of our school. And with the values that it has and the contribution that one of our greatest alumni has made. And so, we feel we're here, we are making that commitment to preserve and therefore the loss of that right would be a hardship to us.

TAD HEUER: So the hardship is that unless Harvard becomes the owner -- I mean, I guess it's going to go back to the original question and I'm not sure how this is resolved. If part of the -- if one thing you're requesting in addition to it becoming an academic use, it could be used as a, you know, one-year residence for a visiting faculty member, doesn't

that imply that it still has viability as a residential use which means there's no hardship required to take it out of residential use and provide you with more institutional value? I mean, I'm very sympathetic, but I'm still having difficulty calling it a hardship.

DEAN MOHSEN MOSTAFAVI: No. This is the point that Mr. Myers was raising earlier on in some ways. I think that the way that I tried to answer it is that there is the hardship in terms of what we feel is important in terms of the history and the conservation of the house. There is also a certain responsibility that I have as a Dean in terms of actually the development and the commitment to do that work also goes with a certain responsibility to share the benefits of that to my community. That is, to the community of the Graduate School of Design. So, Mr. Scott's points about

would you share it with us? Would you share it with the community? In that sense I feel that that is where I keep talking about the balance. We -- for us I think I would have to grapple with this. I'm being completely honest with you, there's a -- it would be very difficult at this point for me to imagine that we could suggest that we're going to buy this house and then just give it to one person for the benefit of one person. So while I see that as part of our mix use, there may be one year where we could have somebody living there. On the whole our agenda, our purpose is really to have it, have it as a house but really have more of this what has been described more like a museum quality situation where it's, its conditions, its qualities can be shared within a very limited and modest fashion with the benefits that basically provide. So it's still in a sense a kind of museum

of residential -- it's a residential, but actually it has to -- I mean, how do we share in some way the goodness or the interest that the house has within a certain limited parameter to the wider community? And that includes the members of the GSD community.

DOUGLAS MYERS: If I can comment and further this dialogue, I still have a good deal of difficulty with taking into consideration everything you've said with nonetheless applying it and considering it in the context of standard of substantial hardship which is absolutely to me the key point in this application. Because Mr. Sullivan's question made it clear that the institutional use is prohibited until substantial hardship is shown. And with every bit of aesthetic empathy that I can muster, nonetheless when you put the hardship in terms of associational and subjective terms, and I respect your

candor, it makes our job in terms of acting in conformity with this ordinance and laws of Massachusetts as we understand it, it makes it very difficult for me anyway to reach the conclusion of substantial hardship based on those types of grounds. Especially when there's a ready alternative which is simply to acquire the house under the existing Zoning Ordinance and then proceed from there with fee ownership. Or else as other members are suggesting to negotiate any purchase on conditions satisfactory to protect your interest in the house, but also that too I admit would be subject to the existing Zoning Ordinance.

DEAN MOHSEN MOSTAFAVI: I appreciate your comments but I would, I would -- I wonder with the use of the term associational or subjective is quite in the spirit of what we -- it's not just purely a subjective thing. I think -- I

mean, a number of letters that Mr. Hughes was reading that really substantiate the case that this is not just I like it or I feel like that. It is something that is now part of the history of United States residential buildings. And it has a very important association with the school in terms of us actually feeling ethically responsible in terms of the preservation of this house. That may in fact, you know, not be looked after. Therefore, therefore, we are -- we are really looking at something that is not simply a sort of subjective condition but one that I think is very clear about the values and importance of what this house presents historically.

TAD HEUER: Here's the situation that would make it a lot easier for me and maybe I can articulate something that I'm hearing from my fellow Board members. If you came to us and said something like

this house is impossible to live in it. It cannot be used period. It's about to fall down, A. B, the living space is in no way possible to be used. But we have it and we want to preserve it. And we want to treat it as it was as a historical house, as an artifact, but the only current use we can put it to is to have small seminars because there is no other use available. That to me at least would be a more compelling case of there's a need for institutional use because its residential value is nearly extinguished. That's -- I'm kind of hearing --

DEAN MOHSEN MOSTAFAVI: No, but that's why I use the word residential museum. Simply because I'm trying to address exactly the point that you're raising.

TAD HEUER: I'm almost to the point that condition not used at all for residential use. Historically was a

residential use and it's zoned as a residential use. But the hardship issue is that it cannot be used in its current state. And here I'm having difficulty understanding that.

ALEXANDRA OFFIONG: I think one point we should remember is that it -- the practicality is for a long-term permanent residential use because, because of the building fixtures, the lack of storage, the small space, the privacy issue. I think there's a lot about this house that makes it perfectly suitable for one semester visiting faculty, but may not be as suitable for someone to live there on a permanent basis. And I think the fact that it's been used as an accessory office use for the last two decades underscores the point that that may not be the suitable use.

TIM HUGHES: Any more comments from the Board?

THOMAS SCOTT: Couldn't Harvard own it in the residential zone and do all of those things that you've talked about? It's not possible?

ALEXANDRA OFFIONG: As you said earlier, we feel that to be -- a residential use is someone living there on a long-term basis. And the uses that the Graduate School of Design envisions would be, you know, seminars and meetings, of that type of use wouldn't probably be consistent with residential use unless you can shed some light on that.

MARY POWERS: If I could just refer the Board to the testimony of Pebble Gifford who is not here I'm sorry to say. But as I recall her comments, she did speak to the fact that it was on the market, and part of the reason that she believed as a relator that it had not sold was because of the impracticality of residency.

BRENDAN SULLIVAN: What I get out of the neighbors' letters in the file, and I've read them a few times, is I think that the neighborhood, which is an extraordinarily beautiful neighborhood, is on the edge of residential and institutional. And I think that there is a line, being on an edge there is a line. And I think what they -- and maybe the fear of the unknown. But I think they really don't want that line stretched and they want to preserve what they have. And, again, we've heard an awful lot tonight about preservation. And I think that's what they are looking for. And they really don't want any encroachment into their sandbox, if you will, or whatever, you know, you want to categorize that. And agreements notwithstanding, and Harvard is a wonderful institution obviously, but the sands tends to shift and the ground shifts a lot of time as the

players leave, other players come in. Agreements are sort of maintained or not maintained or something like that. That's what I sort of get out of the letters from the neighbors, that they really want their neighborhood preserved and not sort of encroached upon.

DOUGLAS MYERS: I would agree with that. And I would -- I really feel that I should just state for the record that part of our duty as a Board is to consider the impact on the neighborhood. And I don't think we can gain, say, the possible adverse impact of not only the possible but the demonstrated likely adverse impact of change to an institutional use. Institutional use entails consequences. One of the letters that was admitted referred to deliveries, service, maintenance, catering. A whole host of foreseeable and likely unforeseeable intrusions into the life of this

neighborhood. So I think that's part of the duty of this Board is to consider and weigh those impacts.

DEAN MOHSEN MOSTAFAVI: I think we've come to you for advice and guidance on this kind of topic. You're now specifically stating that this is going to be institutionalized, caterers, vans and we keep saying that we are willing to say we want to keep the spirit of this in terms of its character, in terms of its artifact as a house. We are not going to bring catering vans. We are not going to add a second story. We will not be using this 24 hours a day. We want to preserve and also have a minimal use. We thought that you would guide us in terms of the establishment of what would be acceptable to you and to the community. This is why we went to the meetings. If we didn't want to work with the community, why would we go to the meetings twice to precisely

try to find out where is that line that you are saying in terms of the question of encroachment, in terms of being neighbors? We are not seeing ourselves as the same thing as the Cronkhite. We see that we are really trying to save this house and look after it and be good neighbors and not have trucks. If there's a way in which you feel you can state for us not to have trucks there, not to institutionalize it in the way that you are talking about and still have the spirit of us preserving it and occasionally be able to use it, that's what we have been trying to figure out. How do we say that, you know, without having this anxiety about the fact that it's now suddenly going to be a sort of, you know, mini -- no, but I think --

DOUGLAS MYERS: Again, I would -- if it is the sense of the Board to pursue that discussion with regard to conditions, I would participate and in favor of

developing conditions, strict in my view, iron-clad conditions, but I -- everything I have said has been predicated on my own difficulty in overcoming the legal hurdle of substantial hardship. And, therefore, speaking for myself, I have a great deal of difficulty even getting to the discussion of conditions.

DEAN MOHSEN MOSTAFAVI: But I always assume that you would be establishing the conditions and you would be telling us the conditions and that those conditions are binding. So the idea that maybe, you know, your point, Mr. Sullivan, that the players change, I never thought as has been characterized, that it is something that is just my word or some third party's word. That this is a legally binding agreement that is made. That you have legal authority. And whether I'm here or some other person is here, that is something that will be

followed. That's the -- it's not like some kind of a hypothetical promise that I'm making. You are making the decision and we will follow whatever decision you make.

TIM HUGHES: I personally think that the case can be made for hardship in this because the building is such a unique structure. And it does require a restoration and preservation by a steward or a trusteeship that can accomplish that and guarantee that can be accomplished. And when you said the players change, I think the player that's not going to change in this is if Harvard University was the one that would take over the stewardship. Whether the Graduate School of Design who has the most vested interest in this piece of property than anybody can imagine other than maybe having raised your whole family there for generations and generations. So I think a case for

hardship can be made for the uniqueness of the structure. And I think it's there. It's written there. I do think that the impact is a little more problematic. You know, and I do think conditions need to be set that would minimize the impact to -- in a way that you could minimize the neighborhood opposition, you know. I'm --

DEAN MOHSEN MOSTAFAVI: We would be willing to do it.

TIM HUGHES: And I know you're willing to do it from everything that's being said. I don't know how we're going to get from there to an affirmative vote on the Board without some, without you sitting down with the neighbors or without there being something written up and that everybody can live with.

TAD HEUER: I think what you said, Dean Mostafavi, in the very end was something I didn't hear all night and something I wanted to hear was the

distinction between residential use between somebody living there and a long-term residential use. That helps me significantly get to the issue of hardship. And I think as your point, Dean, I think the entire Board was looking at hardship, I think we were all, presumably all, would be looking at a set of conditions if we got to that point. And I think some of us are still trying to work out our way towards meeting that main legal hurdle for us which is to grant, not grant, what's the hardship? I think the notion of no long-term viable residential use in the way that residential use is traditionally conceived by this Board is something that helps me personally get towards the acquisition whether there's a hardship because it is a very unique, difficult to maintain space that you would want to preserve and that the Board has a very vested interest in doing so. But for

me it's the issue of can we get to a point where, and I think we can, the value of the property as a residential use in the long term capacity is simply no longer there and that the value for it now is this an institutional use, that may have the best vested residential qualities to it in terms of a short-term (inaudible) who has no appendages, no books inside. There's a shift in those kinds of things, I think, make a difference to me.

As to the conditions, if we were to grant it, I have the list of 10 or 12 of them that I've heard over the evening, I'm happy to give those to you. I think we probably would not want to pass them by here tonight given the extensive of the neighborhood that this is something that is inequitable and has been treated fairly. I think was it Mr. Blacklow said something that the impact should be the equivalent of the residential use. I

don't know if that's literally going to be possible, but I think that should be the goal that we should strive toward.

DEAN MOHSEN MOSTAFAVI: We have tried in terms of the comments that we made to keep it within what we thought was in the spirit of the comment that you made. That was why we actually mentioned specifically five times during the seven-day period of limited durations that we are now specifying of, you know, a couple of hours every time. We felt that let's say 10 hours or 12 hours during a week maybe might be -- I mean, these are a little bit subjective so, you know, what I mean? We have to come to the table, if we went and discussed this with one neighbor, and we would get a different feedback than some other neighbors that have been very supportive. So we also really would be helpful to have your guidance in terms of like, you know, what is the reasonable

means of establishing this, because I think it would be very difficult to get, you know, complete agreement by every single person about how -- is it two hours? Is it an hour? Three quarters? I mean --

TIM HUGHES: No doubt. But Tad raised the issue of whether we could get passed the hardship part before we get to the condition part. And I think that you can't necessarily say that the long-term residential use of this building is not possible. But I do think you can say that the -- and the hardship here is that the long-term residential use of this structure and its preservation as an architecturally significant building is impossible. And that's the hardship to me. That's what I see as the hardship. I don't have a problem with that. I'm ready to move forward and try and condition this variance in a way that it would work for

the community.

DOUGLAS MYERS: I would just say just briefly I hope non-argumentative response, I would just urge that the hardship must be a hardship to the petitioner. And in here the petitioner has acquired this building in its present condition and to assume the hardship. And I just don't see how that would involve a voluntarily elected hardship by the petitioner regardless of the condition of the building.

TIM HUGHES: The hardship is that the petitioner is not going to acquire this building unless we give them a variance that speaks to hardship. Otherwise they'll walk away from it.

DOUGLAS MYERS: Or make another decision.

TIM HUGHES: Or make another decision. But I think we could establish early on in these proceedings in this

hearing that the purchase and sales agreement is contingent on the variance.

BRENDAN SULLIVAN: Well, there's two courses of action. We can either take it to a vote and decide whether we get passed that hurdle. Or it could be continued for further discussion and a laundry list of conditions which we then get back to the Board for consideration. I'm not sure if we can hash those out intelligently, succinctly and given the time tonight.

TIM HUGHES: I have a tendency to agree with you. But if anybody can hash it out tonight, it would be Mr. Heuer because he's made notes on all the conditions.

BRENDAN SULLIVAN: But I think in order to do it properly, you really need to step back from the moment. Tad, is that correct, not correct?

TAD HEUER: Yes. I mean, I don't

know how we split this vote whether we would find hardship and then continue for a determination of conditions if we were to find hardship, or whether we would do it all at the same time.

TIM HUGHES: I think we just have to continue the case. Understanding that, you know, we've, we've already gotten to the point of the hardship and then the next step is the conditions. And if that doesn't materialize in a continued hearing.

BRENDAN SULLIVAN: I haven't crossed the hurdle of hardship yet. I'm crossing the continuing of more thought, more dialogue for the Board's review. Should in the next go-round we get by the hardship hurdle, then the conditions would be in front of us in a sustained form.

TAD HEUER: Right. My question is whether it's the --

BRENDAN SULLIVAN: Exercise of

fertility.

TAD HEUER: I don't want to send them back with a beautifully crafted list of conditions that would never be seen.

BRENDAN SULLIVAN: And I will state without reservations that I still have a great problem granting it because I do not believe that they have met the statutory appointment for legal hardship.

THOMAS SCOTT: I think it's a great opportunity possibly lost if we don't find hardship and have them walk away. They're here making a commitment to a historical property that, you know, has a significant architectural value, not only to their community but to this community and visitors to this city. I think -- I feel as Tim does that the hardship would definitely be demonstrated and that we really should be careful not to let this opportunity slip away.

TAD HEUER: So in order to receive

a variance, you need four affirmative votes. You've heard this evening that you have potentially at most at the moment three members affirmative votes and two members that are wavering. So you can either proceed to a vote now knowing you need four affirmative votes to receive the variance or you can request a continuance for a future date and you can come back and see if you can persuade those two members who have expressed concerns to move into your column.

ALEXANDRA OFFIONG: I think we will request a continuance.

TAD HEUER: Mr. O'Grady?

SEAN O'GRADY: I'd also like to make a comment. We seem to be going down the road towards sort of an extensive list of conditions. The fear is the same fear as usual, enforceability. Issues of 15 hours a week or how many people are in the building are simply not enforceable. So,

I keep -- I hope that's kept in mind.  
That we don't generate something that just  
generates a bunch of telephone calls that  
are -- that we can do nothing about, that  
will generate more tears than --

DOUGLAS MYERS: Cheers?

SEAN O'GRADY: Thank you.

With that said, our first available  
continuance would be October 22nd.

TAD HEUER: I will not be here.

SEAN O'GRADY: November 5th.

TAD HEUER: That's fine.

BRENDAN SULLIVAN: Between now and  
I guess November 5th it's going to give  
you an opportunity to have further  
dialogue with concerned neighbors,  
abutters. If what comes out of that is a  
piece of paper, two pieces of paper,  
whatever, I would ask that that piece of  
paper be submitted to the Inspectional  
Services by five p.m. on the Monday  
preceding November 5th so that the members

of the Board have an opportunity to review it. Also with the understanding that one person, two people, do not have a right to sabotage any agreement or anything like that. As you said, it's going to be difficult to get five people to agree. You're going to get six different opinions. And we understand that, and again, they're all well meaning. I think we will see what the bottom line is to all of that. We would like to see that piece of paper five o'clock Monday the preceding the November 5th.

TAD HEUER: And I think to guide you beside what you've seen the letters, my list of things I heard over the evening are the issue of expansion of floor area, the -- as Mr. O'Grady's caveats, the number of individuals on the property and the intensity of the use. The maintenance of the external walls to the extent that was in the purview of our Board. The

parking issue. The rental activities issue. The guest house issue. And I urge you to speak to Mr. O'Grady about the legal components of that for the short term stays as opposed to longer term quasi residential uses. And the issue of public access to the community that's similar to the way New Canaan House is used. I don't know if that's similar to the way you can use, etcetera. Hopefully you won't have to van people in. And also the elements of the Historic Commission protocol requests. So those are some issues that broadly I think I've heard over the evening. I would encourage you to --

DOUGLAS MYERS: Outdoor receptions.

TAD HEUER: And the issue of outdoor receptions.

TIM HUGHES: I think the Chair would like to be recognized.

CONSTANTINE ALEXANDER: I highly

endorse Mr. Sullivan's suggestion about the conditions be in the file by five o'clock for the -- I think that requirement should extend to the neighbors as well. That any conditions that are proposed to be adopted by the Board or considered by the Board be in the public file by five p.m. on the Monday before so that the Board can look at the whole range of conditions and consider them as well. I think the worst thing of all is conditions get proposed on the floor of the hearing that night and that's -- that's that leads to more confusion. I would suggest that you expand what Mr. Sullivan had proposed.

TIM HUGHES: Indeed. All right.

