

BOARD OF ZONING APPEAL  
FOR THE  
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, OCTOBER 27, 2016  
7:00 p.m.

in

Citywide Senior Center  
806 Massachusetts Avenue, First Floor  
Cambridge, Massachusetts 02139

Brendan Sullivan, Acting Chair  
Janet Green, Member  
Andrea A. Hickey, Member  
Patrick Tedesco, Member  
Alison Hammer, Associate Member  
Laura Wernick, Associate Member

Maria Pacheco, Zoning Secretary

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**P R O C E E D I N G S**

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(7:15 p.m.)

(Sitting Members: Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco, Laura Wernick.

BRENDAN SULLIVAN: Let me call to order the Board of Zoning Appeal for October 27, 2016. Let me make the following statement:

After notifying the Chair, any person may make a video or audio recordings of our open sessions or may transmit the meeting through any medium subject to reasonable requirements that the Chair may impose as to the number, placement, and operation of equipment used so as to not to interfere with the conduct of the meeting. At the beginning of the meeting the Chair will inform other attendees at that meeting that a recording is being made.

A citizen has left a recording device here plus we are also recording by audio and also a transcript of the minutes of the meeting.

So we have been duly informed.

\* \* \* \* \*

(7:15 p.m.)

(Sitting Members Case BZA-011345-2016: Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco, Laura Wernick.)

BRENDAN SULLIVAN: First case the Board will hear BZA-011345-2016, 820 Memorial Drive.

Is the petitioner here or a representative?

When anybody is going to speak, if you could please state your name and give your address for the record. If you have a business card, that would be even more helpful.

ATTORNEY PHILIP LOMBARDO: Thank you, Mr. Chairman. My name is Philip Lombardo and my address is 41 North Road, Bedford, Massachusetts, 01730.

ANDREA HICKEY: Can we ask you to check and see if your mic is on? Is the switch on?

BRENDAN SULLIVAN: There should be a red light.

ANDREA HICKEY: Is it lit?

ATTORNEY PHILIP LOMBARDO: Yep.

Should I repeat that? My name is Philip Lombardo. My address is 41 North Road, Bedford Massachusetts, and I am representing the owner of the property Pecten Properties with respect to their Variance application this evening.

ATTORNEY ADAM DASH: I'm attorney Adam Dash, 48 Grove Street in Somerville. I am here representing Pecten Properties regarding a licensing matter. I believe we have some cross issues that we can explain this evening so that's why I'm here.

JARROD HANSHAW: My name is Jarrod Hanshaw. Address is 33 Ledyard Street, New London, Connecticut, and I work for the owners Pecten Properties. I am their facilities manager.

MARC BELANGER: My name is Marc Belanger from Bohler Engineering, address 352 Turnpike Road, Southboro, Massachusetts, and we are representing the applicant for

civil engineering and site work.

BRENDAN SULLIVAN: There are a couple of issues before we get into the case because it will be considered a case heard. We're not going to be able to go forward tonight with the hearing because the posting sign was not present, and that's under Section 10.42.1 where the posting sign has to be maintained for a period of at least 14 days prior to the hearing. I was there this time last week when I got there before the regatta, did not see the posting sign, I was there on Monday and I have been there almost every day and the posting sign was not present. Mr. O'Grady also went there on Monday after I called him. He went to the site, saw the attendant and, again, he observed that the posting sign was not there. So that's a defect. That's nothing we can do about -- there's no leeway given to us. If that sign is not present, then we cannot hear the case. So that's issue No. 1.

But then the other issue and, again, I really

don't want to get into the merits of case but as far as the licensing, if you could briefly tell us what the status of that issue is.

ATTORNEY PHILIP LOMBARDO: I'll defer to attorney Dash on that.

ATTORNEY ADAM DASH: Thank you, Mr. Chair.

BRENDAN SULLIVAN: I don't know if the other members of the Board were aware on that? Okay.

ATTORNEY ADAM DASH: Thank you, Mr. Chair Adam Dash. And good catch, by the way, on this. This is Ordinance 8.12.010 which says that self-service stations shall be permitted at stations which have service bays. Our understanding of that is that it doesn't mean that you can't have a self-service if there's no storage bay. It just says the self-service shall be permitted if there is a service bay which we take to mean that there's no discretion in that manner, but yet there's no service bay, there would be discretion in allowing the self-service otherwise the

requirement doesn't have a lot of -- make a lot of sense.

And then of course we would think the city would rather get rid of a service bay near the Charles River at this station than -- and have the convenience be 300 square feet larger, which is fairly minimal rather, than have a -- run a service bay and do mechanical repairs there seems to be better for the neighborhood.

I've been talking to Licensing about this matter and they were saying that, and I'm saying that Licensing and Zoning are really on two parallel paths, we need both approvals to do this. And that if Zoning, obviously we're not taking it up tonight, I understand, but if Zoning were to approve the Variance and condition it upon the Licensing, we would then go over to Licensing and go down that road. But somebody has to go first or else we're kind of stuck in the catch 22.

So I talked to Licensing and they said -- I told them I was coming -- we were coming here tonight. They



said, okay, tell us what Zoning does and then we can go talk about the interpretation of this because they agree that it's kind of an odd thing, and there are certainly stations in the city that don't have a service bay and have self-service. So it doesn't seem that this is something that's been enforced or well known. And it may be for the reason that I stated, that in fact it's just got to do with the discretion versus no discretion. Not the -- you have to have one to have the other.

And so, we think the Variance data -- we're not going to present it tonight, but we just ask that you take it up when you can take it up.

BRENDAN SULLIVAN: Sometimes longevity has its benefits and I remember when it came in. So that's how I -- but anyhow I know the whole history behind it. And I knew that you were trying to work that, and my thought on this, I guess what counsel is saying is we're not going to hear it tonight, but when we do, if we don't get a ruling

from Licensing, which I think they're also in concentration with Legal, that if we proceed, gave them permission, gave them the Variance, they then would take that in hand, go to Licensing and say well, Zoning has allowed it but now what about you guys? I'm not in favor of that. I would -- because that still has a cloud over it, and I really, you know, our thing is a lot of work, a lot of paperwork. There is the typing up, the filing and all that other stuff which may not, which may come to not, and I'm a little apprehensive about granting something that still has this cloud over it. I'm speaking for myself.

I would far prefer it to have Licensing basically clear the way for it first before we were to hear that. That would be my preference. Again, I'm only one person. If other people....

ATTORNEY ADAM DASH: Yeah, again, I think this is where we get caught in that catch 22, where you want them to go first and Licensing would rather you go first and

somebody has to do something in order to get out of this.

BRENDAN SULLIVAN: And I think this date came sooner than they were prepared, and I don't see what the hang up is, that they just can't huddle and come up with a policy myself.

ATTORNEY ADAM DASH: Yeah, well, I know that we wanted to seek you out first because A, you have this, that's helpful.

B, that you create a decision which has an appealable component to it and we would obviously like to know before we even go through Licensing whether or not this is going to fly with you first off.

And secondly, the -- like I said the Licensing and the Zoning matters are actually different.

I mean we do this all the time where you have Historic, where you have Conservation Commission with their multiple approvals and they go in order and they're always usually conditioned on the others so that one happens the

other doesn't happen. And I understand what you're saying about typing up the decisions and all that, I understand that. I served on a Zoning Board before and we typed our own decisions, I get that. You know, it's one of those things that we feel you weighing in would be I think important, probably more important and more -- have more clout than if you went first. And if the others did, and also like I said, we're just happy to be in this timeline where we come before you first. And we'd love to obviously get off your agenda, too, and not to have to keep coming back and seeing you too which would also save you time.

BRENDAN SULLIVAN: Yeah.

We've come up with something similar in the past. And I think the, my feeling has always been let's clear, let's take the cloud away first before we give a --

ANDREA HICKEY: So is there a precedent for having a decision from our Board contingent or conditioned upon approval?

BRENDAN SULLIVAN: Well, the only thing that --

ANDREA HICKEY: With Licensing?

BRENDAN SULLIVAN: The only thing that would be akin to that would be if we were to give a Use Variance to a restaurant, to anything, and they still -- it gets kicked up to Licensing in order to put some conditions on that. You know, hours of operation, so on and so forth. But that's sort of in the normal course of business. Somebody would have to come before us first to get the Use Variance or whatever and then go to Licensing anyway, a Victualer's license.

ANDREA HICKEY: And you distinguish this case how?

BRENDAN SULLIVAN: Only because it's a -- right now it's a prohibitive use of the property, not just zoning but Licensing.

ATTORNEY PHILIP LOMBARDO: Yeah, I guess -- this is Phil Lombardo again. I think more, it's more akin to the situation than attorney Dash described, which is oftentimes

people come to you first and there are a series of things that have to happen after. For a gas station you need an underground fuel storage license. You might need site plan approvals. You might need design review from Historical and so forth. It's not necessarily given that you're going to get any of those, and sometimes it's the developer coming forward that hasn't even bought the property yet, and it's not a given that the developer is going to buy the property.

So we do appreciate it is a use of your resources, but this is the only forum that actually has time deadlines, appeal periods. There's no process for the Licensing Board that requires them to do anything quickly or otherwise. So what we're hoping is we're in a process now that we can be heard and when we get our act together with the posting and know if we're gonna at least satisfy this Board, that we meet the requirements and so forth.

ATTORNEY ADAM DASH: And to get any comments or conditions that you may have so we can tweak that before we

go --

BRENDAN SULLIVAN: Well, that gets into the merits of case which I don't want to because that then opens up the hearing. This has sort of been a side discussion, side bar if you will.

ATTORNEY ADAM DASH: Understood.

BRENDAN SULLIVAN: Not getting into the merits of the case. So I hear you. I think what I will do is to reiterate to Licensing that we need a decision because we have to go forward. And I think they may be in consultation with Legal also to, you know, how do we proceed? Shall we proceed?

ATTORNEY ADAM DASH: Would it be something that your Board would be interested in sending to Legal just to move it along?

BRENDAN SULLIVAN: We will communicate with them and I think also you also could knock on their door if you haven't already. I guess you have.

ATTORNEY ADAM DASH: Yeah, the Law Department doesn't take orders from me. They will take orders from you, though.

BRENDAN SULLIVAN: Well, neither from me either.

ATTORNEY ADAM DASH: Actually that's not true. They said if you -- Licensing said that if your Board sent it to Legal, that that would be sufficient.

BRENDAN SULLIVAN: Oh, all right. Well, we will have, we'll communicate that we need some direction. Because right now I'm, again, just for myself would not want to proceed with the hearing on the merits of the case until that has been taken up. It's not going to go forward tonight. When do you think? What are we on next?

MARIA PACHECO: November 17th is our next meeting.

BRENDAN SULLIVAN: November 17th or --

MARIA PACHECO: Or December 1st.

BRENDAN SULLIVAN: -- December 1st. It's a case not heard so we don't have to assemble the same people.