The Board will make a motion that this case be continued until November 5th on the conditions that the conditions that we'll be discussing and talking about that night be put into the file no later than

five p.m. the Monday before the hearing. That would include any conditions on the side of the petitioner and any conditions that were deemed be appropriate on the side of those opposed to the petitioner. And that the petitioner sign a waiver in terms of the time the statute of the time limitation. And change the time on the posting. Anything else?

SEAN O'GRADY: No.

TIM HUGHES: All those in favor of the continuance.

(Show of hands.)

TIM HUGHES: Five in favor.

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

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

(9:50 P.M.)

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

CONSTANTINE ALEXANDER: We have a case on the agenda. I'm going to the regular agenda for a second and then return to the continued agenda. I call case 9838, 657 Cambridge Street.

There is a letter in the file. There's an issue as to whether the proper sign posting that occurred with regard to this case was sufficient. And as a result, we have a letter from the petitioner that says: Due to failure to post, I request a hearing on the next

available date.

What would the next available date be?

SEAN O'GRADY: October 22nd.

CONSTANTINE ALEXANDER: We have a waiver of notice.

So the Chair moves that this case be continued until seven p.m. on October 22nd on the condition that we have -- the Chair notes we have a waiver in the file, but on the condition that the petitioner modify the sign that was never posted but should now be posted to reflect the new hearing date.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case continued.

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

(Whereupon, a discussion was

held off the record.)

(9:55 P.M.)

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

CONSTANTINE ALEXANDER: We're going to return to our continued case agenda. And we're going to call case 9819, Eight Follen Street. Is there anyone here wishing to be heard on that matter?

Please identify yourself for the record and spell your name.

ATTORNEY GREGORY COGAN: My name

is Gregory Cogan C-o-g-a-n and I'm the attorney for Susan and Terry Ragon who are the petitioners.

DOUGLAS OKUN: Douglas Okun, 156 Mount Auburn Street, Cambridge.

CONSTANTINE ALEXANDER: Before we get into the merits of the case, this case was continued before because there was a failure to post the sign that was required.

ATTORNEY GREGORY COGAN: Yes.

CONSTANTINE ALEXANDER: My understanding, there was an issue with the new posting although the sign was posted on -- initially which was 14 days before the hearing, that at some point during the 14-day period the sign came down or disappeared or what have you.

DOUGLAS OKUN: I don't know.

CONSTANTINE ALEXANDER: Okay. Well, I know that to be the case. I want to get more facts about it.

SEAN O'GRADY: I misunderstood. I guess what happened it hadn't been posted by 14 days. I was told by Maria that she showed up on the 15th asking for the sign. I thought it had fallen down but I guess it hadn't been posted.

CONSTANTINE ALEXANDER: So the sign was posted on the 15th?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: By definition you don't have sufficient notice. 14 days from the 15th is the 29th of September.

DOUGLAS OKUN: I thought she would put the sign back up. But she had thrown it away or lost it so I came and got another one.

CONSTANTINE ALEXANDER: I appreciate that. But since your client didn't put the sign up for the 14 days, we can't hear the case.

DOUGLAS OKUN: Oh.

CONSTANTINE ALEXANDER: We'll have to continue it further.

DOUGLAS OKUN: Oh.

CONSTANTINE ALEXANDER: I mean, it's not your fault. It's -- your client has to understand, you know, we have a Zoning Law. You as the attorney can very well appreciate that. The Zoning statute says you need 14 days.

ATTORNEY GREGORY COGAN: Right, right. I wasn't aware of that.

TIM HUGHES: Let me get something straight here, you're saying that the sign that got picked up on the 15th was when you picked up because you thought she misplaced the other one? Is there any chance that the other one wasn't misplaced, that it was up the whole time?

SEAN O'GRADY: I don't know. No, it wasn't because I was there earlier.

TIM HUGHES: Oh, okay.

CONSTANTINE ALEXANDER: So we're

going to have to -- I'm sorry, but we're going to have to continue the case one more time. I wish I could have told you this a little earlier in the evening.

What's the next available date?

SEAN O'GRADY: We have one more opening on the October 22nd.

DOUGLAS OKUN: October 22nd?

CONSTANTINE ALEXANDER: Can you make that?

DOUGLAS OKUN: The next one.

SEAN O'GRADY: We do have an opening on November 5th.

DOUGLAS OKUN: Okay, November 5th.

CONSTANTINE ALEXANDER: This is a case not heard, so you don't need all five of the people sitting on this case.

The Chair moves to continue this -- we have a waiver of notice already on file. So the Chair moves to continue this case until seven p.m. on November 5th on the condition that the sign, first of all,

be posted for the record of 14 days. And that the sign be modified to reflect the date, the hearing date will be November 5th.

DOUGLAS OKUN: So we should modify it?

CONSTANTINE ALEXANDER: Yes. Take a magic marker, cross the date that's on the sign now and put November 5th on. Make sure it's posted as required in the front.

DOUGLAS OKUN: By the fence.

CONSTANTINE ALEXANDER: I'm sorry?

DOUGLAS OKUN: By the fence.

CONSTANTINE ALEXANDER: By the fence, that's fine. I'm sorry.

All in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

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

(10:00 P.M.)

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

CONSTANTINE ALEXANDER: We're now  
ready for the regular agenda that was  
supposed to start at 7:30. The Chair will  
call case No. 9832, 233 Alewife Brook  
Parkway.

Anyone here wishing to be heard?  
You heard the drill. Give your name  
address, spell it for the stenographer.

LAWRENCE WEINER: Good evening.  
Lawrence Weiner W-e-i-n-e-r. My address  
is 21 Hill Street in Malden.

CRAIG MURPHY: My name is Craig  
Murphy. I represent Cambridge Graphics,  
the sign fabricator at 21 McGrath Highway.

CONSTANTINE ALEXANDER: You're  
here for a sign variance?

CRAIG MURPHY: Yes, sir.

CONSTANTINE ALEXANDER: It wasn't  
quite clear, all of the relief you need --  
all the variances you need. The sign is  
too big. That I got. I got a sense  
though, I want to make sure I'm right,  
that your other issues are the  
illumination, internal illumination  
because the sign is I guess more than two  
inches from the wall. That's a section  
with the sign. And the letters -- the

illuminated letters are too high. They can't be more than 30 inches and you're going to be 44 inches. I just want to be sure that, again, we all know as a Board what we're doing when we --

CRAIG MURPHY: From what I understand, I didn't know there was any issues with the size of the letters and such like that. The letters, as they constitute right now, I don't believe they're 30 inches. Is there a -- you're saying that 30 inches is too --

CONSTANTINE ALEXANDER: You cited in your -- in the advertisement, you cite the relief you're looking under is 7.16.22 C3B and I turn to that with regard to this issue.

LAWRENCE WEINER: That was Mr. Barber that cited that.

CONSTANTINE ALEXANDER: Yes. That was because the sign was 49 feet.

LAWRENCE WEINER: Illuminated sign

exceeds the area permitted 7163. And the illumination as it applies to the signage, the letters themselves -- the letters are smaller but are you taking them in total?

CONSTANTINE ALEXANDER: Well, I'm looking at the statute, and it says that one of the things is that the sign, with regard to illumination, the sign is mounted such that the sign face does not extend more attached or if extending more than two inches beyond the plane of the building only that portion of the sign face consisting of letters and numerals is illuminated.

CRAIG MURPHY: Correct.

CONSTANTINE ALEXANDER: You're going to meet that requirement.

CRAIG MURPHY: Yes.

CONSTANTINE ALEXANDER: And then also with regard to illumination, either the vertical or horizontal dimension of the sign does not exceed 30 inches.

LAWRENCE WEINER: That's what we're asking. That's the variance we're asking for.

CONSTANTINE ALEXANDER: And also, just the total sign, the size of the sign you're asking. You can't have a sign more than 30 square feet.

LAWRENCE WEINER: Right. That's what we're asking.

CONSTANTINE ALEXANDER: Those are the two elements that you're asking for?

CRAIG MURPHY: Thank you, sorry.

CONSTANTINE ALEXANDER: All right.

LAWRENCE WEINER: My name is, as I said, Larry Weiner, and we bought Fresh Pond Liquors -- well, we bought Thrifty Liquors back in 1982, and we've been there for 27 years now. And our lease was due up this year. And about three years ago John White the previous owner of the property sold it to Linear Properties. Shortly thereafter Linear announced that

we weren't going to be able to renew our lease where we were. We were in the back by CVS, D'Angelos and Newbury Comics for years and years back there. And they announced that they're going to take that building and make it for a CVS and Trader Joe's. So that prompted us to start looking for alternative sites. We looked up Concord Street. We looked at the fish markets spot at the Concord rotary there. We then weren't successful in getting into that spot. The reason we're looking is that the landlord said that he was building a building out front but that he wasn't sure that we were going to have a spot there. And if we did, it was going to be a much smaller space than we currently have. That was 6,000 square feet. Because of the license requirements, we aren't able to go anywhere. We look at the McPherson Moors building. There just wasn't any place

else. So finally, I had to accept the location where we are right now which is out front there. What happened was that the -- in negotiating with the landlord, there was one spot that we took that was next to Sleepy's and we were going to be there, and also the other lease -- in the lease terms we had a pilon drawings that was -- we had two, 4 by 16 double sided sign for that 27 years that we were there. It was 256 square feet. And we were told, no, you're not going to do that. You're down to about 55 square feet. So we dropped that sign. And he also, at the last minute, insisted that I move from right next-door to Sleepy's to the other remaining space which is next to the bank. The bank is on the corner. And that's three sides there. And so we're over in the corner there. And that move, that precipitated us being here before you tonight. Had we not moved, we wouldn't

have had the substantial hardship that was created. And we only moved over one, one bay. But the bay to our left, the previous bay is more than a hundred feet from the Wheeler Street sidewalk, at the edge of the sidewalk. So there, that would allow a sign to be twice the size of the sign that we're in right now. We're only allowed 24 feet.

CONSTANTINE ALEXANDER: Is the size of your sign and the nature of the illumination the same as the Sleepy's sign?

LAWRENCE WEINER: Yeah. We're going to have a little box, but the channel letters are going to be the same.

CONSTANTINE ALEXANDER: And external dimensions of the sign, sleepy's didn't have to come before us and neither did Chipolte, for the sign anyway.

LAWRENCE WEINER: That's one of the things. This building has three sets

of sign dimension controls. So again, part of the hardship for us is that we've got T-Mobile, Chipolte, Sleepy's and this vacant space that's going to be able to come in and have a 48-foot sign. If I may show the difference here. The top picture is what we are allowed by right. And the new tenant sign would be allowed space would be the bank. And what we're asking for is to be a conformance for that kind of signage. And we're buried over in the corner. It's going to be hard to see us from Trader Joe's and CVS when they're open there. We're trying to make due with the 700 feet.

CONSTANTINE ALEXANDER: So this photo simulation, this is what the sign is going to look like if we were to grant you relief?

CRAIG MURPHY: Yes.

LAWRENCE WEINER: Page one is submitted.

CONSTANTINE ALEXANDER: Submitted by the Zoning?

LAWRENCE WEINER: Yes.

CRAIG MURPHY: He was going to be where the words "new tenant" is.

LAWRENCE WEINER: That's where I had it.

TIM HUGHES: That's where you're allowed to have a sign there?

CRAIG MURPHY: Yes.

TIM HUGHES: So let me get this straight, I can go to the bank, get my money and get liquored up and fall asleep at the mattress place?

LAWRENCE WEINER: And Mexican food.

THOMAS SCOTT: So this sign --

TIM HUGHES: I'm good with it.

THOMAS SCOTT: The sign on the first sheet that's 24 square feet?

CRAIG MURPHY: That's 24 feet.

THOMAS SCOTT: How big is it? How

big is it?

CRAIG MURPHY: 23 feet by 8 feet.

TIM HUGHES: What is it you're looking for? What's the difference in the relief?

CRAIG MURPHY: 28 square feet.

CONSTANTINE ALEXANDER: The second one is 150 inches by 52 inches. So four feet by 12 feet.

BRENDAN SULLIVAN: What about the side -- the opposite side facing the parkway? Are you asking for any relief facing that sign?

LAWRENCE WEINER: No. We're going to be in conformance with the, the other ones.

BRENDAN SULLIVAN: Is that the one that you're going to put on facing the parkway, is that --

CRAIG MURPHY: These are --

BRENDAN SULLIVAN: Let me finish the question before you answer. Is that

-- the sign that you're going to put on the parkway side of the building, is that the same size as the temporary sign than that's there now?

CRAIG MURPHY: The banner? No. It will be smaller.

LAWRENCE WEINER: We have a picture of it, don't we?

We have the new tenant stand there. But underneath there there's that freestanding sign that used to be Ground Round, and I tried to get that as a sign and that went to the bank. So even though it's blocking my store, we are --

THOMAS SCOTT: The size of this sign now is --

LAWRENCE WEINER: The one over the -- between our two Open Now signs. That green, that little green --

THOMAS SCOTT: No, the Savemore one on the top, that's 24?

LAWRENCE WEINER: Yes.

BRENDAN SULLIVAN: But you do have a sign on the pilon?

LAWRENCE WEINER: We do. I did want to say that we are the last tenant that will be before you in this building because everybody else has it by right.

CONSTANTINE ALEXANDER: I'm confused.

LAWRENCE WEINER: That's from Alewife.

CONSTANTINE ALEXANDER: You're not looking for relief on this sign?

LAWRENCE WEINER: No.

CONSTANTINE ALEXANDER: Okay.

LAWRENCE WEINER: And as you can see, we'd be buried in there and suffer without the variance. So I respectfully request -- I know that you're an independent body and act --

CONSTANTINE ALEXANDER: We certainly will.

LAWRENCE WEINER: But I hope

you'll take into consideration that recommendation made by the Planning Board.

CONSTANTINE ALEXANDER: Which I'll read into the public record at some point.

BRENDAN SULLIVAN: Is the height and length of your proposed -- the height of the proposed sign the same height as the Sleepy's and the Chipolte's? What is the relationship, your sign to their sign to that sign?

CRAIG MURPHY: They're pretty much exact how it is visually there. The Letters are actually much smaller than say Sleepy's.

BRENDAN SULLIVAN: The overall dimension height-wise to here. You don't know that?

CONSTANTINE ALEXANDER: I understood that this basically photo simulation which has your sign that you would like to put on it, this is accurate. So this should show the relationship of

the size of this location and the sign and Chipolte's?

CRAIG MURPHY: Yes.

CONSTANTINE ALEXANDER: If we were to grant relief to having a sign that conforms with this photo simulation as well as the dimensions on this --

CRAIG MURPHY: Correct.

CONSTANTINE ALEXANDER: -- then you would -- that's what you have to live with?

LAWRENCE WEINER: That's what we would like.

CONSTANTINE ALEXANDER: We should be thinking about it in terms of this sheet. This is what it would look like in terms of granting relief. Any further questions?

Let me ask if there's any public testimony. Anyone wishing to be heard on this matter?

(No response.)

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

There is a letter from the Planning Board that I'll read into the record, but I wanted to let Mr. Sullivan study it further before I do that.

BRENDAN SULLIVAN: Go ahead.

CONSTANTINE ALEXANDER: You ready? We do have a letter from the Planning Board. "The Planning Board reviewed the sign variance request for case No. 9832 and supports the application. The Planning Board found that the applicant demonstrated a reasonable hardship on the triangular lot where their retail space is 95 feet from Wheeler Street, while the next retail space is more than 100 feet from Wheeler Street and, therefore, allowed twice the amount of signage per lineage foot frontage as of right under Article 7. The applicant illustrated through the presentation of a conforming

sign that it would be out of scale with the rest of the signage on the Wheeler Street facade that has been approved for as conforming or granted waivers for signs. The parkway facade conforms to the signage regulations and have been applied to all storefronts on that side of the building and preserves the parkway character for this new commercial development at such a prominent site.

Comments from members of the Board?  
Ready for a motion or not? I don't want to rush you, Mr. Sullivan.

BRENDAN SULLIVAN: Go ahead. You can make a motion.

CONSTANTINE ALEXANDER: Okay.

The Chair moves to grant a variance to the petitioner to erect a sign or signage on their premises at 233 Alewife Brook Parkway.

The Board finds that a literal enforcement of the provisions of the

ordinance would involve a substantial hardship to the petitioner. The hardship would be that the sign would be permitted as of right is insufficient to advertise the presence of this retail establishment particularly when contrasted to the other signs that are permitted as of right on the building because of other circumstances.

That the hardship is owing to special circumstances relating to the shape of the building, the triangular shape of the building. The amount of store frontage that's permitted, that's involved in this petition as contrasted to the neighboring storefronts. And that the -- and the need for advertising when you're out riding in a commercial establishment, a retail establishment, and has substantial detriment to the public good will not occur.

And that relief can be granted

without nullifying or substantially derogating from the intent or purposes of this ordinance.

This ordinance intends -- has got a purpose of regulating signage, but it is signage regulations are grounded in the concept that commercial enterprises need to have a certain amount of signage as compared to neighboring properties.

And that further, that the Planning Board supports this petition which is further evidence that granting relief as proposed would not be to the substantial detriment to the public good or derogate from the purposes of our Zoning Ordinance.

This variance would be granted on the condition that the signage be erected consistent with a single page photo simulation submitted by the petitioner, and initialed by the Chair. And also with regard to dimensions and presentation shown on a single piece of paper included

in the file, which shows that the sign dimensions and also initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Scott, Heuer.)

CONSTANTINE ALEXANDER:

Mr. Sullivan opposes. Relief has been granted.

LAWRENCE WEINER: Thank you very much, gentlemen.

(A discussion was held off the record.)

(10:15 P.M.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9833, 72 Hamilton Street. Anyone here wishing to be heard

on that matter?

Mr. Rafferty, you know the drill.

ATTORNEY JAMES RAFFERTY: Good evening Mr. Chairman, members of the Board. James Rafferty on behalf of the applicant 66-72 Hamilton Street, LLC. I think it's 66-72 Hamilton, LLC. And this is Margaret Morrissey, she's the manager of the LLC.