JANET GREEN: I think we have the continued on the 17th.

MARIA PACHECO: It's a not heard.

ATTORNEY ADAM DASH: I think November 17th is fine with us if it's fine for you.

MARIA PACHECO: We've got room.

BRENDAN SULLIVAN: Okay, that will keep everybody's feet to the fire. Let me make a motion, then, to continue this matter until November 17, 2016, at seven p.m. on the condition that the petitioner post the notice Board, that that be in compliance with the requirements of Section 10.42.1, maintaining that notice board for the period of 14 days prior to the hearing date.

That the posting board, you may have to pick up a new one if the other one has disappeared, will reflect the new date of November 17, 2016, at seven p.m.

Also, that if the petitioner wishes to enter into the record any additional correspondence, any additional

plans, that those be in the file by five p.m. on the Monday prior to the November 17th hearing. And I can only reiterate the importance that the attendant, whoever the attendant is maintain that sign.

ATTORNEY ADAM DASH: No idea.

BRENDAN SULLIVAN: We go by there all the time and, you know --

PATRICK TEDESCO: It was posted at one point.

BRENDAN SULLIVAN: It was up there at one point.

ATTORNEY ADAM DASH: Head of the Charles.

BRENDAN SULLIVAN: But it really needs to be maintained.

ATTORNEY PHILIP LOMBARDO: Yes, sir.

BRENDAN SULLIVAN: Okay.

All those in favor of continuing the matter?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Green, Hickey, Tedesco, Wernick.)

BRENDAN SULLIVAN: Okay, see you then.

ATTORNEY ADAM DASH: Thank you.

ATTORNEY PHILIP LOMBARDO: Thank you, Mr. Chair.

\* \* \* \* \*

(7:25 p.m.)

(Sitting Members Case No. BZA-011371-2016: Brendan

Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco,

Laura Wernick.)

BRENDAN SULLIVAN: The Board will hear case No. 011371-2016, 40 Cottage Street.

If you could introduce yourself for the record.

MARK BOYES-WATSON: Mark Boyes-Watson from Boyes-Watson Architects, 30 Bows Street in Somerville.

ROBIN CHASE: Robin Chase, 40 Cottage.

ROY RUSSELL: And Roy Russell, 40 Cottage Street.

BRENDAN SULLIVAN: Before we begin, I just, are you aware of the amount of opposition?

MARK BOYES-WATSON: Beg your pardon?

BRENDAN SULLIVAN: About the amount of opposition to the granting of the Variance?

ROBIN CHASE: No.

BRENDAN SULLIVAN: Well, there's quite a bit. And I only say that only because if you want to open up the case and go forward and then we deem, you know, to continue it because of the correspondence, and out of respect to respond to that, then we have to reassemble the same which may kick

this well into December. That's all.

ROBIN CHASE: Can you tell us something about that?

BRENDAN SULLIVAN: Well, it's here in the file.

ROBIN CHASE: We haven't received copies of that. I don't know anything about that.

BRENDAN SULLIVAN: What I could do, if you wish, is we could suspend this, recess this, you could go into the back room, you could read the gist, respond to it, I could go on to the next case if you want and then have you people come back.

ROBIN CHASE: Sorry, one question.

BRENDAN SULLIVAN: Did you want to do that maybe just to --

MARK BOYES-WATSON: Yeah, maybe we could do that.

BRENDAN SULLIVAN: Is there anybody here interested in the 40 cottage Street?

(Show of hands.)

BRENDAN SULLIVAN: There's a number of people if you turn around. Would it be helpful, and you don't have to, just go into the other room and possibly discuss it? I would rather have you do that and hash out, if it's possible, and you may agree to disagree and then come back to us --

ROBIN CHASE: Okay.

BRENDAN SULLIVAN: -- in a bit rather than spending an hour and a half.

ROBIN CHASE: Yeah, please.

BRENDAN SULLIVAN: Hashing it out then if you want. Let me make a motion, then, to recess this until the petitioner is ready to reassemble and take that and bring those back.

ROBIN CHASE: Okay.

(Case recessed)

\* \* \* \* \*

(7:30 p.m.)

(Sitting Members: Brendan Sullivan, Janet Green, Andrea A. Hickey, Alison Hammer, Laura Wernick.)

BRENDAN SULLIVAN: The Board will hear case No. 011553-2016, 1607-1615 Mass. Avenue.

If you would introduce yourself.

ALEXANDRA OFFIONG: Good evening, Alexandra Offiong, Harvard University.

ALEX KRIEGER: Alex Krieger, NBBJ, the architects.

ALEXANDRA OFFIONG: Thanks so much for having us tonight. We -- the way I would like to provide a brief introduction for our project and then I will ask Alex

Krieger, our architect, to walk through the design.

This is a -- so this is a site that is very important to the university. This is a project that we're proposing that's along Mass. Ave. on the corner of Everett Street. And it's a site that's very important for Mass. Ave., which we know has been subject of community interest for many years, and is also the subject of a recent rezoning that was adopted that looked to strengthen the pedestrian and retail corridor in that area. It's also a site that's very important to Harvard University. Harvard's actually owned the site for more than a quarter of a century, and it's directly next to the new building that Harvard Law School has recently built and it's, it's an important site for the university.

And finally, we know it's been an important site for all of the Agassiz Neighborhood 9 community which we have, we've been working with them throughout the process making sure that the design response to the important



community concerns.