This is an application for variance that is admittedly somewhat unusual, but it in many respects it is the unique aspect of this that I think forms the basis for the relief that's being sought. Some members of the Board might recall this case. This is a furniture manufacturer warehouse on Hamilton Street. Years before that I think it had been the home of Ideal Tooth. And Ms. Morrissey obtained a Special Permit from the Planning Board under the provisions that allowed for the conversion of

non-residential structures to residential use. And the granting of that Special Permit allowed her to then come here and address some issues around the FAR. You might recall that the Board did grant a variance in this case around FAR. It was a continued case. When we first came in, we had a different approach. I forgot the FAR. We were trying to minimize the impact of the FAR by utilizing the basement. It was suggested at that time that not -- I remember it quite vividly because it doesn't happen quite often that we should actually be asking for more, not quite in those words. We had designed it to limit it to what we were asking for. So in effect a variance had the effect of taking space that was in the basement and putting it up to the third floor for which we did receive an FAR variance.

The unique issue here concerns the application of Article 11.2, the

affordable housing formula. And it's been in existence now for about ten years in the City of Cambridge. I don't know if many Board members have had an opportunity to read the correspondence from Councilor Maar, but he kind of recites the history of that section of the ordinance, and it goes really to the heart of what the issue is in this case. There's a provision at 11.200, and I've highlighted it and brought a couple of copies here just to direct the Board directly to what we're talking about. The way the affordable housing formula works, and it's intended to work is that while it's commonly referred to as 15 percent of the project, it's 15 percent of the base number of units. And the way, with the way that translates into actual numbers is that 11.5 percent of the overall units are -- tend to be affordable. Meaning that you -- the land use policy associated with the

affordable housing requirement is that you get one affordable unit for each -- you get a bonus unit for each affordable unit you're required. Now, we don't trip over the threshold for affordable housing until we do ten units or more or 10,000 square feet or more. So in this case it was an 11-unit project. We went to the Planning Board and they approved the project. And we believed -- and frankly, I believed and the decision of the Planning Board notes that it will have one inclusionary unit. And we -- Ms. Morrissey went out and obtained financing pro formas based on one affordable unit and she obtained a building permit with that understanding as well. During the course of construction when she was dealing with affordable housing and offering the selection of the unit for affordable, the issue arose as to whether or not the number of units here exceeded the maximum allowed as of right

in the district, and thus it's not 15 percent of the base number of units, it's 15 percent of the total project. So that led to an analysis of this 5.282 which is the provision that talks about the conversion of these buildings. And what that Special Permit does, as I'm sure you recall, it's a Special Permit within the purview of the Planning Board that looks at the size of the building when determining the appropriate measurement for the density that that building should have when it's converted to residential use. The common analysis for that we know in the ordinance is the size of the lot. But the land use principle that was adopted in 2004 when this provision was adopted by the City Council was that that is not the best determinant. That this is a -- this was added to facilitate the conversion of non-residential structures to residential use. So if you look down

to the -- in the section there, and you'll see it spells out what that formula is. And it says in the bottom of that section of Article 5.2: That you then either do the linear square feet of the gross floor area whichever is greater. So in this case whichever is greater. We are, under that formula, this building could have 14 or 15 units. 15 units. So we're not over the maximum number of units allowed. We are underneath it. So the hardship here is really has much to do with the timing and the situation we find ourselves in. Had this arisen at the time the building permit were issued or at the time the Special Permit were issued, quite frankly the issue would have been confronted and the project may or may not have gone forward. It's a project now that is trying to get built in a very challenging economic environment. The effect of this on a project of this size, an 11-unit

project is really quite dramatic. It represents 18 percent of the units in the building to be affordable. But, again, what Councillor Maar pointed out in his letter and I thought was a very practical analysis, is that the option that the proponent would have had this come out at the outset, was that she could have adjusted her building to bring it below the requirement. Drop it to nine units, in which case there'd be no requirement for any affordable units. Because the reality of the construction and cost associated with this, if you build nine, and you get nine market, and you build 11 and you get nine market, no one's going to build 11. The affordable units on the sale side, and this is a sale product, the affordable units on the sale side, their sale price has nothing to do with the cost of those units. It's a formula backed into based upon an income derivative. So

basically when the affordable housing people put aside units for sale, you sell the unit at a price that allows someone to get a mortgage. So in this case currently, and last time I looked at this it was a month or two ago, but the rough numbers are for a one-bedroom unit for an average household, a single-family household here, the way that the sales price works out to be about \$140,000 for a one-bedroom unit. And for two-bedroom units about 155,000. That's because you impute the additional numbers of people based upon the size of the unit. So in this case -- and that's where the -- and that's where the real disparity comes up in the affordable housing side. But people that do affordable housing on the rental side frankly don't see that big a gap between the market rate and the rental rate. But when you go to the sale, it's really quite dramatic. So in this case,

the financing for this project was based on the assumption that one unit would go affordable. That unit will be sold at an amount less than it cost to build it. But it's a consequence of the fact that it's more than nine units.

The hardship here really is related to the fact that the understanding, the good faith understanding of the lease here was that this was a one-unit project. When we discovered this issue, I began looking through comparable cases that I've had. And I've had the good fortune of representing a number of residential developers. And I looked at the way the city treated PUD housing. If you think of the 303 Third Street housing or the One First Street, larger housing projects that perhaps don't come as often before this Board. In those cases, the PUD Special Permit, upon the granting of the Special Permit, the (inaudible) PUD drops. So a

base PUD district always has a base zoning district and it has a PUD. And so to incentivize a developer to get into a PUD process, the idea is that there are certain added benefits that would accrue if they go into the PUD process. It gives the city a higher level control over the design to give the developer more. But one of the chief things that happens in the PUD process is the longer per dwelling unit calculation in most cases, and certainly the case at 303 Third Street and One First Street, it drops. And it drops from 900 square feet to 300 square feet per dwelling unit. Well, in that case when the affordable housing formula is applied, no one goes back and says it's 900 square feet because that's maximum allowed as of right, and you got a PUD Special Permit. They say -- and the department agrees. I mean look at, oh, yeah when we do that one, we've done them

that way. Well, what's happening here?

Well, this says maximum allowable and there's an interpretation, and I understand where it's come from. That, you know, there is an ambiguity here. And the ambiguity I think is addressed by Councillor Maar when he says that when they created 11.200 and imposed this affordability requirement, they weren't thinking about conversion. That came five years later. And when they created the conversion Special Permit, it would have been helpful if they addressed this issue in the conversion such that how do you apply this? So it comes down to a look at what is intended by the maximum allowable number of units. And we've gone around and around.

CONSTANTINE ALEXANDER: I'm a little bit troubled about where you're going with all this. Are you here seeking a variance?

ATTORNEY JAMES RAFFERTY: I am. And I know you're saying why aren't you seeking an appeal, right?

CONSTANTINE ALEXANDER: Yes. By taking the variance you accepted the ambiguous interpretation that brings you here.

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: It seems to me you can't argue ambiguity to justify a variance. You got to say, you got to deal with the statutory requirements for a variance.

ATTORNEY JAMES RAFFERTY: Well, right. And the statutory requirements are that there's a unique condition here, and the unique condition is that we have a project that is already under construction, that was permitted by the Planning Board with one affordable unit, and it's that uniqueness and that hardship

that means that if this project were required to have two units, it's not clear that the project would be allowed to continue.

CONSTANTINE ALEXANDER: I want to push that a little bit. Are you representing to us tonight that if we were to deny the variance tonight, the project is going to be abandoned?

ATTORNEY JAMES RAFFERTY: I wouldn't use the word abandoned.

CONSTANTINE ALEXANDER: Not go forward?

ATTORNEY JAMES RAFFERTY: I don't know that. We discussed this. And the view right now is that it could not afford to go forward. That the pro forma here to two of these units, if a second unit is not available for sale at market rate, that the project probably will not go forward in its current configuration.

CONSTANTINE ALEXANDER: I

understand that, but will it go forward?

ATTORNEY JAMES RAFFERTY: If I may be permitted. When I say current configuration, this still would remain -- I'm sure that the developer would then be forced to look at a scenario whereby the project may not be subject to affordable housing. If units were collapsed into other units and square footage was removed, and the effect there would be zero affordable units for the public, and that's where we get to the hardship and the unique nature here. Because the project may not be abandoned, although it quite very well could, and there's a very serious concern on the part of the petitioner that that's the reality. To be perfectly candid, I don't think we have fully disclosed the precarious position we now find ourselves in to the lender. It is a recent development. It has -- because -- and because it's still in

somewhat uncertain area, until the resolution of this case, but the reality is that I think that faced with this situation, what a petitioner or this petitioner would look to do would say okay, what are my options? I proceed the way I am and the project can't, can't meet its financial requirements and the financing will stop. Or I can look at ways to not be subject to the requirements of 11.200. And that threshold is based on the number of units in the size of the building. And if you're going to build nine units and have to literally give away two, and I don't say that, you know, disparagingly or flippantly, but the economics are closer to a give away than a break even if you look at the cost of this. Particularly in a conversion project where the cost of the conversion is in some cases much higher than ground-up construction. So in this case

you would have, and again, I think Councillor Maar's suggestion would suggest that we create an incentive at the outset. Because this is surely what would have happened at the outset if the building permit hadn't been issued. If this issue was confronted in the beginning, than the petitioner would have had to deal with the lender and say can I afford to do an 11-unit project? Or do I drop it down to a nine-unit project. And if that were to happen, there wouldn't be any affordable units. So the hardship is real. It's related to the nature of the business and it has something to do with the sequencing of learning this. The reason I provide you with a copy of the Special Permit by the Planning Board is not to point out a mistake on their part, but really to evidence that for the longest time the understanding here, including my own understanding, was that this would have

been a one-unit affordable project. Which is if you look at any 11-unit project under the application of the formula, an 11-unit project you'd say nine market rate, one and one. And that's the way 11-unit projects get permitted. In this case we did have a conversion project. So -- but we had a Special Permit from the Planning Board that put us into a different category. So we're not exceeding the maximum allowed. What we're doing is we're proceeding based upon what the ordinance says. And if you look at that paragraph that's highlighted it says all right now petitioner, now property owner, you either go this way or you go that way. That was clearly what the Planning Board thought. That's what was represented. It was not an issue before this Board as it very rarely is. So now it's down to okay, I'm sure if I'm sitting in the Board's position, why doesn't this

feel like a developer who just wants to not give up the affordable unit and increase their bottom line and their profit? That's not what's at work here. If this was at the outset and we hadn't yet obtained the building permit and we weren't eight months into construction and putting in, finishing kitchens now, I think you could make, you could have that caution to say well, you want more, you have choices, you make your choice, you're going to go forward. You're a business person, you decide whether or not.

Through a series of unfortunate coincidences, and good faith as there has been, this project was approved at the Planning Board, obtained a building permit and it's been allowed to get built to this point. And that, that then led us to say okay, there is a unique hardship. And we're not asking or saying that because we can't make money on the project, we want a

variance. We're saying that the circumstances surrounding this building and this process are quite unique. There is a very real hardship. There's a real financial hardship. And the threat is, or the threat or the challenge or the concern is that a denial of the variance could lead to a scenario, a very likely scenario that the one-unit that is going to be provided could possibly be lost.

CONSTANTINE ALEXANDER: But that argument to me, I'm not dismissing it, that argument is analogous. If you don't give me a variance, I'll build something as of right and as of right it will be worse than what will happen then.

ATTORNEY JAMES RAFFERTY: I'm sorry to hear that. That's the furthest thing I would want you to leave with thinking of the argument. The argument was a response to my challenge to me would it be abandoned? Which the legitimate

question, but I think it puts the issue in too stark a term. Would it be abandoned? I mean, I'd let Ms. Morrissey speak to it more directly than I. The bank has a significant commitment in the project. She has financial obligations associated with it. I think the likelihood is that it could, particularly in this environment and the bank could take the project back. It could be foreclosed upon. Or you'd probably then say well, okay, what are the other options here? And if at the end of the day the option is that there's probably a risk of that. But the petitioner does find herself, and I hope that the Board will pay close attention to the rationale laid out in Councillor Maar's -- the co-chair of the Ordinance Committee, he really has spelled out the history here and goes so far to say that we need to fix this ambiguity. It was never the intention in 2004 when we

created a mechanism to facilitate the conversion of non-residential buildings to residential use in districts who were promoting housing, which this was, it was never our intention to create a more onerous affordable housing upon those structures than other type structures. And that's the effect.

TAD HEUER: I have a purely legal question on that point. So Councillor Maar is the Chairman of the Ordinance Committee that drafted the ordinance, passed the ordinance. The ordinance is now in front of either the Building Commissioner or us to interpret it. It's my recollection that as, and maybe you can enlighten me as to how I can treat this letter, is this legislative history or is this Councillor Maar's interpretation of what he thinks the ordinance meant when he passed it? Because if I'm remembering correctly, the ex-post description by a

member of the legislative body as to what they meant when they did something, doesn't carry any weight. It's the ordinance itself that they passed that we have to interpret. And if that's the situation, or are we in a situation where we're talking about an appeal because someone's looked one way and someone's looked the other, we have an ambiguous set of ordinances, but we have to deal with them as they basically not based on the impression that those who passed them believe they were meant to have at the time they were passed.

ATTORNEY JAMES RAFFERTY: No, I agree. But that's Councillor Maar wrote the letter. But the letter is a statement of support. The back page of the decision contains an affordable unit probably. And on the face of it, it's a letter in support. He offers the rationale that he provides is part of his -- he offers a

rationale as to how things happened here, but you're right, we're not appealing this saying they made a wrong call here. And because I don't -- ambiguous means, I mean, I don't think ambiguous can get you there. I say well, there's a whole other road to go down. It seemed that the hardship was quite prominent and real. Frankly there was, there was some steps taken on the municipal side that somewhat led to this situation. And I say that with the highest respect to the people who do that work. As you know, I engage with them all the time. But that is just a practical reality of how we find ourselves in the situation. I wouldn't view it any more than a letter of support from a councillor who has the added perspective as someone who has been dealing with these ordinances for ten years. Beyond that I don't think it's appropriate for me to speak for the letter. But I was struck

when I saw it today. We, we have walked through this issue. We did speak to the councillor in trying to get an understanding, and it was his view that, you know, he would be willing as is so often the case, before this Board to express his views. And I think that probably, that would be the essence of the letter. But the letter, I found it helpful because it does identify the two areas here. And we could have pursued an appeal and may yet still have to. And hope we wouldn't have to. But we did think the equities here were such that to the extent that hardship has to do with uniqueness. That there is a unique situation confronting this project at the moment. And the unique aspect of it is that this project is dealing with its affordable housing requirement when it's 60, 70 percent complete.

CONSTANTINE ALEXANDER: That's

where you are, 60 and 70 percent?

MARGARET MORRISSEY: Yes.

ATTORNEY JAMES RAFFERTY: And maybe you can speak to where you are on the life the project. What remains to be done and how long the construction has been going on?

MARGARET MORRISSEY: It's been going on quite a while. What do we have left to do? Kitchens are going in. The floors are going in. Next week we're going to start doing the landscaping and all of that.

CONSTANTINE ALEXANDER: Have you any communications with your lender about the problems that put you here tonight?

MARGARET MORRISSEY: Not yet. I was trying to save that.

ATTORNEY JAMES RAFFERTY: I think we've taken the view at the moment it remains an unresolved issue. But we certainly, we have a transcript, we're not

deceiving anyone. But I think it's fair to say that this issue surfaced about, I would say, August or July of this year and we've been trying to understand it. And after reviewing it, decided that while the ordinance does have these requirements, there is a variance mechanism. It is not a route we got to likely. I certainly understand the concern about precedent. The requirements associated with the hardship. But I do think that what's at stake here and what could be seen as not being the ordinance is the notion that at the end of the day we will get the affordable unit here. We will get a treatment of this project in the way the Planning Board envisioned it and the way the conversion Special Permit allows for. There is a, there is a very real hardship. It is not at all a matter of simply moving the profit line from one place to another.

CONSTANTINE ALEXANDER: Well, if I

hear it right, the hardship only arises with you if the project can't go forward because you're going to lose your financing poses the problem you have. If you can go forward, you can complete the project, there is no hardship.

ATTORNEY JAMES RAFFERTY: Well, no, I mean the hardship is a financial hardship.

CONSTANTINE ALEXANDER: It's a financial hardship. It's a hardship but is it sufficient to grant -- is it a sufficient hardship to require us to grant you relief?

ATTORNEY JAMES RAFFERTY: Well, obviously that's in the judgment of the Board.

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

ATTORNEY JAMES RAFFERTY: But I think what I'm suggesting is that I don't think the tipping point of whether

something qualifies as a hardship or not is whether it's a go or a no go. A project that goes into the bankruptcy or a project that goes into foreclosure those are all recognized hardships.

CONSTANTINE ALEXANDER: I agree.

ATTORNEY JAMES RAFFERTY: And we're dealing with a conversion project which is unique to itself. I know you've had a long night. You probably gone beyond -- it's an unusual case. It is a very real case. And I guess I'd have to add that the hardship, a component of the hardship is the sequence of the events in the extent to which the petitioner has relied upon the Special Permit and the issuance of the building permit. I think those are good faith understanding, and I share with you that this was a one-unit project and we were -- and I think the math alone, I think you can appreciate that the difference between one and two

units in an 11-unit project just on its face is far more dramatic than a 20, 30, 40-unit project of the -- that that is a certain level of disparity over all impact.

CONSTANTINE ALEXANDER: Any questions from the members of the Board before I take public testimony?

BRENDAN SULLIVAN: I know what triggered why you're here, a shortcoming on the part of the Planning Board I guess, and that the Building Department didn't catch it. But going back to 11.203.2, the requirement for inclusionary housing, any inclusionary project shall provide 15 percent of the total number of dwelling units.

So, we're going to establish that it is an inclusionary project?

ATTORNEY JAMES RAFFERTY: Yes, it has more than ten units and it's greater than 10,000 square feet, no question.

BRENDAN SULLIVAN: And as such to provide that inclusionary or the affordable unit, does that trigger a bonus in order to provide it? Or that you don't -- well, anyhow.

ATTORNEY JAMES RAFFERTY: The way the affordable formula of 11.200 gets applied is if you had a 11-unit project, you would say it's a nine-unit -- I'm doing nine units as my base. 15 percent of nine is one. So I'm required to give one. And I get a bonus for 11. So we have 11 units. So in a 11-unit project -- the way the formula is, I had an individual as well versed in the ordinance as Michael Brandon come up to me Tuesday night, and you may recognize the name, and he says to me, hey, why are you at the Zoning Board for a variance for -- to get an 11.5 percent application for the housing? It's always 11.5, people think it's 15. I said, it's a long story. But,

I mean that's, that's the way the 15 percent, the 15 percent is applied -- and some people have criticized it's a bit of a misnomer because it's 15 percent. But the concept, and again go to Councillor Maar's letter, which does speak to it, the concept of 11.200 it would be confiscatory for the city to simply require them. We can't simply require you to give us a bonus, affordable unit. We're saying that we're going to require you to give us one and in exchange you get one. You get a bonus one. And that was the big land use debated issue in '99 which was it had the density crowd pitted against the affordable housing crowd. And they said well, we're going to get bigger buildings and more units, well that's the only way we're going to get these things. Rent control's gone, and we're not going to spend city money on it, so we're going to require the developer to give us one, but

for every one he gives us, he'll get one over and above what the zoning would otherwise allow. And that's the equity and that's the way the ordinance works.

So we're looking at a project here that got a Special Permit that would have allowed 15 units under the Special Permit. We only sought to do 11. So we said, okay, we're subject to the nine, one and one. And we go down that road and begin building and get financing and learn no, it's not nine, one and one. You've exceeded the maximum allowable, and now I'm getting real close to the appeal and so I better stop talking. But that's the reality.

BRENDAN SULLIVAN: So the options are to either take one of the units and make it affordable which then you would then have two affordable units. The other option would be to combine a couple of units to get below that -- to get to that

nine-unit and both of those actions basically have to do with return on investment?

ATTORNEY JAMES RAFFERTY: Yes, that's right.

BRENDAN SULLIVAN: Okay. And I think that's sort of a bottom line of the whole thing. It comes down to dollars and cents.

ATTORNEY JAMES RAFFERTY: Well, the hardship is a financial one, yes. If I haven't made that clear, yes. Without question it's a financial hardship. And it has the effect of saying, again, if you were to think about it at the outset --

BRENDAN SULLIVAN: But is the absence of -- and again, I'm not disputing what you're saying, but in the absence of actual proof that either the project is, you know, very precarious situation one way or the other, we're just going on testimony basically, that's it's not

viable, possibly viable but not worth it, or we're not sure yet I guess.

CONSTANTINE ALEXANDER: That's basically what I've heard. That's why I was trying to press the point to see exactly where we are on that spectrum. And I'm not accusing the Councillor but we don't know where we are in the spectrum on any one of those three items.

BRENDAN SULLIVAN: Yes.

ATTORNEY JAMES RAFFERTY: Well, I mean if, I think in terms of the level of financial detail, the point is that if more is needed, I'm sure we can provide that. I think I was relying upon the reality of losing the ability to sell a, to sell a unit in a project in this size when you're dealing with a project of this size, the averages, the profit in a project of this nature, you don't, you don't start to get near the profit until the eighth or the ninth unit. So, what it

really means, though, is that had this been made aware at the outset, you would say well, if the ordinance were interpreted this way, you're not going to get too many people to build 11 units this way. A lot of people would opt to build nine-unit projects. Nine gets you nine. And so who would build 11?

CONSTANTINE ALEXANDER: Is there any thought by Councillor Maar to solve this issue by changing the ordinance, clarifying it? I haven't read the letter yet, so go ahead.

ATTORNEY JAMES RAFFERTY: I mean he suggests something to that effect. He believes that this is an issue that needs to be addressed. But I'm not sure it can be done retroactively. I'm not sure it can be done specifically timely but he does acknowledge that -- something about I would like to see the --

CONSTANTINE ALEXANDER: Second

page. I just glanced at the letter, but he does make reference to the letter --

ATTORNEY JAMES RAFFERTY: I hope to have this ambiguity addressed by the Ordinance Committee in the future.

I think the most compelling part of what he said was that the conversion project, it was not intended in 2004 when it was drafted and adopted to have a different standard for them.

CONSTANTINE ALEXANDER: You keep going back and forth. Your argument keeps going back and forth between what was intended in the statute and how it should be construed. It's still irrelevant to the variance case. And that's your -- those are your arguments to the appeal case. But the variance is hardship and you've addressed hardship, but the rest of the stuff to me is beside the point.

ATTORNEY JAMES RAFFERTY: Okay. And I have to remind myself of that all

the time. And it is. But it does form the backdrop of what we're talking about. And like I said, if we were simply coming in here and saying, hey, we can't make enough money on this project, give us a variance or else we're not going to do it. We're in a much more precarious position than that. We are way down the road here. I don't know if you have numbers or whether you can state or what the impact would be. I mean, can the project survive? Would you want testimony on that issue?

CONSTANTINE ALEXANDER: It's your call on what you want to bring before us.

ATTORNEY JAMES RAFFERTY: I thought I heard about the berth of evidence on how real is the economic hardship.

BRENDAN SULLIVAN: I guess I was trying to reduce it down to the lowest common denominator in my mind without

having a spreadsheet in front of us.

ATTORNEY JAMES RAFFERTY: Right. No, and that's what I said. And, you know, I think -- I'm not well versed in all the numbers. So....

CONSTANTINE ALEXANDER: And I'm not going to put you on the spot.

ATTORNEY JAMES RAFFERTY: No, but maybe Ms. Morrissey would take a minute and say what -- if you could just describe what the impact of having to sell only nine market rates units as opposed to ten would be on the viability of the project continuing.

MARGARET MORRISSEY: Setting units at 6 or 7 hundred thousand, nine is 64. And it's for nine units add on another, so it's 700,000.

ATTORNEY JAMES RAFFERTY: But the impact of the viability of the project if 700,000 were removed?

MARGARET MORRISSEY: Yeah. I mean

that's where your profit is at the end.

CONSTANTINE ALEXANDER: Any further questions before I open it up to public testimony?

Anyone here wishing to be heard on this matter?

(No response.)

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

I will read into the record the letters -- two letters we have. The one that Mr. Rafferty has cited several times, the letter from David Maar the City Councillor. The letter is: I'm writing to express my views on the application for a variance in the above-captioned matter. I believe that the case is sufficiently unique and the Zoning Ordinance is regrettably ambiguous. That the granting of a variance in this case is appropriate. As you know, this project received a Special Permit from the Planning Board

pursuant to the provisions of Article 5.28.22, a section of the Zoning Ordinance adopted by the City Council in 2004 in order to facilitate the conversion of non-residential structures to residential use. When this section of the ordinance was adopted, it was not the intention of the City Council to have the affordable housing requirements of Article 11.200 apply differently to, quote, conversion project, close quote, and new construction projects. The City Council adopted 11.200 in 2000 and it has been an extremely effective mechanism in creating much needed affordable housing units without any cost to the city. The promise behind Article 11.200 is that for every affordable unit a developer is required to provide, there is an additional bonus unit allowed. That bonus unit is intended to offset the cost of the affordable unit. In this case a developer would be required

to provide two affordable housing units, but would not be allowed any bonus unit to offset that cost. In the case before the Board this evening, the issue rests on whether the language of Article 11.203.2C that requires projects that exceed the maximum allowed number of dwelling units, quote, as of right, close quote, to satisfy 15 percent of the total number of dwelling units in the project as affordable is the appropriate formula for determining their number of affordable units required. By contrast when the affordable housing formula is applied to projects that do not exceed the maximum number of units as of right, only 11.5 percent of the total number of units must be set aside as affordable. I understand interpretation being made by the Inspectional Services Department on this issue. It is my view, however, that the land use policy behind Article 5.28.22 is

compelling. With the adoption of this section, the city has concluded that when converting a non-residential building to residential use, the most effective measure for determining the appropriate number of units is the size of the existing building as opposed to the size of the lot it occupied. Adopting this policy, the City Council is not intending to categorize the unit count in such buildings as exceeding the maximum allowable as of right, close quote. I hope to have this ambiguity addressed by the Ordinance Committee in the future. In the meantime I believe that zoning relief is warranted in this case. This ambiguity has a particularly dramatic of this size. As you know, housing projects of fewer than ten units and less than 10,000 square feet are not subject to the affordable housing requirements of our Zoning Ordinance. I am concerned that if the

developer of an 11-unit project is only able to develop nine market rate units, then there would be a very real incentive for developers to reduce a project of this size below the threshold requirements of the affordable housing provisions. Such a course were pursued, the developer would still obtain nine market rate units that the city would not receive an affordable unit. Thank you for taking the time to consider my views in this very important issue. For the reasons I have set forth above, I strongly urge the Board to grant the relief requested in this case."

We also have a letter from Kenneth E. Reeves, City Councillor obviously regarding this case. "I wish to express my support for the granting of a variance in this case. I think as a matter of fairness, it is not appropriate to require a larger percentage of affordable units from a project that is converting a

warehouse to housing than a project involving new construction. There is little in the way of new housing construction occurring in the city in this current economic climate. Being able to create 11 new units from a warehouse is a positive development for this neighborhood. When the project was presented and approved by the Planning Board, it was done so with the understanding that there would be ten market rate units and one affordable unit. That understanding resulted from the fact that affordable units ordinarily represent 11.5 percent of the total unit down on the project. I know from conversations with the property owner that this project is at a critical phase in development. If an additional affordable unit were to be required it could affect the construction financing that is already in place, and seriously jeopardize the completion of the

project. I believe this is a unique case that warrants a variance. I urge you to give the matter every consideration."

That I believe is the sum and substance of the communications in the file.

Any further comments, Mr. Rafferty?  
Comments from members of the Board?

TIM HUGHES: I kind of agree with the second letter that it's really if you were functioning under the idea that you were doing ten marketable units for one affordable housing unit and then you find that whole financing structure can get taken out from under you because you didn't put in two affordable units, it is a fairness issue. If you knew that going in, maybe you could have structured your financing that would have made it possible. But I know, you know like looking at it conservatively, you're looking at a drop of about \$450,000 in

this project. And in this climate it's a bone. I think it would make it tough.

CONSTANTINE ALEXANDER: And without expressing my views yet, I'm not sure where I'm coming out. I would still point out that fairness is not an issue. It's a variance case, not an interpretation case. And as Mr. Rafferty addressed, we have to find special circumstances and substantial hardship. Fairness doesn't play a role in this. And in fact, if you want to go back to the fairness, Hurley Street that just got reversed by the appeals court where I think there was a real fairness issue there and the Court didn't pay much attention to the fairness. The law is as it is.

ATTORNEY JAMES RAFFERTY: With all due respect, I wouldn't adopt that characterization. I think equity remains a constant issue.

CONSTANTINE ALEXANDER: It does. Governmental agencies and I think essentially when you talk about fairness, you talk about notions and lawyers we call equitable stuff. Anyway, not to debate.

Any further comments from members of the Board or do you want to put it to a vote? No one wishes to comment further? Okay.

BRENDAN SULLIVAN: It's more venting somewhat I guess.

CONSTANTINE ALEXANDER: I'm sorry?

BRENDAN SULLIVAN: A little more venting. Tad, what are your --

TAD HEUER: I mean I think I would have preferred that this came before us in the form of an appeal. I can't express possibly more strongly that I would, if this were an appeal because then the types of issues that are being raised by Councillor Maar, by Councillor Reeve, you know, the issue of fairness and being able

to go to one of these sections, really means something in this context more than the other one because it was meant to apply more than the other one. Would carry significantly more weight, and I'd be a lot more comfortable making a determination on appeal as to which of two spacially competing sections is meant to be applied in the circumstances before us. In a situation where that I think as the Chair has expressed, that has been taken as a given in the form of a variance, admitting that the portions of the ordinance that are in dispute are true as they are but requiring a variance from them. And I think I'm a bit more amenable to finding a hardship in the circumstance, but I really wish that I was not being placed in a position to find that because I don't think it's appropriate to the case.

ATTORNEY JAMES RAFFERTY: Can I

comment?

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY JAMES RAFFERTY: I fully appreciate that. But I think the relevant ambiguity has to do with how we got here. Two different agencies looked at the same thing. So it does have meaning on bearing on the hardship. If this was -- again, if this was at the outset, I think it would have a different posture. And I fully understand that. I'm being very candid, if one were to chart the success of appeals before the Board, you wouldn't find that often that four members tend to overturn a determination. And it really forces people, in my experience, into certain harder positions. And I would only say that there were a number of competing interests that we discussed, and at the end of the day I will say that there was empathy expressed to us by people on the administrative side of the

city that this situation did, I mean because of the number of units that -- people seemed to appreciate that this had a financial hardship to it that was unforeseen, and that's why we, I'm not saying I was directed, that's why we made the decision that we did.

CONSTANTINE ALEXANDER: I will make an observation at this point because I think that Tad said -- and I have some thoughts in my own mind. If we were to deny you the variance you have another course of action to get where you want to get the appeal process. That doesn't preclude you a denial of a -- it doesn't preclude you.

ATTORNEY JAMES RAFFERTY: I agree.

CONSTANTINE ALEXANDER: I accept your comments that if historically at least our Board has generally upheld the decisions of the Special Services Department. Therefore, at the outset an

appeal may seem not the best way to go. But you've heard sentiment here that sympathies with the variance approach show some skepticism about the decision of the Inspectional Services Department. And I am troubled by the fact that you are asking -- good reason, but asking us to distort this variance standard. I don't agree with Tad on this one. I don't think you have a substantial hardship within the meaning -- at least as the case is presented within the meaning of the statute of the ordinance. I would prefer personally, I'm going to vote against this because I believe you can come back and probably get what you want through a different approach. If I were faced with the fact that if I voted against it and other members join me and it was denied and the project was put in jeopardy, I might have a different point of view. But I think you have another avenue that

doesn't require us to distort the variance standard. So on that I'm not going to support the relief.

Ready for a vote or are you pondering, Brendan? Do you want to speak?

BRENDAN SULLIVAN: Yes. Because I -- it's a tough one. If you were to go to nine units, is it still viable to market nine units? But I guess it gets back to the market which gets back to the return on investments which gets back to dollars and cents I guess.

ATTORNEY JAMES RAFFERTY: I don't know the -- it's a very relevant question.

BRENDAN SULLIVAN: And I guess my feeling in all the years I've sat here, it doesn't make much difference nor should it sway me whether anybody makes a dollar or a million dollars or somewhere in between. It's whether or not the granting of the variance is the right thing to do under the circumstances. I'm not convinced that

it is. And the intent, again, it makes good conversation and great theatre to discuss intent, but, you know, the intent of the ordinance was never to allow what was built up on Tremont Street either but it is. The whole book of intents is just wrong.

CONSTANTINE ALEXANDER: I think the other question I have for you, Mr. Rafferty, we have to talk about hardship which you know the statute says a hardship is owing to circumstances related to the soil conditions, shape or topography of such land or structures and especially affecting such land or structure but not affecting generally the Zoning District in which it is located. How do you fit your situation in that standard?

ATTORNEY JAMES RAFFERTY: Well, that's -- because it does have to do with the structure. It has to do with the fact

that it's the conversion of a non-conforming -- a non-residential structure. If this was ground-up construction and we simply wanted a different standard to make more money, I'd agree. But we're here because of the nature of the project. It has to do with the structure. I don't think it's a distortion of the standard. I mean, the reality is that the hardship, economic financial hardships are recognized all the time. Don't forget we're dealing with an area of the ordinance that it imposes implications -- financial implications. It's a very somewhat unique area of the ordinance. Affordable housing requirements. What we're going to require someone to do. So I don't think you're then necessarily go to what might be -- if we were asking for a setback relief or something else, and say well, we can't build over here because we've got that

topography. With all due respect it's a little bit of a different animal. It's not a variance that suggests dimensional relief. It's a relief from a section of the ordinance that applies a formula to a housing project. And so, I don't see it as a distortion. I think you can say that the application of the formula that relief is warranted in this case if you find it's sufficiently unique, and I can never recall a case like this in that a project has gone as far as it has with the whole bunch of different city agencies, by permits and everything else, this is a different type. We're not looking for dimensional relief. We're not looking for more units. We're not looking for something else that you would be more focussed on a lot. We have a real economic hardship we have a condition that's present because of the structure. I think you can get there by the fear of

distortion.

BRENDAN SULLIVAN: If you came down before us that we have no options other than the granting of variance, that's the only option we have, I can buy into that. But I think there are options that's where I get hung up on. You can either take one of the units and make it affordable and then you're home. Or you can drop the entire project down to nine units and then you're home.

MARGARET MORRISSEY: It's already built.

ATTORNEY JAMES RAFFERTY: But I mean the cost to take --

MARGARET MORRISSEY: Take it back down.

ATTORNEY JAMES RAFFERTY: -- on an 11-unit project to nine units, I mean that's a hardship. I don't think the hardship needs to be a catastrophic hardship in terms of the financial impact

may not be catastrophic. There are 11 units significantly constructed under construction. So it's not as though okay, we'll flip a switch and go to nine and everybody's happy here. It's just the reality.

CONSTANTINE ALEXANDER: There's an alternative that you're still not addressing.

BRENDAN SULLIVAN: There are implications and that's where we go to the degree of implications and, you know.

ATTORNEY JAMES RAFFERTY: I understand. I guess what I'm saying it's not a semantic difference, but it seems sitting on this side and knowing what the pressures are on this project and understanding the timeline involved, I appreciate the suggestion that gee, if this were here, if you checked one box instead of the other and we weren't under -- I understand the relevance of that.