So the project that we are proposing is approximately 20,000 square foot building. It is a building that will be four stories tall. The first floor will be devoted to retail uses which we have heard in through our dialogue with the community that this has been very important that that ground floor is an active use, and so we are actually proposing it and it's actually one of our requested variances.

The upper floors will be devoted to Harvard Law School use. Specifically they will be the experiential learning program, which is a public service lot lying space. That will be a part of lawful curriculum. It's a growing program, and it requires additional space. This site is particularly well-suited because it's got such good frontage and public access and it's easy to find, and because this is a public service space, we know that this building's use should be easy to get to for the members of the public that

will be the clients.

So as we began designing this project, we looked to a few -- there were a few different key objectives:

One, contributing to the Mass. Ave. corridor knowing that it needs to be part of the good urban design.

Secondly, it needs to be a good neighbor to the surrounding properties.

And finally, it needs to achieve a building that works efficiently and effectively for the uses proposed.

So the project itself, we have been -- the project itself we looked very carefully at the zoning, and it's conforming for FAR, it's actually, it's less than the required height,  
it --

ALEX KRIEGER: The allowed height.

ALEXANDRA OFFIONG: I'm sorry, it's less than the allowed height. And it also responds to the new, the -- we know that through the recent rezoning process, there has

been a desire to create a wider side box setback and sidewalk along Mass. Ave.

So, this project responds to that through creating a medium setback requirement on Mass. Ave. and creating that wider sidewalk that has been so desired:

So in a nutshell, we are seeking zoning relief for the retail use which is -- actually, because this site has had commercial uses since the 1920s, this actually would not have required zoning relief had we not been involved in an extensive environmental remediation process for the past years in which those uses were actually discontinued because the site was closed. So we are seeking relief for retail use.

Secondly, we're seeking a Special Permit related to the parking related to the retail use. The building itself -- for the institutional uses we will be providing the required parking as part of the university pool. The retail parking, which will be approximately three to seven

spaces depending on the tenant and the use that we ultimately secure, and those spaces be given the way the ample public transportation in the area, the ample on-street parking within five minutes, and the desire to create a nice site for the neighbors we are seeking a waiver for that requested parking.

We have met with the Parking, Transportation -- the TPT, Traffic, Parking, and Transportation Department with the City. They have a letter in the file supporting that request as well.

And then finally we are seeking relief for the setbacks on the site. The side yard setbacks as well as the front yard setback to Everett Street. This is a site that has some very unique conditions in terms of it faces two front yards, it has -- on two of the side yards there are properties -- abutting properties that are built to the property line, and so we've had to design this with a lot of unique constraints.

We can talk a little bit more about the setback relief, I think, after we go through the design from the architect.

ALEX KRIEGER: Thank you. And let me say that I'm very pleased to be here. I have not had the privilege of appearing before this Board before, so I'm kind of excited about that opportunity.

Let me start with this, with this image. It's an overall site plan. The yellow is the proposed building. And I just want to point out that if you think about the size of it in the plan, you realize how small -- it's actually as small as many of the houses. It's smaller as a footprint than the apartment building certainly, of course, the law school building and even the adjacent apartment buildings. And the reason I mention that is that in order to put an institutional building on that site of that size you have to push out a little bit, otherwise you will not have enough room for the interior. Once you're finished

putting two stairs in and an elevator -- we love to put two elevators in, but we cannot do that. Once you put the mechanical shaft in, you actually don't have much usable space just given how small it is, and that's what led to a couple of these setback variances. Although in our plan, of course, some of them actually aid in the quality of the environment that's produced as a result. And now I can sort of maybe talk a little bit about each of them. Before that we showed you kind of -- this is, of course, existing condition, and you can see this is a view up of course Mass. Ave. towards Porter Square. And that shows the building in its setting as we're proposing it. You can see it in relationship to very large apartment buildings across the street and of course through the also very large law school building.

So the rest -- we have all kinds of boards to ask to have you answer any question you might have, but I want to use this which I think will easily describe the urban

design characteristic. So I think it's as Alexandra said, we are abiding by the additional setback, the five-foot setback along Mass. Ave. And furthermore, we're setting back the retail even further back a little bit because there's an expectation that if this becomes a restaurant or a bank facility, there will be ample space to sit outdoors and even underneath a little bit of an overhang. And so this -- we feel very happy about this. This certainly seems to be what many people desire to have some more very fine commercial space, retail space, on the ground floor.

And then the three floors up above, and again as Alexandra said, we're trying quite hard to keep it below the 60-foot height requirement limits. So this is about 54 feet height. Three floors. And, again, it's essentially office space.

We're pushing back, we're sort of leaving the corner of Mass. Avenue/Everett corner by pulling the building back at the lower levels to create a very modest

entrance to the law school facilities. We're trying to keep that as small as possible so that the majority of the ground level will remain as available as retail space. But needs a door, it needs a little lobby to get into the stair, elevators, to get up to the three floors.

And I'm not sure whether you're interested in the kind of material pallet that we're proposing, but it's an attempt to try to create a transitional building there. It's an institutional building, but it's much smaller and should look more like it's starting to transition to the scale of the buildings that move further to the north. So it will be, it will have partially masonry, very common material, as you can see, of course, the -- especially the buildings across the street. It will have, of course, a fair amount of glass. It will have a second material. We're considering several options, including wood, actually, to make it seem as responsive to not to mimic a residential building, but kind of responsive to the character, scale,



articulation of the more domestic scale building that occur at least for two more blocks along Mass. Ave.

So, let me turn to this view which is the view from looking southward. We have a very peculiar condition which is the --

JANET GREEN: Yes, you do.