But I do think there's a practical nature that says, you know, we're in a unique section of the ordinance here and I think there is -- I mean, obviously you're the final decider, but, you know, if we were to have to come back and get an appeal, and the notion here is that it's not a pejorative to get this one turned down, and the appeal, it's the same set of facts, I would argue from this side of the seat instead of this seat and we can achieve an outcome that would allow the project to survive of course we'd do that.

BRENDAN SULLIVAN: That's a slippery slope, because if you were denied here tonight and you denied so do appeal and that appeal was denied and we can't come back with this same case.

ATTORNEY JAMES RAFFERTY: Right. So that's wondering if there isn't support here whether sometimes the Board has allowed a petitioner to oftentimes -- an

appeal case is people appeal first and they do that. Well, I thought, you know, it's my bias. Well, why would you ever vote for the appeal if there's a variance right behind it? So the appeal tends to be -- so, if I do worry that there's some pejorative attached to a denial here and then turn around and someone not as enlightened as yourself happen to be sitting here, you were -- what are you doing back here? And people say oh, they're trying to pull a fast one.

CONSTANTINE ALEXANDER: Ready to have a vote?

BRENDAN SULLIVAN: Not really.

TAD HEUER: And there's no value in -- and just speaking out loud in continuing this out when it will be brought.

ATTORNEY JAMES RAFFERTY: It very well could be. And I'm starting to think that that might, that might be necessary.

BRENDAN SULLIVAN: I'm sorry, what was the question?

CONSTANTINE ALEXANDER: Yes, I didn't hear it either.

TAD HEUER: Is that a conceivable procedural device to continue this out as far as we can to allow the petitioner bring appeal have the appeal heard and the variance becomes not necessary because the appeal has been granted or to grant the variance because the fact they had no other?

ATTORNEY JAMES RAFFERTY: And if that's an option. Based on the filing I made this week a new case can be heard on November 5th or 6th and I heard you given that out as a continued date anyhow.

CONSTANTINE ALEXANDER: That's -- we've done this before as you know. We can do that.

TAD HEUER: Why don't we also provide you with the opportunity to

provide more financial information that may assist Mr. Sullivan to make a determination of where the viability line is on this project.

ATTORNEY JAMES RAFFERTY: If we had to go for a variance case?

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: That's very appealing given where we sit now.

BRENDAN SULLIVAN: It puts it on life support. I'm still not there yet, but....

ATTORNEY JAMES RAFFERTY: That's why people make pilgrimages. You know, people come back from bad --

CONSTANTINE ALEXANDER: Do you want us to take a vote on it now?

ATTORNEY JAMES RAFFERTY: No. I'm going to pilgrimage and light a candle and ask for a continuance. We hope to have the case continued to the same night as the appeal.

SEAN O'GRADY: I think it will be the 19th though. We actually are full on the 5th, but you're not also going to be here.

CONSTANTINE ALEXANDER: Can't sit on the 19th.

TAD HEUER: I can do the 5th.

ATTORNEY JAMES RAFFERTY: If I file new, I file today and I got the 5th.

SEAN O'GRADY: Okay. We have three continueds. If you want to go to four, that's fine.

CONSTANTINE ALEXANDER: I'd go to four for that night. So we'd have to -- that's a case heard.

ATTORNEY JAMES RAFFERTY: We may never get to the continued case. If we put this on at the end of the meeting as a continued case, and put the appeal on in the body of the case, as long as we may never have to get to the -- it could be withdrawn before the end of the night. If

that's all right with you, Sean.

SEAN O'GRADY: Oh, yes.

CONSTANTINE ALEXANDER: Okay.

Ready for a motion?

SEAN O'GRADY: November 5th.

CONSTANTINE ALEXANDER: The Chair moves to continue this case until the following completion of the regular agenda on November 5th. To continue the case to November 5th but the case be heard following the regular agenda rather than the usual seven o'clock p.m. time for continued cases on the condition that the petitioner sign a waiver of notice as time to render a decision. And on the further condition that you change the sign on the structure on the property to indicate the new date.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor.

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

ATTORNEY JAMES RAFFERTY: Thank  
you very much.

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

(11:15 P.M.)

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

CONSTANTINE ALEXANDER: The Chair

calls case No. 9834, 59 Shepard Street.

Anyone here wishing to be heard on this matter?

ARTHUR KREIGER: Yes. Mr. Chairman, members of the Board, my name is Art Kreiger from Anderson and Kreiger here in Cambridge representing New Cingular Wireless PCS known as AT&T. And with me is Mark McEnnes and Maria Aps from Harvard. Mark from the planning office, and Maria is the planning manager for this project. We also have Kevin Brewer, a radio frequency engineer if we get into technical issues. And Dan Valazekian, from FAI Communications, consultant for AT&T. So we've got the whole team here.

CONSTANTINE ALEXANDER: You have our sympathies.

ARTHUR KREIGER: And also Marty Cohen. I don't expect you're going to hear from all six of us. I'm going to take the lead here. What I'd like to do

is four things. Just run -- quickly run through the application by way of setting the stage and figuring out what you have in front of you in the supplemental package but a very small one.

CONSTANTINE ALEXANDER: What supplemental package?

ARTHUR KREIGER: I'll get to that in a moment.

CONSTANTINE ALEXANDER: The point is that if it's anything meaningful, we're not going to hear the case tonight. Because our rules require that all material be in the file by five o'clock Monday before the hearing.

ARTHUR KREIGER: Okay. This is really cumulative material on the issue of the need for this facility, and it's a noise study that was referred to in the original application which just became available. It's a two-page noise study

saying that there's no noise impact.

BRENDAN SULLIVAN: We need --

CONSTANTINE ALEXANDER: You're not changing the plans?

ARTHUR KREIGER: No.

CONSTANTINE ALEXANDER: Not changing the photo simulations?

ARTHUR KREIGER: No.

BRENDAN SULLIVAN: Not to interrupt. It is a residential zone. I'm just wondering do you we need to get into that before we hear the case?

ARTHUR KREIGER: I'm going to do that. That's No. 1. No. 2, Ms. Aps will talk about the need of the facility. I will talk about the selection of Hilles Library as a location because we got the Planning Board letter that raises the question about why it needs to go there. And then I will talk about the proposed facility. Four topics. I'm happy to go into as much or as little detail as you

want based on your familiarity with the application and the time limit of the night. The application was dated August 4th, it had nine exhibits --

CONSTANTINE ALEXANDER: I don't mean to interrupt you. I just want to make sure. You mentioned a Planning Board letter. I don't see it in the file.

ARTHUR KREIGER: The Planning Board heard this a few days ago.

MARK MCENNES: It was dated today.

ARTHUR KREIGER: It came out this afternoon.

MARK MCENNES: I have a feeling when I requested it, it was probably in the process of being typed.

CONSTANTINE ALEXANDER: That's all right. That we don't blame you for. But we need a copy for the file. Do you have an extra copy?

MARK MCENNES: I do have an extra copy.

ARTHUR KREIGER: The application was filed August 4th with nine exhibits. I don't know your practice. So, I don't know if you've read it and been through the file.

CONSTANTINE ALEXANDER: I think you can assume that we've read the file.

ARTHUR KREIGER: I'd like to assume that. If I may, the highlights among the exhibits were a zoning compliance table. Where we walked through every requirement in the ordinance, including the ones in residential zone and demonstrated compliance. And the short answer is this fully complies with the Zoning Ordinance. It's Exhibit 2 Exhibit 4 of the plans and I'll get into those.

Exhibit 7 is photo simulations. We'll turn to those. I have blowups of those things.

Exhibit 8 is the radio frequency report, including coverage maps showing

the current coverage with the inadequacy and the proposed coverage where the highest level of coverage in the area. The supplemental letter that I referred to is a letter dated today, two-page letter with a couple exhibits behind it. Here's the original. I have copies, but one of the exhibits won't mean as much in black and white and our color copier was non-functional at the end of the day today.

CONSTANTINE ALEXANDER: One thing, I want to address Brendan's point. I don't see any materials here. As we have to make -- if we're going to grant you the Special Permit that you're seeking, because you're in a residential district, we have to make a finding that non-residential uses predominate in the vicinity of the proposed facilities location and that the telecommunication facility is not inconsistent with the

character that does prevail in the surrounding neighborhood. Where are your materials that deal with that issue?

ARTHUR KREIGER: The materials on pages two and three of Tab 2. Tab 2 is the zoning compliance that I mentioned.

CONSTANTINE ALEXANDER: Yes.

ARTHUR KREIGER: And on page two -- excuse me, and on page three responding to that what you were referring to which is footnote 49 paragraph 3.

CONSTANTINE ALEXANDER: Yes.

ARTHUR KREIGER: Says as follows: Institutional uses predominate in the vicinity of the facility; namely, it's the Radcliffe Quadrangle campus and Observatory Hill portion of the campus across the street.

TAD HEUER: Is that a dormitory?

MARK MCENNES: It's an institutional use.

ARTHUR KREIGER: Still an

institutional use. That's No. 1.

And this facility is not inconsistent with the characters as you will see from the description from the photo simulations. This is not a tower. This is not an intrusive facility. It's barely visible from anywhere. The most it's visible is from the campus, but even that is very little. So that is certainly one of the key factors here and that's where it's addressed on page three of that table.

BRENDAN SULLIVAN: Same as the handouts?

ARTHUR KREIGER: Yeah, I said -- I have copies, but the last one is in black and white. But certainly there's copies of the letter to go around.

The last exhibit of the table has some yellow highlighting.

This supplemental letter is two exhibits. One is a two-page noise study

that I mentioned. And the next I call that No. 10, just to follow the sequence of numbering. And Exhibit 11 is four articles from the Harvard Crimson over the past five years showing a demand need for this coverage. Demand by the students. And then behind that is a table, building-by-building coverage, current coverage by building and by carrier showing that, for example, on Verizon has adequate coverage in all the buildings, AT&T does not. And primarily the issue here is in building coverage. There is some, there is service outdoors on the streets and quadrangle. That service will be augmented by this in the quad and in the neighborhood, but the primary issue, primarily deficiency is in building coverage. And Ms. Aps will get into that issue. That's part of the discussion. But that's what those exhibits are in support of.

And let me just run quickly through the telecomm -- the ordinance sections we address. First is the telecommunications section itself that authorizes a Special Permit for telephone exchange, including telecommunication systems under Section 4.3032 G1. And you get into footnote 49 which has several different requirements including one you referred to, Mr. Chairman. But another one is minimalization of visual impact. And that goes with that. Then we think we meet all the criteria of that footnote. There are the general Special Permit requirements under 10.43. Traffic, continued operation or development of adjacent uses would be adversely affected. Nuisance, hazard, etcetera -- none of that is relevant to noise, light, dust, traffic, nothing. And then there is the -- there are the city urban design objectives in the ordinance which we did go through starting on page

nine of Tab 2 is. And most of them are irrelevant here. But mechanical equipment that is carefully design well organized or visually screened. Yes, the equipment will be screened from the neighbors. Screened and painted to match. No rooftop mechanicals exposed to public views from the streets. Again, I'm obviously trying to streamline the presentation, and not walk you through every one. But that's the gist of those which I know you're familiar with. So we meet all those urban design objectives. And the last is the table of the dimensional requirements irrelevant is height, height here is 85 feet. The penthouse in this library is 54 and we'll be four feet above that with the equipment cabinet.

So that's a quick rundown of the various categories and elements of the ordinance. As I said, we met them all. With that I will return to Ms. Aps as to

why Harvard wants this proposal.

MARIA APS: So essentially the students within the quad have been complaining for years that they've been unable to receive adequate cell phone coverage in that area primarily due to the fact that it's pretty secluded from Harvard Square. It's in a residential neighborhood and there isn't adequate cell coverage. And the students primarily are concerned about public safety in addition to not having adequate cell coverage. And the most recent event that happened on campus was we had a shooting at the Kirkland House. And was -- the university has implemented an emergency application system that text messages to alert students, faculty and staff of incidents on campus and tells them where to go get more information to be safe and remain safe. And the students in the quad, many of them complained they did not receive

the text messages. So in order for the university to help provide public safety as well as adequate cell coverage of the quad area, we evaluated several ways of augmenting cell coverage and determined that AT&T, placing an AT&T cell site within a quad area would both provide adequate cell coverage for the students and minimize any impact on buildings on sighting of any equipment throughout the campus and provide very amenable solution for the students. The university is not doing this out of sort of the benevolence of our institution. But it's really to provide for requests for the students. The articles that are alluded to are coming from Crimson, the school newspaper where every year the since 2004 there has been some mention of it. And most recently the mention was how things -- how insufficient cell phone coverage was in order to get the emergency notification

from the system that has been provided by the university. So....

CONSTANTINE ALEXANDER: Am I correct that historically Harvard has not been willing to put telecommunications antenna or a television antenna on its buildings? Is this a first for Harvard? Other carriers that have come before us and you ask why aren't you putting a it on the building, Harvard won't even talk to us. So I'm surprised.

ARTHUR KREIGER: I think it's just -- obviously they can speak to Harvard's history, but the technology has changed. Text messaging and the new i-phone applications changing, changing demand among the students.

TAD HEUER: So why is Harvard not need for Harvard?

MARIA APS: Well, this particular instance where we are sighting cell on rooftops is new to us. We've never done

it before. And the reason is because of the public safety issue first. And it has escalated just as of late. They can't get -- you know, you kind of think well, why should we care about whether or not they can use their cell phones? One of the systems we implemented is to allow them to receive text message services to receive alerts. In order for us to meet those needs, we have found that this particular solution would resolve that issue for us. The quad is remote. It's, you know, far away from Harvard Square. In Harvard Square the majority of students are able to receive adequate cell signal from a variety of carriers, but the quad area doesn't receive that. There's 1100 beds within the quad and there's an estimate traffic of about 1500 transient people that go through that area on a daily basis. So there is a significant population that does go into that area,

and there isn't sufficient coverage.

CONSTANTINE ALEXANDER: There is a tower now, temporary tower that will go down?

ARTHUR KREIGER: That's correct. That actually shows the Harvard seriousness and need to get something in place. We went to ISD and properly permitted a temporary COW, a cell on wheels, which is a tower roughly adjacent to the building and that will come down.

CONSTANTINE ALEXANDER: Mr. Kreiger, I was just looking at the Planning Board letter. There is hardly a raving endorsement for your project.

ARTHUR KREIGER: Absolutely.

CONSTANTINE ALEXANDER: Do you want to address it?

ARTHUR KREIGER: I do.

And the Planning Board essentially had two issues that don't really come through in the letter. But I'll tell you

what happened at the hearing the other night. One, is we don't really see a need for this. And the other is we don't see why you have to go here. Why can't you go co-locate with Verizon out on Mass. Ave? And I am going to address those. To set the stage for that though, I'm not going to put those front and center because I don't think those are relevant under the ordinance.

CONSTANTINE ALEXANDER: Before you address that, I'll read the letter into the record so people will have the benefit of what you're addressing.

ARTHUR KREIGER: As you like.

CONSTANTINE ALEXANDER: We have a letter from the Planning Board dated today with regard to this case. "Planning Board members were not favorably disposed to telecommunications proposed to be located atop Hilles Library. They see the building as a distinguished piece of

architecture and feel strongly that the installation would be an unfortunate appendage. It was particularly troubling to the Board that another carrier apparently has an installation on a building on Massachusetts Avenue that provides coverage for the quad. It would clearly be preferable to consolidate the installations on that Massachusetts Avenue building or elsewhere rather than having a scattering out into the neighborhoods. Addressing the currently uncoordinated approach of cellular antennas is difficult in a private market and is not uniquely Harvard's problem. The Board has seen many cases that are resulting in an unsatisfactory throughout the city. However, educational institutions should be taking the lead in dealings with this issue systematically with a view towards minimizing visual destruction."

You can address that.

ARTHUR KREIGER: Thank you. All right. Let me just put this map before the Board, and I know you're familiar with the area, but we're going to be talking about certain buildings by name. So this is the Radcliffe Quadrangle. Harvard Square being off the bottom of the page. This is Observatory Hill with other facilities non-residential and of course there's more of --

MARK MCENNES: That's affiliated housing.

ARTHUR KREIGER: Yeah.

What we're talking about is Hilles in this spot in the left-hand corner. These buildings here are flat roofed (indicating) on the left-hand side of the quadrangle and the older more traditional buildings are Steven brick building I think. Slate roofs.

TAD HEUER: Bell towers?

MARK MCENNES: Two of them have.

TAD HEUER: How tall are those?

MARK MCENNES: Do you know what the height of those are?

MARIA APS: If you're potentially to hide a structure. One of them is occupied with a ventilation system. And the other one is if you were to place an antenna inside it, you'd still see it and if you were to screen it, it would compromise the architectural component of the --

MARK MCENNES: And those are certainly two of the more significant buildings within the quad area.

ARTHUR KREIGER: In general terms the -- the search or the selection of the building starts with the coverage issue. Where is coverage adequate? And where isn't it adequate? And which buildings then are available and suitable to fill that coverage gap. To augment the coverage to the level that we're looking

for which is the in-building service. So you start with the heights of the buildings, the roof lines. So there's no shadowing of the signals. Again, we can get into the radio frequency issues if anyone likes. Location of the buildings, for example, buildings on this side would probably be on this side, maybe blocked by Hilles in these other buildings and not provide the coverage, and certainly not reach over to Observatory Hill. There was a consideration given to Wolbach on this side and that's not tall enough. So Hilles is in the right location. It's tested and it provides the coverage everywhere that Maria described is desired.

Some of the other issues besides location and height are the slate roof that you just heard about because these, if you're going to mount on a roof and bolting to the roof you're going to be

disturbing the slate roof. The roof pitch, the question whether there are students residing in that building. Not only for construction disruption of the students, but more than that, the older buildings may have asbestos in them. And if we get into asbestos abatement with students living there, you're into a whole other ball of wax. Hilles of course is a flat roof, concrete construction, no students in it. No students living there. It is by far the simplest and the most straight forward and most effective building to use on the campus. That was the determination not only by AT&T for its coverage needs, but by Harvard not only for the coverage and for the aesthetic and historic value.

BRENDAN SULLIVAN: There's an Observatory?

ARTHUR KREIGER: The Observatory was -- we considered it, and in fact the

Planning Board asked about it the other night. I don't think that meets the coverage needs.

MARK MCENNES: It's also listed on the National Registry. So placing, you know, a cell array on that building is more problematic. And that's because it's located, you know atop that slight hill and it would be the most prominent and logical place to do this, but unfortunately it is a historical building and that didn't seem appropriate.

ARTHUR KREIGER: I described those -- some of those criteria, the search criteria and selection criteria in my supplemental letter as well. I'll summarize them now.

So one question is this issue of being in a residential zone. And the answer is given on pages two and three of Tab 2. I'll just read it so you can -- you don't have to turn back and forth.

The closest and only possible non-residentially zoned alternative to the site is the location in the BA-2., business A-2 zoning district on Mass. Ave, straddling Mass. Ave. between Wendell and Arlington Streets. So basically out on Mass. Ave. perpendicular out to Mass Ave. Due to the distance of that area from the targeted coverage area, the (inaudible) on facility height and shadowing effects of intervening buildings, AT&T has determined that the facility at that location would not address the wireless coverage.

TAD HEUER: So why does it work with Verizon?

ARTHUR KREIGER: Because networks differ. We don't know where all of Verizon's facilities are. And a facility for one carrier in one place may work with the rest of the network, where another carrier's network wouldn't work.

TAD HEUER: Suggest that Verizon's

has coverage gap not there, right?

ARTHUR KREIGER: We don't know.

Can I ask the RF Engineer to --

TAD HEUER: Sure. Let me expand upon my point. Yes, maybe the Mass. Ave. location doesn't help because it doesn't reach far enough into the quad. But if Verizon doesn't have any problems covering the quad, it suggests to me that they have locations either north, west or east or south that do provide enough coverage in that area. And it would suggest that AT&T would want to explore similar locations to ensure that they can cover that gap. Right? It's just not a single location. If you're talking about a network of locations that Verizon --

ARTHUR KREIGER: I don't know how Verizon fills its gap, whether it's that one location or not.

TAD HEUER: All right.

ARTHUR KREIGER: I understand

you're point. If Verizon is filling it from one location, why can't we? And why can't we go there?

TAD HEUER: Pretty much.

CONSTANTINE ALEXANDER: Give your name and address.

KEVIN BREWER: Kevin Brewer, 580 Cochituate Avenue, Framingham. Basically, you know, Verizon and AT&T or Cingular or Cellular One designed different networks right from the start. We're approximately about a quarter mile away from where we believe the Verizon site is that covers it. If we were to build a quarter mile away, we would waste a lot of resources. We would not get the capacity that we need. We would essentially be only covering a very small area with a full cell site that is not already covered. So by going where we have a hole, we get to provide much better coverage and we get to pretty much triple the capacity of that

area. Whereas, if we located a quarter mile to where we believe Verizon is, you know, it wouldn't give us much bang for the buck, you know. And just because we happen to have a bit of a hole here, Verizon has a bit of a hole somewhere else. And it's virtually impossible for us to know exactly where they are and them to where we are.

TAD HEUER: Right. The planning -- you may not be familiar with our Planning Board letters, but that's a very strong letter in Planning Board terms that we see. Usually they're either in support or they have minor modifications. We rarely see them come before us saying more than a paragraph. This one's two. And expressing -- at least it's my impression from reading this letter, grave concerns.

CONSTANTINE ALEXANDER: I agree.

TIM HUGHES: I agree with you, but I will tell you at times they are almost

like that is for residential cell towers or cell facilities.

TAD HEUER: So, I understand that, you know, the shifting maps, you know, where you start one, you know, means where you put two and where you put 200.

ARTHUR KREIGER: Right.

TAD HEUER: But it just troubles me somewhat that going right into the center of where the gap is and saying this is the building it must be on, if the cell service is that valuable to both Harvard and to Cingular, and we are having this kind of concern about a particular site that has been selected, it would seem to me that ruling out a multi-site facility that would allow you to fill that coverage gap would not necessarily be out of the realm of possibility. I guess that's what I'm trying to get at. I understand that Hilles would be ideal. It's a one stop shop. I guess what I'm trying to raise is

would it also be possible to do three less intrusive sites. Financially I understand it's an issue, but we're weighing this residential issue as well.

KEVIN BREWER: Well, if we were to enforce it to that, we would be locating within, you know, a quarter mile of this with three different cell sites trying to triangulate into that area. So rather than dealing with one site that you might not like, now you're dealing with three sites that you won't like or that they're in an area that can't be zoned.

CONSTANTINE ALEXANDER: The issue besides it's a residential district is the architectural nature of the building. That's a real issue.

KEVIN BREWER: We're going to get to that.

MARK MCENNES: That was not taken lightly by Harvard.

ARTHUR KREIGER: The need of

needing three or four other sites responds directly to the Planning Board concern about proliferation of these scattering and the mounting of the neighborhood I think they called it. AT&T determined, and I don't think there's any basis to dispute it that this site just on that side would not fill the gap in its network regardless of any other carrier. If you had to have three or four, I don't know where else is non-residentially zoned that would fill the rest of the gap.

TAD HEUER: That may be true. I'm more asking questions and hoping for answers than having the answers provided. But I mean in particular if they already have a site that's on Mass. Ave, I think we would look more favorably on co-location than new location. And if it's possible co-locate on other buildings that we've already granted. That seems to be I think preferable to me at least than

creating a new site where an antenna will go and then that opens that building up again.

MARIA APS: Are you suggesting then that Verizon would have to co-locate with AT&T or that they would want to?

TAD HEUER: I think it's usually up to the building owner and not up to the cell service. Not where the antennas go on the buildings themselves.

ARTHUR KREIGER: Well, I was going to actually come to co-location as a separate -- related but separate point from do we go out on Mass. Ave? Because the ordinance criterion.

Is there anything else that you want to add about the difference between us and Verizon, whether we know what their system is?

KEVIN BREWER: Well, I mean, they're obviously -- they operate on a main network and we operate on UMTS and

GSM. They do act differently but not that differently. We have different equipment and, you know, they may be able to have a great output power than we're able to. And that could affect their account for their coverage getting into here where we don't have that ability to -- so I can't say in more general terms or less general terms about Verizon. I haven't worked for them and I don't know what they have. All I know is that we have a site on Mass. Ave. about a quarter of a mile from where theirs are and we aren't covering them.

ARTHUR KREIGER: The only other thing I want to say on this point, and I'm obviously happy to answer questions, the only other point that I want to make, this is a factor being considered in a zoning and in a non-residential area. All those numbered paragraphs, says the Board of Zoning Appeal shall consider the following in reaching their determination. So I'm

not suggesting it's unimportant, but I don't think it's determinative. And part of that same criterion is the fact that you mentioned, Mr. Chairman, do non-residential uses predominate in the vicinity of this location, and is this facility inconsistent with the character of the neighborhood. I think when we get to the visuals, you will, I hope you will agree that the Planning Board's concern is overblown in this instance, and I will tell you that the Planning Board was explicitly concerned with the precedent. They said if we grant this, these will be popping up in every building and everywhere else. And that I don't think --

CONSTANTINE ALEXANDER: You did present the photo simulations to the Planning Board?

ARTHUR KREIGER: Yes.

CONSTANTINE ALEXANDER: And they

weren't moved by your argument that the photo simulations looked as if the architectural impact was minimal?

ARTHUR KREIGER: They actually were moved from where they started. The opening comment literally was by one of the members: I'm outraged that Harvard would open its buildings to commercial developments. Well, where do you go from there when you're talking about ordinance? They moved a considerable distance considering the need and understanding that it would not be that obtrusive, to understanding that there's not a lot of neighborhood impact. And that letter was a lot softer than the tone of the earlier discussion at the hearing.

Let me turn to co-location.

Co-location is favored -- carriers like it because it can cut costs, you can all go on one pole ten feet apart. The towns of course like it. It's taken many years of

firm hand under the Federal Telecommunications Act to get to the point where people accept these facilities and prefer they be co-located. So the town will say we're going to let you build a tower here and put everybody on it, including our own public safety, rather than have eight applications around town. That's terrific when that happens, and if that came met means everyone's coverage needs, that's fine. This ordinance does not actually promote or require certainly a co-location. It says nothing that I recall reading about collaboration between carriers in the same location. And so again, I never tell a Board you may not look at this thing that you want to look at, but it's not a factor under the ordinance. More to the point it's not feasible. If I'm --

CONSTANTINE ALEXANDER: That's more the point.

ARTHUR KREIGER: I needed to say it for the record.

CONSTANTINE ALEXANDER: I know.

ARTHUR KREIGER: More to the point there's no indication of co-location that's feasible here and there's no tower on which to co-locate. As you said we're simply going to the same rooftop. Well, why that rooftop and not the next door rooftop? The fact is that out on Mass. Ave. does not meet our coverage needs, whether it's on the same rooftop and Verizon wherever they may be or whether it's not. So I think co-location, although desirable, is not really relevant in this situation.

CONSTANTINE ALEXANDER: I just want to ask a question and I want to move on.

BRENDAN SULLIVAN: Can I see the area map, please?

CONSTANTINE ALEXANDER: One

question. Why isn't Harvard dealing with Verizon? So they have their facility on Mass. Ave. It will work here. We won't have to put an antenna on building at Hilles.

MARIA APS: Well, the Verizon coverage is adequate.

TAD HEUER: It's just the students who are on an AT&T network.

MARK MCENNES: Students have the i-Phone and with a single provider.

CONSTANTINE ALEXANDER: Stupid question.

MARK MCENNES: I asked that question myself.

ARTHUR KREIGER: But there is also a legal question. This may or may not move you, but I do need to say it. Under the Federal Telecommunications Act we're not permitted to discriminate between carriers. So the fact that Harvard might have coverage with Verizon, is not a

reason to deny AT&T. With that, I'll turn to my last topic unless you have a question based on the map.

BRENDAN SULLIVAN: Well, again, I keep going back to that observatory and the reason why that was rejected.

MARK MCENNES: Well, I think in general if you look at where Perkins is, to reach, and the issue here is building penetration primarily for AT&T, we have so many intervening buildings between Perkins and the quad that it is problematic for getting that building penetration. That's my understanding of that issue, why that location as it were.

BRENDAN SULLIVAN: Because, you know, it's up high enough and I just, you know, okay, I'm just -- I'm not convinced I guess.

ARTHUR KREIGER: Let me turn to the last topic which is the proposed facility. You've seen the campus map.

Let me just turn to one page of the plans. These are Tab 4 of your packet of -- here's a blow-up, and I want to focus on the one-page aerial shot of the rooftop of Hilles. Here's Shepard Street (indicating). So we'll call that south on the right-hand side end. Here's the existing penthouse which is an extra story across the north end of the building (indicating), calling it north, exactly that. This direct angle in the middle is the atrium to Hilles (indicating). So here is your equipment cabinet (indicating). And next to the penthouse sticks up four feet above the penthouse, but we'll see it's not really visible for all that. With cables on the building running out to two antennas here at this end corner and here at this corner (indicating). Okay. Here's -- the quad is up on the top of the map. The third cable, since they're atrium antennas, the

third cable runs through a pair of antennas mounted on this corner toward Shepard Street and the quad mounted on a square base just for stability. But the antennas are just two simple four feet high narrow antennas. This whole base is what you see is that square is that rooftop level, that's visible which sticks up, we'll see in the photo simulations is in the center of that.

BRENDAN SULLIVAN: You're saying this antenna is facing Garden Street?

ARTHUR KREIGER: These antennas, yes, face Garden. And these face --

BRENDAN SULLIVAN: How does that serve the quad?

ARTHUR KREIGER: The quad. It doesn't. Well, I shouldn't say that.

BRENDAN SULLIVAN: What's it doing there?

ARTHUR KREIGER: Well, hang on. There is the Observatory Hill portion of

the campus as well.

Ken, you want to explain why you need the third antennas there? This is part of AT&T's general network. This facility wouldn't only serve the quad. Harvard wants it to serve the quad. AT&T's interest is to serve the quad, but also because it fills a coverage gap in Cambridge. I think that's part of the answer of the concern. Do you have anything else?

KEVIN BREWER: Yeah, it's basically that -- but the way the antennas are designed to work, they cover a, you know, a triangular shape area. So these antennas that we're placing up cover about 90 degrees really well and they start falling off after that. We only put two sections up there, we're only going to get maximum about 220 degrees of usable coverage. So by putting that third antenna up there, we get to have mobility

for our customers to be able to leave that site and be able to move about without worrying about dropping or interference.

TAD HEUER: Why do you have to ballast knuckle in the corner if you're side mounting the others.

ARTHUR KREIGER: We're side mounting these on the penthouse. The antenna were on this end of the building, the building itself would shadow.

TAD HEUER: You're not side mounting in the penthouse, you're mounting on the side of the building.

ARTHUR KREIGER: These pairs are facade mounted on the side of the penthouse.

TAD HEUER: Right.

ARTHUR KREIGER: This one is on the roof.

TAD HEUER: Yes.

ARTHUR KREIGER: If this one -- are you asking why it's not on the

building or the penthouse?

TAD HEUER: Yes. It seems like a really -- yes, I'm not asking why it's not facade mounted on the building. Not that I found it better, but out of curiosity.

ARTHUR KREIGER: That's a possibility, and it's something that we have looked at. This is the application we had before you.

MARK MCENNES: Why don't I pass around the extra copy of the photo sims so you can --

CONSTANTINE ALEXANDER: I have them.

ARTHUR KREIGER: Let me just work off this one for the moment before I get into the photo sims. Here's the building (indicating). You've got a glass curtain wall on the top of it under a deep overhang. So we have looked at mounting between glass panels or in front of the glass panels over the overhang that may be

going over the overhang which raises issues as well of architecture and structure. But it's not, it's not an obvious place to mount on the side of the building. And it doesn't -- the third set of antennas does need to be at this end of the building. Here the photo sims corresponding to different shots. I haven't bothered putting in the existing ones on this board because you can easily see what the difference is. So this is the main view of that ballast mounted set of antennas. A pair of antennas side by side, that's what it would look like. The ratio of height to setback from the edge needs to be one to one for small propagation. If they were eight feet high, they could -- four foot and move it 12 feet back.

CONSTANTINE ALEXANDER: On that photo simulation how high is the antenna?

ARTHUR KREIGER: What's the top of

the antenna?

CONSTANTINE ALEXANDER: From the rooftop.

ARTHUR KREIGER: What's the top of the antenna from the roof, do you recall?

KEVIN BREWER: The antenna itself is about four and half feet tall, so its probably overall height, about six feet.

CONSTANTINE ALEXANDER: So six feet over the rooftop.

ARTHUR KREIGER: Six feet back from the edge, right? This is the view from Garden Street. There is the penthouse just over the top of the roof there, and there are the antennas on that corner of the penthouse. Here is the, of course, across the quad with the equipment cabinet, that grey box and the antennas again on the penthouse closer to the camera. Here is the other shot of the penthouse. So this is from -- I'll do the street that runs across the top of the

quad. Linnaean? Although I'm not sure exactly where that's from. Those are the other antennas on top of the penthouse. I'm sorry, this one. And this is -- I'll tell you exactly the key to these.

MARK MCENNES: You have the key to those.

ARTHUR KREIGER: You have the key to the maps. Those are the five views. It hardly matters which is from where because it's very little visibility of anything other than antennas themselves. But the visibility of the equipment shelter is entirely from within the quad and not from the neighborhood. So that's all there is. That's all that's visible essentially from the ground, that pair of antennas. We can look at side mounting but it's not clear whether that's a better --

CONSTANTINE ALEXANDER: Can you -- I'm sorry.

TAD HEUER: And I've never actually asked this in the last few years, but is there any reason why the antenna need to be vertically mounted instead of horizontally mounted? It must be because we've never seen one.

ARTHUR KREIGER: We've heard that question before.

KEVIN BREWER: Well, the antennas have -- I guess the best way to think of it is as a lampshade, but they're not perfectly circular, they're elliptical. So the main beam of the antenna is a horizontal beam and that gives us a blanket coverage. The lengths of the antenna gives us a very narrow vertical beam width, so it's about 16 degrees on average. So if we tilt that on the side, we -- rather than getting, you know, 80 to 90 degrees of coverage, we get maybe 20 degrees of using the coverage. So in an installation like this, we'll be placing

antennas across the roof to try to make up that full --

TAD HEUER: You have fantastic coverage right below and directly above?

KEVIN BREWER: Yeah. I mean, if they were high rises, you know, that might be something we might do right next to it.

CONSTANTINE ALEXANDER: I want to return to the issue of safety for a second. That would be the most compelling reason for granting the relief you're seeking. But I'm -- as I reflect on it, maybe I'm just tired, I'm more and more troubled by the safety whether there is such a great safety need or are we talking about convenience for the students? Or use their i-Phones to talk to one another. I mean, is there a safety issue in this neighborhood? I mean, we had one incident in Kirkland House.

MARK MCENNES: And we felt that was a safety.

CONSTANTINE ALEXANDER: But have there been any attacks on students in the -- any issues?

ARTHUR KREIGER: Can I just say --

CONSTANTINE ALEXANDER: Whoever wants to address it.

ARTHUR KREIGER: Before Kirkland House, two or three years ago Virginia Tech scared the heck out of every educational institution that has masses of students that cannot be informed of lock downs or problems on campus. I mean, I remember reading it in the newspaper long before this case, and then you had the incident at Harvard.