ALEX KRIEGER: Apparently a beloved barber shop which is on the property of the condominium next-door. And that, it's an odd condition, but it also, because of the substantial setback, the very substantial setback for a couple of blocks, with these homes are setback almost by 20 feet. That end of the building will be fairly visible all the way maybe from Porter Square. It also then faces the residential buildings towards the north. And so we did not want to sort of end -- we can produce a bay that again tries to suggest a different scale, a different set of kind of articulation as this faces down this corridor. And now, if we were to -- and so this is one of the variances, because

in this condition we would have to set back a substantial amount, creating an additional one-story high addition which would be awfully awkward. Not to mention reduce the useable space would be beyond the point where it was visible, but not -- we would take an awkward condition and exaggerate it as well. In other words, as of right, we would extend this floor towards the barber shop with, you know, towards it, and the other three floors have to be setback substantially. So we thought that would be very awkward, actually, and we think that this resolution of turning the corner with the bay-like condition enhances this whole character of space beyond. So that's the, that's the dimensional variance that we're seeking on this side.

LAURA WERNICK: How much is that? What is the Variance? How much?

ALEXANDRA OFFIONG: So, on the first floor we're actually allowed as-of-right to build the party wall.

ALEX KRIEGER: Yes.

ALEXANDRA OFFIONG: Actually for the height and depth of just --

ALEX KRIEGER: Yes.

ALEXANDRA OFFIONG: -- so anything above 11 feet our first floor actually goes to 15 feet, so we would have to step down that first floor. So it's, the hole building above 11 feet.

ALEX KRIEGER: So the other awkwardness actually would be that really the first floor of the retail building is to be higher than the 11 feet just to make it useful for any kind of retail use.

So if we literally had to abide by this, the first sort of 20 feet setback would have to be at no higher than the -- which wouldn't even make it appropriate for -- it could be perhaps storage or something but not really appropriate for resale establishment.

So, that's the dimensional request on this side.

Because we abided by the five-foot

setback -- initially we were not sure this was a requirement because the existing building there does come out to the sidewalk edge. In order to retain a useful amount of space on the three floors, we had to push the building back and it pushes back three feet, I think, three-foot, eight towards the side yard. Right? Towards this building. In other words, we have three feet and eight inches into the required setback on this side.

We don't think that we're damaging anyone's views or the condition that's as a result. At the moment this is a kind of a, pardon the expression, nasty little paved service area. Harvard would -- we would landscape it properly. We would add a tree or several. We would actually make it much more pleasant to look into than the existing condition, but at the cost of three-foot, eight from the required setback. Although the existing building exceeds that. So that's the second dimensional request.

And the third has to deal with Everett Street.

Which I might -- I could probably refer to a plan.

So the upper plan shows the existing footprint of the one-story building. You can see it comes up to the property line, the sidewalk there. Pretty much on both sides. The lower plan shows the proposed building. We're setting back the additional five feet on Mass. Ave., as I said, plus setting back the lower floor even further to again create a more generous outdoor dining space if that winds up being a retail establishment.

But that setback here against one of the longest dimension has forced us to move this back by again three-foot, eight but as you can see, I'm not sure we have an existing condition. But, you know, we're fully landscaping this area here and improving the side yard even though it's slightly narrower than the (inaudible).

ALEXANDRA OFFIONG: You can see --

ALEX KRIEGER: Yeah.

ALEXANDRA OFFIONG: -- on page 3 there are some

photos, and you can see the existing driveway. The third photo down which is, it's surface parking right now and not really landscaped.

ALEX KRIEGER: Also you see just to clarify that this is the part of the building of that we can bring forward to a zero lot line finish to the barber shop, but only for one floor rather than the full four floors.

And the third dimensional requirement that we're seeking, relief that we're seeking has to go along Everett Street. The residential buildings, of course, are setback -- it varies, but sometimes quite a bit further. Although they all tend to have a very, very well-defined edge either a hedge or a low wall or planting strip up against, up against the sidewalk.

We think that actually a very common condition, you can see it throughout, not just this map of Cambridge, when one approaches, when one walks down a residential street towards a major commercial street or civic street,

which Massachusetts certainly is, one tends to bring the building a bit forward to the sidewalk edge because that's an expectation that that becomes more common and the buildings face that sidewalk. We also need that space quite badly. Because again, if you lose it, again, the amount of usable space becomes quite, almost really insubstantial. Because -- and the other reason we're doing this is that if we move this back by five feet, we also take space away -- further space away from the retail because we would have to move this modest little lobby for the law school facilities, again, doors, a stair, an elevator, and the support space and so forth, that would also have to move back which would pinch further the amount of retail space that is -- is -- that will be possible.

So, again, in each three cases we think there are strong urban design rationale for request of these variances. Again, the -- that would be quite awkward, and we think that a four-story building with a beautiful bay

facing up Mass. Ave. is better than a one-story condition. In pulling this back to create an even more generous space than desired, we needed to take a couple more feet from the side yard. And because we think, for example, just look at the condition of all of the other buildings -- again, buildings that tend as you move from a residential area towards a large commercial street, the buildings tend to move towards the sidewalk to establish --

BRENDAN SULLIVAN: That's all pre-zoning.

ALEX KRIEGER: Pardon?

BRENDAN SULLIVAN: That's all pre-zoning.

ALEX KRIEGER: Yes. No, I understand. I understand that.

BRENDAN SULLIVAN: And so at some point the city planners thought that was not such a good idea and that's why they gave us the book.