MARK MCENNES: I don't know, Maria, if you want to take this opportunity to --

MARIA APS: The situation that we're in is that some of the systems that we put in place to alert our students, faculty and staff of, you know, incidences

is text message based. It's one of the means of getting the message across. And if our students in the quad area are unable to receive adequate signal, they may not receive the alert in a timely manner. And it is impossible to predict what event could occur in the chain reaction. And, you know, sort of as, you know, we look at ourselves as, you know, custodians of these students while they're on our campus, and we look very much to provide as much information as we can. Especially, you know, the undergraduate students who they come to our campus, they're very known. This may be their first time away from home, and we do our very best to provide as much personal safety that we can. And like I said, in one of the articles that we recently submitted, that Kirkland House shooting was cited. So we feel that we had a responsibility based on this very public

fear that these students are being forced to do something about it. Harvard did approach AT&T to place an antenna on our campus. It is our choice not to ask them to come and fill this gap for us. And so we are working in partnership with them. It is not our intent to become a reseller of cellular service, to invite a whole host of carriers throughout our campus, it's not what we do. It's not what our mission is. Our mission is to provide academic -- we have an academic mission. But in this particular case we were faced with the challenge of providing for the students who have gone very public, and the responsibility of the university to do something about it unless, you know, something were to happen given the situation, we would be held responsible.

BRENDAN SULLIVAN: Was the university pressed at all -- I sort of get the impression that the reason why Hilles

was picked is because it is the easiest install.

ARTHUR KREIGER: That's only part of it.

BRENDAN SULLIVAN: I mean, obviously. And because it is the easiest install it also provides us with the best coverage or it provides us with the best coverage, and by the way, it's also the easiest install. And I'm not convinced that it is the best location. I live on Garden Street and I really -- this particular building as a genuine -- is one of the most beautiful buildings in the world as far as I'm concerned. At night -- we take people at night, they ask what is that building and they stop. It's gorgeous. And to me this is defiling it.

TAD HEUER: I have to kind of agree. This, to the extent that you can have an elegant cell antenna installation, it's debatable. This to me seems to be

one of the most utilitarian least elegant approaches in doing this that I've seen recently. It looks like it was designed for maximum utility with not as much emphasis on the fact that it's going on an architectural landmark. I mean, when I think to some of the other ones that we've had here before, we've had non-descript stores that we've had lengthy discussions about fake chimneys about, this to me is orders of magnitude beyond a non-descript store in a, you know, residential neighborhood, mid-Cambridge that is -- and I just, I'm not getting the sense that this is so -- that this configuration is so essential that it is the only possible option in that it would need to be done this way or there would be no cell coverage in that area.

BRENDAN SULLIVAN: I would prefer to see a pole from the ground up in the tennis court hidden by the trees than to

see this.

TAD HEUER: Or something near the observatory where there are many other kinds of radio type facilities.

BRENDAN SULLIVAN: Yes. And it would be a stealth installation. I'm just -- without seeing the, you know, the interference. Without seeing the diagram of why that is absolutely, positively impossible. I don't know.

CONSTANTINE ALEXANDER: That is the issue that troubles this Board. Troubles me as well.

TIM HUGHES: It doesn't trouble me that much.

THOMAS SCOTT: It troubles me.

BRENDAN SULLIVAN: It's my neighborhood. I'm two blocks away.

TIM HUGHES: I think that the phone company should be pressed upon to be a little more design-oriented in this stuff. Let's face it, maybe Harvard

hasn't given you installation in the past because you think there's only one color of brick and they all come out looking like they don't meld at all with anything. And I've seen it all over the place. But, it's the future. I don't see any way around it. And quite frankly, we don't have that much power here in this -- only the fact that it's in a residential neighborhood has given us any discussion about this at all.

CONSTANTINE ALEXANDER: I don't agree with that. We have all the requirements for a Special Permit. It derogates from the intent of the Zoning Ordinance. I think we have power beyond the residential location.

ARTHUR KREIGER: Let me -- if I may address the point that you made about this installation and then suggest where we might go from there. Where we might like to go. AT&T, as you know, for better

or worse, builds antennas with all sorts of disguises. And I say for better or worse, because you may have seen the trees, the mutant trees on the highway.

TAD HEUER: Franken Pines.

ARTHUR KREIGER: Franken Pines. I hadn't heard that. We can do a chimney exhaust, flew, we can do anything. Harvard's design office wanted the unadorned antennas because they were smaller diameter, less obtrusive in Harvard's view than putting a flew around them, a pipe around them, or certainly for a chimney wasn't going to work on Hilles. A concrete chimney. Harvard thought that letting it be what it is is actually inconsistent than trying to dress it up on the rooftop that doesn't have any chimneys and things on that thing. It wasn't saving dollars or lack of imagination or anything else. Harvard thought that was the least intrusive solution. And the

design people thought so. And that's the answer to that. You don't have to look it, but that's how we arrived at that solution.

If the Board doesn't like this, then the next question, I've heard discussion of other locations. We can go there in a second. But I guess my question in between is is there a way to ameliorate the effects of a Hilles installation for the Board? Specifically, if we were to take a ballast mounted and find a way to mount it below the overhang back against the windows so that this is gone. And what you see on the up story is hardly visible by that assumption. You would still have the equipment shed and the ones at the other end. If that was done, does that solve the problem? It sounds like the ones facing Garden were an issue anyway.

BRENDAN SULLIVAN: That's a step

in the right direction. Any kind of cell installation is putting it in the right direction. And mounting against the building might be done in the way that's a building feature. Again, it's --

CONSTANTINE ALEXANDER: If I can summarize it, some of the views of the Board members at all, I don't think anybody denies the needs for the facility here. There are safety issues. The question is it's not been solved by our satisfaction as to whether there is a better place or not a better place or a better way of doing this. That's the one we need you to think of longer and harder about before we make a final decision.

ARTHUR KREIGER: I'd like to just consult with my colleagues for a second and then we'll --

CONSTANTINE ALEXANDER: Would you like us to take another case?

ARTHUR KREIGER: No. 30 seconds.

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

ARTHUR KREIGER: I think what we'd like to do is request a continuance so that we can look at the stealth installation on Hilles.

CONSTANTINE ALEXANDER: I'd look very hard at another location.

ARTHUR KREIGER: I was going to say look at other locations. The question procedurally if we make it a stealth location, it's the same application. It's not a significant change in procedural terms?

BRENDAN SULLIVAN: Yes.

ARTHUR KREIGER: If we go to another building, it's a new building?

BRENDAN SULLIVAN: Because the posting would have to be on that building.

MARK MCENNES: It's site specific?

ARTHUR KREIGER: So it's a whole new application, we don't need to continue

this one?

CONSTANTINE ALEXANDER: We have a whole new application because you're going to be showing another building.

TAD HEUER: I would suggest if you do come back with something that is viable in the Hilles site, to come to us with that, we then turn it down, you can say -- in the effort of expedition, to come to us both with suggestions for those. And also if we were to say not there, other items that you have thought about in the process of coming up with a better Hilles site, that would be a new application, but might be -- get a -- from the Board how those compare to any suggestions that you may have before us. I would look and say certainly bring them down into the -- between the main roof line and the top roof line. It's a suggestion I think I find more amenable to the corners if that's possible. Certainly looking at

other locations, strangely up near the observatory would possibly be the only place in the country where a huge satellite dish would not look out of place, essentially a stealth installation. But also is this photo down in the bottom left; is that right?

ARTHUR KREIGER: What? I'm sorry.

TAD HEUER: Is that -- am I correct the bottom left here?

MARK MCENNES: Straight across. Yeah, that's -- we're looking over -- I think we're looking through Briggs.

TAD HEUER: I mean, I'm looking at a symmetric here on the right-hand side. I'm not sure how the architects are, but whether on any of these other brick buildings would not be out of character for this area of the quad. Any of those would be a potential. Again, noting your slate roofs and etcetera, etcetera. I know that might not be possible, but it

seems to be passed -- we have chimneys here and brick building that might be a potential facility even if it's scattered.

MARIA APS: Well, remember, though, we do need to put equipment.

TAD HEUER: Oh, certainly. And it might not be feasible at all. Entirely understood. But as the Board, I think, is looking at types of installations that would be hidden, disguised, etcetera, to be able to blend in more appropriate by giving you the coverage you need. I guess those are the options I would suggest you look at to go forward.

ARTHUR KREIGER: Then we request a continuance to a date and time sometime before 9 Ash.

CONSTANTINE ALEXANDER: Well, we have to -- this is a case heard, so we have to have the same five before us. Understand that you have to have to come back with plans of some sort, photo

simulations on the Monday before the Thursday here. And I assume the next one is November 18th?

SEAN O'GRADY: 19th.

CONSTANTINE ALEXANDER: I'm not here on the 19th.

SEAN O'GRADY: You're not here for 22nd of October?

TAD HEUER: Correct.

ARTHUR KREIGER: We wouldn't need the same five to present --

CONSTANTINE ALEXANDER: Not for the new case.

ARTHUR KREIGER: We say everything again?

TIM HUGHES: That's an interesting question, but that's not the way we do things.

CONSTANTINE ALEXANDER: If you came back let's say on the 19th, and I can't be here, you'd have the other four members to hear the case if you want to

proceed before them, but you'd need four and four.

ARTHUR KREIGER: What's the next available?

SEAN O'GRADY: December 3rd.

ARTHUR KREIGER: Nothing before November 19th is open?

CONSTANTINE ALEXANDER: There's the man.

SEAN O'GRADY: Nothing is available, no. Well, you have five members.

MARK MCENNES: Just a point of clarification, let's say we decide to go forward with a new location, what is the order of schedule for incoming cases?

CONSTANTINE ALEXANDER: You'll get your application before the 3rd?

ARTHUR KREIGER: Yes, I just want to get a sense.

SEAN O'GRADY: If you go for a new application, you'll be heard -- I mean, if

you had an application in very soon, I'm sure you'd be heard before December 3rd. Probably in November.

MARK MCENNES: Okay.

TAD HEUER: Can they get November 5th?

SEAN O'GRADY: I don't know where we are. Jim seemed to think it was open, so I think it's open, but I haven't been following that.

BRENDAN SULLIVAN: Because a new case would not necessarily be heard by the same --

MARK MCENNES: Correct.

BRENDAN SULLIVAN: -- assembly of members. I may want to wait until I go on vacation.

ARTHUR KREIGER: So I guess our request is we continue to December 3rd if we can file a new application before that.

CONSTANTINE ALEXANDER: You don't need approval for that.

MARK MCENNES: Correct.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case heard until seven p.m. on December 3rd on the condition that the petitioner sign a waiver of the time rendering a decision.

Further condition that the sign on the premises be modified to reflect the new time and date. And for further instruction that the sense you're going to bring before us new plans, we would need those and the photo simulations in our file no later than five p.m. before the Thursday hearing.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

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

(12:15 A.M.)

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

CONSTANTINE ALEXANDER: The Chair  
will call case No. 9835, 4 Channing  
Circle. Anyone here on that case?

You're before us seeking a variance  
to convert a two-family -- a single-family  
to a two-family and to make an addition to  
a non-conforming structure, something like  
that.

BOYCE WATSON: Yes, something like

that. I think the addition is a Special Permit. Boyce Watson from Boyce Watson Architects.

MUIREANN GLENNMULLEN: I'm Muireann M-u-i-r-e-a-n-n Glennmullen.

CONSTANTINE ALEXANDER: Just to jump ahead. The only relief you need is the side setback?

BOYCE WATSON: It's a little more complicated. Because it's an existing, non-conforming building, there are those limits that you can spend ten percent with just a building permit. But to get up to the allowable FAR, we do need relief. In this case, okay, it's a variance, right? Because it's more than 25 percent extension.

CONSTANTINE ALEXANDER: Right, but you're not seeking it.

BOYCE WATSON: What we're seeking is to be able to extend up to the allowable -- what we're doing is, it's a

very unusual lot in this case. I got these photographs here of the house, which it is off -- Channing Circle is a cul-de-sac off Channing. And what happens is, if I can just -- here's Channing (indicating). Here's Channing Circle (indicating), so you have, you know, the houses that are in front and primary streets. Channing Circle is here (indicating). It sort of breaks here, and there's houses along and there's houses on these diagonals. The lot in question is this one which participates in the diagonal because you kind of go southeast. And so, yes, what we're really trying to do is an existing non-conforming. It's allowed to be a two-family. It's allowed to be the size it's proposed. So there's the extension and then there's also -- and I'll show you a couple of boards in a minute that shows ways in which it encroaches on setbacks. Just while I'm on

this, just to point out, it's this odd-shaped lot that has a strange calculation which is the setback which I have laid out in the drawings. But also that it's, while it's preserving the maximum amount of open space and the least impact on any abutters, and why I'm saying that, is it factors in that these -- all these garages in this area that actually zero lot lying garages. And actually the house itself has one here (indicating) that actually abuts the neighbors. So, the other thing that's happening as it relates to when it comes to setback, is actually there's a connection to this garage (indicating). And when you make that connection, actually your house has the setback of the garage, so that's sort of involved in the setback relief. So, if I just were to go to the setback relief -- so what we -- if you go to your 02 in your books, here's the Channing Circle

(indicating). Here is actually the front of the lot line (indicating). And on this drawing is delineated what ends up on the strange pie-shaped lot. So if the setback requirements were these dotted lines, but I highlighted up in this corner the area where the extension -- so the new construction is over the lot line. The existing construction is over the lot line here creating the non-conformity that should just overlap that edge here. I didn't highlight it, but that's existing construction. So the new construction -- and then if you recall the assessor's is right opposite that garage, that is right here on the lot line (indicating). So, the setback relief is just for this, for the fact that we're attaching to the garage, and for the fact that we're building this little piece over the lot line, and that has to do with because we're in this strange triangular

configuration trying to preserve as much as we can. Otherwise there are other extensions proposed, and I'll just outline them.

So, this Board just illustrates where those extensions occur. Here's the existing building (indicating). So there's a slight reduction in the size of the front stoop, addition of this bay, and here's that connection (indicating). And that's on the first floor. On the second floor -- so of this, just this little corner encroaches on setback. And then on the second floor there's a second-story extension which is, even if it were encroaching, it would be as of right under the ordinance. It's the second floor ordinance here and second floor extension here (indicating), and this is a third floor dormer. So none of those are in the setbacks or height relief. It's only because of the overall expansion that

relief is required. That's basically it. So I think that that's the -- that's the idea.

CONSTANTINE ALEXANDER: And you have no FAR issues because you reduced the --

BOYCE WATSON: Some of it.

CONSTANTINE ALEXANDER: Some of it.

BOYCE WATSON: Yes. Actually the extra -- the additional dwelling unit is actually in the basement. It's just a little bit grandmother suite.

CONSTANTINE ALEXANDER: And you can put it in the basement because under the Building Code, eight feet, six inches is required?

BOYCE WATSON: Actually, I think they changed the code. What they've said is inhabitable, still supposed to be seven except for bathroom. The bathrooms can only be six, eight. So we are over seven

feet in the basement except the area hatched in my drawing.

CONSTANTINE ALEXANDER: In the basement. I thought the area hatched covered more than the bathroom.

BOYCE WATSON: No. What's happening here -- I'll grab that. What's happening here is in the basement.

CONSTANTINE ALEXANDER: There's the hatched area. The bathroom in the corner.

BOYCE WATSON: That is allowed to be used, and six, eight -- so it's actually in a strange category now of usable floor area that is not FAR.

CONSTANTINE ALEXANDER: Right.

BOYCE WATSON: But this is really where you can use it. See the little kitchenette down the stairs? Mechanical doesn't count. This does count.

CONSTANTINE ALEXANDER: What about that?

BOYCE WATSON: (Inaudible).

CONSTANTINE ALEXANDER: What is that?

BOYCE WATSON: Storage.

BRENDAN SULLIVAN: So it's not the second unit is in the basement?

BOYCE WATSON: Yeah.

BRENDAN SULLIVAN: There is access from the outside to the basement --

BOYCE WATSON: Yes.

BRENDAN SULLIVAN: -- unit?

BOYCE WATSON: It is now. It's habitable now.

BRENDAN SULLIVAN: And it's access now to the first unit to the first floor or will be?

BOYCE WATSON: Yes. In fact, what happens, those will be separated by doors but can be used as a single thing as well.

BRENDAN SULLIVAN: But can either be a part of or have access to or it can be separate?

BOYCE WATSON: Exactly. This door here, you come up these steps and you're in your back door of the house. So this is your back kitchen entrance. But that door also gives you access down under these stairs and second means of egress from the basement that, you know, entirely separate.

BRENDAN SULLIVAN: Muireann, is this for your own use?

MUIREANN GLENMULLEN: It's my own home.

BRENDAN SULLIVAN: This is it?

MUIREANN GLENMULLEN: Yes.

CONSTANTINE ALEXANDER: This is a tight neighborhood. No letters in the file to my surprise.

MUIREANN GLENMULLEN: I'm sort of surprised. I wrote to everybody and more than half of them came and they said this is great, dah, dah, dah. And so then I wrote, maybe write me a letter of support.

And all I got back was sort of this one.  
But they were all very enthused, and  
please invite us back after it's done.

CONSTANTINE ALEXANDER: May I read  
this?

MUIREANN GLENMULLEN: Yes.

TAD HEUER: Where's the access to  
the six-eleven storage in the basement  
unit? I'm just not seeing a door.

BOYCE WATSON: No, no. It's --  
actually should be there. See the wall?  
It's before you get to that little egress.  
It's not shown, the door actually. You  
see where the little white bit, the tongue  
goes to the egress? It would be there.

TAD HEUER: Yes.

BRENDAN SULLIVAN: And the reason  
why again you're putting the unit, I guess  
for lack of a better word, in the basement  
is?

MUIREANN GLENMULLEN: Well, rather  
than extend into the garden and kind of

destroy, you know.

BRENDAN SULLIVAN: But it seems if you're going to live there, you have a distinct purpose for that. So is it for a family member or possible family member or maybe a rental or something?

MUIREANN GLENMULLEN: Yes. Well, any one of those things. Possibly family as they come and go. Possibly if I were to --

BRENDAN SULLIVAN: It's just that there was a need for additional separate living space?