ALEX KRIEGER: Yeah, I understand. I'm just trying to suggest why we are doing this both for, both for



reasons of program but also at least in our opinion, for reasons of that kind of making that a prominent condition especially since what we're doing in sense to counter that is to set back on the lower -- on the lowest floor of that corner more substantially, create an entrance and a small little bay to announce the building as one moves up from Harvard Square.

ALEXANDRA OFFIONG: I just have a few things just to add to Alex's points.

On Everett Street, just want to make sure it's understood that the property today is built out to the, to the same line. It's exactly the same setback.

ALEX KRIEGER: Yes.

ALEXANDRA OFFIONG: And one of the important points is that across the street it is a Harvard Law School building, Wasserstein Hall. That does have a very generous setback as well. And so one of the things that in a way mitigates having a smaller setback over here. So there is

some generosity in the intersection.

ALEX KRIEGER: It's still opened up substantially, the setback is.

ALEXANDRA OFFIONG: Right.

And one of the things that we very -- we wanted to create a buffer to our, to our neighbors, and so we felt that we wanted to push the massing so it wasn't, it wasn't close to their buildings with the exception of the barber shop, because it is part of the continuous retail experience.

ALEX KRIEGER: Yeah.

ALEXANDRA OFFIONG: So one of the things that is important to note is just that the setback is actually respected. We are meeting the setback in this location which aligns with this residential building, and the as-of-right condition would actually allow us also to build directly to this property line. So to pull the building for three stories to the -- to that side yard, which we also

felt was highly unfavorable because it would not only put the massing close to the neighbor but it would also create a discontinuous and landlocked open space that wouldn't be good for anyone.

ALEX KRIEGER: Certainly block the views from all of these folks here. In other words, we could have in theory said okay, we'll give up this setback -- we'll give up this and put it here or we'll give up the five feet here and put it here but that I think would be more injurious, that's not even a word, but to the environment than holding on to this line we don't think is so uncharacteristic in Cambridge and providing more openness towards the neighbors.

ALEXANDRA OFFIONG: And it would certainly not work well from a floor plate or efficiency perspective so that's also clear.

ALEX KRIEGER: And I can even show you that alternative if you would like to see it.

BRENDAN SULLIVAN: Anything else?

ALEX KRIEGER: I think that's -- we're happy to ask any --

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Excuse me, can you speak into the microphone? We just can't hear anything that he's saying back here.

ALEX KRIEGER: We're happy to answer any questions.

JANET GREEN: You have to pull the microphone closer.

ALEX KRIEGER: We're happy to answer any questions.

I thought the mics worked a little better when you're a foot away.

JANET GREEN: No, they work better when you're closer.

BRENDAN SULLIVAN: Let me editorialize here a little bit. When I first reviewed this, you know, the university, whenever it comes down as a petitioner, usually

generates a tremendous amount of interest, correspondence, community activism, Smith Center, Holyoke Center being the latest and greatest. And my takeaway in sitting here for a number of years is that I'm sure that the community does not want us to grant any special favored status to Harvard because of what it is, and on the same token I'm sure that Harvard does not want to be subjected to any intense scrutiny beyond what anybody else, any other petitioner. And that's fair.

And so when I look at this and I say okay, well, how would I treat this for -- take aside the petitioner, how would I treat this as anybody, any property owner coming down? And what struck me is that you have a building that sat there since 1913 and commercial space there probably from 1920, contains 7994 square feet presently. And what is proposed is a four-story building with 20,925 square feet, and basically you're going to go from 14 feet to 54 feet. And so what I would normally, and then you're asking for

variances, and what I would normally ask a developer, property owner is what can you do as-of-right and why can't you do it? Because basically you're going to start off with a blank piece of paper. And then I looked at the building and I walked around it and I go to the barber shop, but not have had any conversation with the man about this building because I didn't want to -- well, I didn't want to. But then I've also gone down the alleyway, not the alleyway, but the entry to the back apartment building and I'm trying to imagine what this four-story building is going to look like. And then I said, you know, looking at the sun coming along, the sun's going to get lower and what have you, and so I looked at the shadow study, and I think it's going to have a dramatic impact on that back building. Aside from casting shadows, and again, December 21st at five o'clock, that whole back building is going to be somewhat in the shade. And then in the wintertime, it is winter, sunlight I think is treasured coming into those buildings.

The reverse of that is across the street at City Hall they're having a meeting about light ordinances going into -- from buildings into residential areas. So we've got the reverse. We've got this building casting a shadow, No. 1, and also emitting light or how much light that does emit into that building. And so I picture myself in one of those apartments, and all of a sudden looking and, you know, you're seeing a small building in front of you but you see the blue sky and you see all the other nice -- the sun and so on and so forth. And then imagine this building sitting there. And so it gives me pause to be honest with you.

Now, in going through the dimensional form, the building could go up to 60 feet as of right. And that's -- you're under the floor area ratio also.

ALEX KRIEGER: Yes.

BRENDAN SULLIVAN: And so, yes, the -- what you're requesting is setbacks. And okay, so maybe it's a smaller building, but it's going to be a tower at that point. We

don't know.

The retail part of it, which again is a use variance, and those, you know, the courts have found those to be granted really quite sparingly. And I mean I can give you case law here where I usually cite which says that, you know, variances -- courts have found that variances are extraordinary relief being granted by a Board, and that use variance should be the most extraordinary and the most delicate to be granted because it goes at the very heart of zoning which is a separation of uses. But I get the retail part of it and I understand that, that it is much desired and it should continue along. I understand that. I also understand the need for a parking waiver on that because none of those have it and I mean I don't have any problem going to the barber shop. I don't have any problem going to across the street, any of those things. And I think that, yes, there's plenty of parking for those who have to drive there, but I think that that ground floor is probably going



to service the neighborhood and/or the surrounding institution buildings and what have you. So that doesn't trouble me. It's the effect of that building on the back building that gives me pause.

ALEXANDRA OFFIONG: So, just, just want to set the stage for -- we have been meeting with the neighbors. We have worked -- we have presented to the Agassiz Neighborhood Council. We have had many stakeholder meetings. And we've actually made some significant design changes that have gotten to this point in order to address a number of concerns. You will see in the file that actually both of the abutters have provided letters of support. Both the neighbor to the north, the abutter to the north as well the abutter to the east. So they, you can see the letters in the files but they are both satisfied with the design.

BRENDAN SULLIVAN: Okay.

ALEX KRIEGER: I would also add one more thing, certainly it is tall, going to be taller than what is there

now, but because of the existing building comes up along the property line, actually the amount of ground level open space will increase substantially as a result of pulling back that required setback by 20-some feet. So actually at ground level it will be much more pleasant than it is now, and we did do a very extensive shadow analysis. But there are some, there are some moments when there's a shadow increase. Some of it by the way, there are sometimes when these buildings, right across the street actually, create great shadows. But we don't think that it's something that is -- it seems worse than it is. If you actually look at the full shadow study, it seems worse than it is, the amount of affect that it has on a daily basis or seasonal basis.

BRENDAN SULLIVAN: Yeah, that's just my thought.

As I think, again, as you are in one of those apartments, you're all of a sudden just going to see this. And, you know, is it going to have affect when those people, you know, come home this time of the year and all of a sudden

there's lights on right there, you know? And --

ALEX KRIEGER: One of the things that we did is we had these discussions quite a bit, I think it's as Alexandra said, and we -- I guess I could show you elevations. We limited the number of windows on that side, on those two sides substantially in response to that very issue. So most of the windows, of course, face Mass. Ave.

BRENDAN SULLIVAN: Is there any kind of attenuation to keep that light from emitting?

ALEX KRIEGER: Well, we also talked about whether or not the windows -- we need some just windows for the exterior environment. It would be protected by shades or actually part of the bay window that we're calling at the very end would be screened on the outside around this corner. So these discussions were fairly extensive with the neighbors. And, again, if I could find the right board, we brought many boards to show you, there are many fewer windows on the sides of the building that face especially

this here.

ALEXANDRA OFFIONG: Yes.

I would also note that the fact that we, we have committed to providing retail use in the building is actually one of the reasons why the building has to be a certain size because that use on the ground floor is, we're actually dedicating a certain use to the retail and so therefore the building has to accommodate the university uses as well. So just wanted to put that in context.

ALEX KRIEGER: Just for your interest, this is the facade, it faces that. That's this.

JANET GREEN: Make sure you use the microphone.

ALEX KRIEGER: This is the facade that faces this property. And this is the bay window which of course is forward of that and that's what you would see from walking down Massachusetts Avenue. You can see the very -- there's actually one window at the very corner, and this is a very narrow window just to allow light into the stairway, and we

agreed that that would be translucent glass or in some way screened so it would not be so --

ALEXANDRA OFFIONG: I think from the privacy perspective that was more of the concern.

ALEX KRIEGER: We would have loved to have more windows on that facade, but that was a very appropriate response to some of the concerns of the neighbors.

BRENDAN SULLIVAN: Okay.

Any questions? Please do. Chime in.

JANET GREEN: I just had a question about the bicycle area.

ALEX KRIEGER: Yes.

JANET GREEN: Would you address that? Did it look like you had switched it from one area to another? And why was that?

ALEX KRIEGER: When we more fully understood the code, we have two bicycle areas, there are some on Mass. Ave. --

JANET GREEN: Right.

ALEX KRIEGER: -- and then others in the back and -- well, we call the backyard.

ALEXANDRA OFFIONG: We also, in our discussions with Traffic, Parking and Transportation, they were -- they felt very strongly that it was important to have bike spaces along Mass. Ave. while we could actually have put them all in the -- all of the short-term and long-term spaces behind the building. They encouraged us strongly to put some in the front, so we did make those adjustments to the site plan.

LAURA WERNICK: Have you had much interest in the retail space? Do you have any sense of what kind of -- commercial use?

ALEXANDRA OFFIONG: We don't have a tenant. We're at a stage of right now we are just hoping to design and get the building approved. We do, the -- the specific uses that we are requesting are either restaurant use or retail use.

We see it, we envision a use that would serve the people that are already there in the community and in the neighborhood and at the law school, that it wouldn't -- we don't envision it will be a destination type of retail or restaurant, that it would be something, that would fit in well with the Mass. Ave. So we don't have a tenant and we're not -- it's still up in the air.

LAURA WERNICK: How much square footage is the footprint for usable, dedicated to your retail use?

ALEX KRIEGER: It's about around 2,000 square feet.

LAURA WERNICK: So it's pretty tiny.

ALEX KRIEGER: Yes, which is another reason why that we're sort of pushing out as much as we can while being reasonable about it, that's right. 2,200, it's in that range. Because, again, because we also need a lobby to get upstairs and some service area in the back.

LAURA WERNICK: Yeah.

ALISON HAMMER: I have a couple of questions. Is there a basement or no?

ALEX KRIEGER: No.

ALISON HAMMER: No.