MUIREANN GLENMULLEN: Oh, yes. I was thinking if I were to go -- my parents were elderly, if I were to go off and stay with them for a few months, a rental unit to have somebody in the place without being in the place, that kind of thing.

BRENDAN SULLIVAN: Yes.

BOYCE WATSON: Exactly. That whole house, as you can see, I haven't got

the dimensional form right in front of me, it's fairly small. It's not -- this is a little house and a little unit.

BRENDAN SULLIVAN: I know. I walked it. As -- I mean, as I said to somebody if John Dollinger knew that that place existed, he'd still be alive today because they never would have found him. It really is --

MUIREANN GLENMULLEN: Hidden back there.

BRENDAN SULLIVAN: -- a unique setting and a unique house. And how do you sort of make a silk purse out of this sow's ear I guess.

MUIREANN GLENMULLEN: The neighbor's comments were sort of gentle putting out the kitchen just on the first floor out there attached to the garage.

BRENDAN SULLIVAN: It's a transition that works.

MUIREANN GLENMULLEN: A little bit

here and little bit there as opposed to some big thing that loses character.

CONSTANTINE ALEXANDER: Anything else? Should I open it to public comments?

Anyone wish to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. I will read into the file the letter from Anthony D. Mardin --

MUIREANN GLENMULLEN: Anthony D. Mardin.

CONSTANTINE ALEXANDER: -- trustee, and resides at 3 Channing Circle. I am a neighbor of Muireann Glenmullen and I have reviewed her plans prepared by Boyce Watson Architects with the following additions and changes to her home at 4 Channing Circle. Third floor dormer at rear 72 square feet, side entrance and kitchen extension along the garage, 345

square feet. Extension of sun room, 44 square feet. New second floor bathroom above existing sun room 123 square feet. Creation of a second unit in the basement with a window well, 17 square feet. I understand the total additional square footage being added conforms to gross floor area requirements for a lot of this size, although the building is non-conforming. Having reviewed these plans I am in support of her application. Carefully edged letter of support.

BOYCE WATSON: Very specific.

CONSTANTINE ALEXANDER: I assume you -- you are without -- it's confirmed that you meet these requirements?

BOYCE WATSON: I think they're taken from the drawings, yes.

CONSTANTINE ALEXANDER: I want to get it on the record, okay?

BOYCE WATSON: I think because there was preliminary consultation and a

secondary one, and then there is that issue, so, yes.

CONSTANTINE ALEXANDER: Ready for a vote? Comments or questions?

TIM HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: Okay.

The Chair moves to grant a variance to the petitioner to proceed with the work as proposed on the basis that granting the variance is -- the following findings of the Board:

That a literal enforcement of the provision of the ordinance would create a substantial hardship to the petitioner. The hardship relates to the ability to use this non-conforming structure to provide sufficient dwelling units to the City of Cambridge.

That the hardship is owing to circumstances relating to the unusual shape of the lot and of the structures. The structures are non-conforming. The

structure is non-conforming and any type of work to improve the structure requires a variance.

And a substantial detriment to the public good would not occur, and it would not be nullifying or substantially derogating from the intent and purpose of the ordinance.

The purpose of this exercise is to create an additional dwelling unit which will add to the housing stock to the City of Cambridge, which is one of the purposes of our Zoning By-Law. It does so in a way that it doesn't seriously depart from our Zoning By-Law.

There is no opposition from the neighborhood on this project. In fact, there's one letter of support.

The variance will be granted in accordance with plans submitted by the petitioner prepared by Boyce Watson Architects, dated 9/21/09. The pages are

numbered 00, 02, 04, 06, 08, 10, 00 again.

BOYCE WATSON: They are reverse pages. So the intermediate numbers.

CONSTANTINE ALEXANDER: Thank you. And the initial page which has been initialed by the Chair.

All those in favor of granting relief, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

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

(12:30 A.M.)

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

CONSTANTINE ALEXANDER: The Chair will call case 9836, 160-162 Hancock Street. Is there anyone here wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: The Chair is in receipt of a letter from the petitioner requesting a continuance. Where is the letter?

SEAN O'GRADY: It should be right in the very --

CONSTANTINE ALEXANDER: Here it is. Regarding 9836, 160-162 Hancock Street: Due to a posting issue, I wish to request a continuance to the next available hearing.

October 22, 2009, is that available?

SEAN O'GRADY: It is.

CONSTANTINE ALEXANDER: The petitioner understands now about the posting requirements?

SEAN O'GRADY: He's certainly been heard and penalized, and I hope he does.

CONSTANTINE ALEXANDER: The Chair moves to continue this case as a case not heard until seven p.m. on October 22nd on the -- well -- and the Chair notes that a waiver of the time for rendering a decision has been received, so the motion to continue was on the condition that not only the petitioner properly post these, but the sign that is posted indicates the new hearing date by modification of the

sign that he or she now has.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(12:30 A.M.)

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

CONSTANTINE ALEXANDER: The Chair calls case No. 9837, 8 Miller Avenue. Anyone here wishing to be heard on that?

TAD HEUER: Good morning.

HUGH WHITE: Good morning.

CONSTANTINE ALEXANDER: You're looking to enclose a porch on your house and you're seeking a variance.

HUGH WHITE: Or a Special Permit.

CONSTANTINE ALEXANDER: You're right, Special Permit. Anything you want to tell us beyond what's in the file right now?

HUGH WHITE: Nope. We've got letters of --

BRENDAN SULLIVAN: Introduce yourself for the record.

HUGH WHITE: I'm Hugh White, and I'm co-owner of the house.

CONSTANTINE ALEXANDER: I see one letter of support. Is there more than one?

HUGH WHITE: There should be.

CONSTANTINE ALEXANDER: I recall seeing more than one. Okay. Well, to grant a Special Permit we have to make certain findings.

HUGH WHITE: Okay.

CONSTANTINE ALEXANDER: And you sort of address some of them in your application, not too extensively. First

of all, we have to make a finding that the ordinance cannot be met without the relief being sought and the nature of the citing of your structure on the lot and the size of the structure you'll need relief, you can't otherwise enclose the porch.

HUGH WHITE: That's correct.

CONSTANTINE ALEXANDER: That we have to make findings regarding the traffic generated or patterns of access or egress would cause congestion, hazard or established neighborhood character. And the point being all you're doing is taking a porch and enclosing it and not changing the footprint.

HUGH WHITE: It's slightly -- just slightly smaller.

CONSTANTINE ALEXANDER: Slightly smaller?

HUGH WHITE: Right.

CONSTANTINE ALEXANDER: In any event, that would not put any additional

traffic or change the character of the neighborhood?

HUGH WHITE: Right.

CONSTANTINE ALEXANDER: Whether what you want to do will have an impact on adjacent uses would adversely affect adjacent uses. And I think we have letters from the neighbors who are most affected who can testify that won't be the case.

HUGH WHITE: Right.

CONSTANTINE ALEXANDER: And privacy will not be an issue for the neighbors.

HUGH WHITE: No.

CONSTANTINE ALEXANDER: And whether the relief you are seeking would create nuisance or hazard to the detriment, health, welfare and safety of the occupant or the city. And since all you're doing is taking a porch now, a screened porch and enclosing it --

HUGH WHITE: Yep.

TAD HEUER: This is a side porch, correct?

HUGH WHITE: A side porch, yes.

CONSTANTINE ALEXANDER: We're clear. Do we have plans in the file on this?

TAD HEUER: I saw them.

CONSTANTINE ALEXANDER: I saw them, too. And the other question is whether granting relief would impair the integrity of the district or adjoining district. And the finding we would make, that would not be the case in view of the fact that the relief being sought is modest. You're taking what is there now, slightly reducing what is there, enclosing it, otherwise making the structure more inhabitable than what it is now.

HUGH WHITE: Yes.

CONSTANTINE ALEXANDER: Anyone here 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, we have letters of support. From Gerry Callen C-a-l-l-e-n, 63 Orchard Street. "I'm writing in support of case the No. 9837 filed by Hugh White and Susan Tiersch to enclose their side porch. My home is directly across Miller Avenue from Hugh and Susan's house, and the effective porch is readily visible from my kitchen window. The proposed changes in no way are detrimental to my view and I fully support approval of the Special Permit."

We also have a letter from David Boyce and Mary-Lou Dymski. B-o-y-c-e and D-y-m-s-k-i. They reside at 10 Miller Avenue. "We are the neighbors of Hugh White and Susan Tiersch at 8 Miller Avenue. We understand that they are seeking to make their side screen porch a

permanent room. We support their efforts to improve their home and understand that the structure will not be larger than it currently is."

And you confirmed that. In fact, it will be smaller.

HUGH WHITE: Yes.

CONSTANTINE ALEXANDER: And we also have a letter from Paige P-a-i-g-e Arnoff-Fenn A-r-n-o-f-f - F-e-n-n and George Fenn. It doesn't say where they reside. Oh, 57 Orchard Street, Cambridge. "We are delighted to learn of your remodeling project." This letter addressed to the petitioner. "We're delighted to learn of your remodeling project to replace your side screen porch with a permanent room. Naturally we support your efforts. Dimensions of your home and the porch side of the house in particular will be no longer than it currently is. Good luck."

TAD HEUER: Is it really that bad?

HUGH WHITE: It's not that attractive.

CONSTANTINE ALEXANDER: I guess I have to go through the drill to make a motion. Ready for a motion?

The Chair moves to grant a Special Permit to the petitioner to enclose an existing side porch on the grounds that the petitioner cannot satisfy the requirements of the Zoning Code given the current screen porch.

That the enclosure will not cause congestion, hazard or substantial change in established neighborhood character, or generate traffic. The reason for that being it's quite self-evident, that all of the proposed is to enclose a porch that already exists.

That the continued operation and development of adjacent uses would not be adversely affected. Support of that is

witnessed by the letters of support from the people who live on adjoining lots, and they are in support of the project.

That no nuisance or hazard would be created to the detriment, health, safety or welfare of the occupants or the citizens. And, again, that is self-evident from the fact that we're only talking about enclosing an existing side porch.

And that the proposed use would not impair the integrity of the district or adjoining district. In fact, the relief being sought is modest. Only a Special Permit, that's it's consistent with our goal of making properties more habitable while observing the requirements of those Zoning By-Laws I should add.

A Special Permit would be granted on the condition that the work proceed -- we're going to tie the relief to these plans.

HUGH WHITE: Right. Okay.

CONSTANTINE ALEXANDER: These are the final plans.

HUGH WHITE: Those are the fine plans, yes.

CONSTANTINE ALEXANDER: If you want to make changes, you'll have to come back before us.

TAD HEUER: Wait until 1:30 in the morning.

HUGH WHITE: That's all right.

CONSTANTINE ALEXANDER: On the basis that the plans -- that the work proceed in accordance with the plans submitted by the petitioner. They are 1, 2, 3, 4, 5 pages of plans. The first page of which has been initialed by the Chair. The plans are dated July 6, 2009.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. Good luck.

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

HUGH WHITE: Thank you very much.

(12:35 A.M.)

(Sitting Members: Constantine Alexander,

Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9839, 2 Amory Place. Is there anyone here? Please give your name.

BHUPESH PATEL: My name is Bhupesh Patel B-h-u-p-e-s-h P-a-t-e-l. I'm the architect for 2 Amory Place.

JOSH BARTHOLOMEW: Josh Bartholomew B-a-r-t-h-o-l-o-m-e-w.

KRISTIE WELSH: And Kristie Welsh, K-r-i-s-t-i-e W-e-l-s-h.

CONSTANTINE ALEXANDER: You want a variance to construct a second story addition over an existing first floor?

BHUPESH PATEL: Correct.

CONSTANTINE ALEXANDER: And we've seen this case before on the neighboring property.

BHUPESH PATEL: That is correct, right.

CONSTANTINE ALEXANDER: And we've

granted relief without conditions other than complying with the plans.

TAD HEUER: I've seen that before.

BHUPESH PATEL: Yes. The light red is what you've already approved and the dark is what you're approving tonight hopefully. This is the addition that was there, and I'll show you those photographs. And he lives on the right side here (indicating), and this is his addition.

CONSTANTINE ALEXANDER: This is a non-conforming structure, just side lot lines?

BHUPESH PATEL: And it's abiding by all the setbacks and the FAR except for one basically which is the addition of the porch because this here setback -- the zero setback that exists between the two properties is the thing that we're not in conformity with, sorry. And here, abiding by the nine feet that is required of this

addition as far as --

CONSTANTINE ALEXANDER: You're not bringing the structure any closer to the lot line, you're going up?

BHUPESH PATEL: Correct.

CONSTANTINE ALEXANDER: Now you've got two stories of non-conformance in terms of the lot line and before you had one?

BHUPESH PATEL: That's right.

TAD HEUER: No.

BHUPESH PATEL: There's no non-conformity except for -- yeah. There's on the line, right, correct.

TAD HEUER: But not towards the line. You're moving closer to your right side setback but you're still within the setback?

BHUPESH PATEL: That's right.

CONSTANTINE ALEXANDER: Right, non-conforming.

BHUPESH PATEL: Just

non-conforming. Just one, two -- wow. Okay. Anyway, that's the gist of that. I'm going to flip these two pages, and just to give you an idea of what these are.

This is basically the first floor, and it's showing the existing house which is this portion plus a one-story room here (indicating). And this is the addition on the first floor, and obviously the second floor is that it's that same space plus above here (indicating). There's a front door that's going to be here (indicating). And it's not a front door, it's just a mud room, and access to the basement down here which was not there before. A bulkhead existed prior to that back here (indicating).

On the second floor, this is for the basement. I want to make it clear that there will be a large basement space in the above height and we're asking for the

square footage that we're asking for. And there's a red dashed line showing where the old basement was, and the new basement is this area here (indicating). And that's happening still in the FAR. I'll show you some photographs of the neighboring property so you get a sense of what's getting done.

First, I'll show you this. Basically this is looking down their driveway, and their addition will come out to this area (indicating). But let me show you that as a pre-existing condition. This is the side that's been done (indicating). And that's just to show you the acute angle of what you see on the driveway. And basically this is the front of the house and this is the addition (indicating). It pokes out a little bit on the neighbor's property, but it will poke out more on their property.

TAD HEUER: Is that a roof? That

picture is actually better.

BHUPESH PATEL: Yeah, yeah. This is showing you the front. So the existing property that's almost finished, and it's beginning aspect of aesthetics, this is really just the paint work. This is the image that's more important because it just shows you that the addition is put in in a way that sort of respects the old outline of the mansard which is the important thing that historic conservationists -- I'm sorry, really fell in love with and were very complementative (sic) about the process when we came up with this and granted the other side wholeheartedly. So it's the same concept relative to that as far as how it's connected to it and the start is basically the same style. Generally speaking that's basically it.

TAD HEUER: And you're planning the same kind of overhang roof over the

entry?

BHUPESH PATEL: That's right. The same aesthetic that's applied to the overhang that will be in here (indicating). And I'll show you elevations that will help clear that up.

That's the back elevation. That's very basic, but it's the side elevation that gives you the idea. Here's the existing (indicating). Here's the existing and here's the canopy style that creates like a welcoming area that gives me the same place that tends to accumulate.

TAD HEUER: Where's the current front door?

BHUPESH PATEL: That's over here which is on the front here (indicating). This is that side door if we had another side door.

TAD HEUER: I see.

BHUPESH PATEL: They actually have

a side door on this deck which you don't see. And the front door is obviously here (indicating). So they still have the front door. It's --

CONSTANTINE ALEXANDER: And you've talked to the neighbors?

BHUPESH PATEL: Oh, I'm sorry. So, these are the most immediate abutters. I'll point them out on this larger site plan so you know who they are. Basically One Amory Place is the one who already done their development. There's abutters directly across the street in the cul-de-sac, and she signed on there. And that's Three Amory Place, and the other one is -- oh, yeah, Cross which is the property right here (indicating), which is shown on the site plan is basically directly across here. And those are the abutters. These properties are all mostly commercial properties that face the square (indicating). So the owners were notified

but none of the owners really live in the building per se.

CONSTANTINE ALEXANDER: Anyone here wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. No one's here.

The Chair will read into the record the a letter submitted, a petition submitted by the petitioner: "We have reviewed the proposal for a rear addition for 2 Amory Place. The new addition will serve as a compact, clean addition and respectfully extends a proportion of the scale of the existing mansard house as detailed in proposed package. S-0 site plan axon view. We understand the proposal will meet the required setback heights as well as allowable square footage increase." I'm not sure that's right. "However, any property that added more ten percent of the square footage

requires a variance resulting in this application. We feel the proposed above noted change will enhance not only their property but the neighborhood in general. We support their application for a variance and hope the Board will grant it." The letter is signed by John Stauffer S-t-a-u-f-f-e-r, One Amory Place.

Edward Liberacki L-i-b-e-r-a-c-k-i, 4-5 Amory Place; Debra Cunningham, One Amory Place; and Gene Souza, Mack Mecalla M-e-c-a-l-l-a at Three Amory Place.

The Chair would also note that this project has been approved by the Mid-Cambridge Commission.

Ready for a vote? You awake?

The Chair moves to grant a variance to the petitioner on the basis of the following findings:

That a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner,

and the petitioner has a house with inadequate living space located in a non-conforming structure. So, relief is necessary to improve the inhabitability of the house.

The hardship is owing to the -- basically the non-conforming nature of the structure, and that we can grant relief without substantial detriment to the public good or without nullifying or substantially derogating from the purposes of the ordinance.

Again, one of the purposes of our ordinance is to encourage the housing in the city, and this will improve the housing stock.

We'd also note that the project has full neighborhood support, and that it also has the support and approval of the Mid-Cambridge Commission.

The variance will be granted on the condition that work proceed in accordance

with the plans and elevations submitted by the petitioner, the first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(Whereupon, at 12:50 a.m., the meeting adjourned.)

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

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

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

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

**IN WITNESS WHEREOF**, I have hereunto  
set my hand this 9th day of October 2009.

---

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

My Commission Expires:  
April 23, 2015

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