I also had a question about the parking. I'm not familiar with the university pool, I was wondering where the pool is located?

ALEXANDRA OFFIONG: So Harvard University is -- we manage our parking as a campus which is allowed under zoning, and so the university has one parking facility and we allocate spaces for our, for our development needs. So we have a certain number of spaces. And when we have a development project, we are able to use spaces within that pool in order to support the required zoning for the Cambridge Ordinance. Does that make sense?

So, for example, for this building the likely location of the institutional parking will be right across the street at Wasserstein Hall which has a 600-odd space



garage.

ALISON HAMMER: Yeah, I was just wondering where in Cambridge the pool would be -- what part the pool will be pulled from?

ALEXANDRA OFFIONG: There are many, many lots and facilities and they all contribute.

ALEX KRIEGER: Just to clarify -- sorry, I'm sorry, sir. Just to clarify --

BRENDAN SULLIVAN: Yes.

ALEX KRIEGER: -- on the restaurant space. Around 2,000 would be the net square footage. Obviously it would be slightly larger as the gross.

LAURA WERNICK: Right.

BRENDAN SULLIVAN: Has Wasserstein, do they have a surplus of spaces there now?

ALEXANDRA OFFIONG: So --

BRENDAN SULLIVAN: I'm just wondering if this pool has been drained.

ALEXANDRA OFFIONG: No. We manage it very carefully. We manage it with Inspectional Services. We have a certain number of spaces and only some of them have been allocated, and we have a very intricate way of insuring that we are not double counting and not double dipping. We do have -- when we built the garage, we actually set aside a number of spaces so they have -- so anyway, we do have ample, we do have ample spaces.

BRENDAN SULLIVAN: That's where you are on the totem pole whether or not you get a space or not or something like that.

Now, do you anticipate that some of the people who are in Wasserstein now are going to be working in this building?

ALEXANDRA OFFIONG: So, yes, so some --

BRENDAN SULLIVAN: I mean, it will be added staff I guess or added --

ALEXANDRA OFFIONG: Some of the clinical, some of

the clinical uses today, some of the experiential learning programs that exist in Wasserstein, they occur in Wasserstein. It is a growing program so there will be probably some, some of the programs could shift, some of them could be relocated from other locations.

BRENDAN SULLIVAN: When Wasserstein is built out obviously?

ALEXANDRA OFFIONG: Yes.

BRENDAN SULLIVAN: Okay.

ALEXANDRA OFFIONG: It's a program that will remain in Wasserstein and we'll expand it to this building.

ANDREA HICKEY: Can you tell me how you access the green space to the north? Is it only from inside the building?

ALEX KRIEGER: This area here?

ANDREA HICKEY: Yes, please.

ALEX KRIEGER: No, no, no. You simply can walk down the side yard -- what I'm calling the side yard, I

guess, just walk down and access it this way.

ANDREA HICKEY: So that will be true open space and not fenced off just for the inhabitants or --

ALEX KRIEGER: We will not foresee any fence along here at all. Anyone can venture into that space if they wish, but I'm not sure why many would do so.

ANDREA HICKEY: I'm not either, but part of your sort of presentation was how great this green space is to the residential buildings to the north and to the east and --

ALEX KRIEGER: Well, I guess largely looking out on to -- in other words, to compensate somewhat for your worry about four stories, that four-story is set further back than the one-story is. The one-story is along that line. And so the folks on the upper floors would look down onto a much larger green space, yes.

ANDREA HICKEY: All right.

ALEX KRIEGER: Whether or not that fence

will -- that's something we could -- we will continue to negotiate, which whether or not people from the condominium might be able to walk through from this direction.

ANDREA HICKEY: That's what I'm thinking.

ALEXANDRA OFFIONG: I think we, the green space is, it's envisioned as a passive green space. It's sort of quiet buffer, a visual buffer, but it's not intended to be programmed in any way.

ANDREA HICKEY: I understand. Yeah.

I'm a little troubled by the bay, that sort of three-story glass bay. It's a lot of windows sort of looking out on the condo building on Mass. Ave. Can you talk a little bit about, I mean, I know the building is set back so that that glass bay isn't necessarily directly looking into the windows, but can you talk about that a little bit?

ALEX KRIEGER: Sure. Sure. As you pointed out, the whole barber shop is forward of the plain of the

building.

ANDREA HICKEY: Right.

ALEX KRIEGER: And the first window is set back a little bit further. And if you look carefully at this rendering and this, again, is with the discussions with the neighbors, the last portion of that and around the corner would have the same screening that we have on the front of the building. So there will be no direct either visual or sort of light transmission on the diagonal towards here. And around the corner there are no windows. Again, only one window here. We think that the actual bay is forward of that, and a fourth of it is screening. Anyway the part that's closest to the condominium.

ANDREA HICKEY: And I appreciate sort of the setback at the ground level. I can see how thoughtful it is. I almost wish it was more retail space dedicated to the community's needs, you know, in terms of ratio of square footage for this retail space that is sort of the bonus to

the community. I wish there was a little bit more. But I appreciate the thoughtfulness of how the sidewalk is wider, the buildings push back, and the entrance to the institutional part is not really prominent. So I appreciate those aspects of your proposal.

ALEX KRIEGER: Thank you.

JANET GREEN: And the barber shop is also really retail space even though it has nothing to do with you.

ALEX KRIEGER: Yes, there it is.

ALISON HAMMER: Can I ask a follow-up on the basement? Is there a particular reason why you chose not to include a basement?

ALEX KRIEGER: Well, several reasons. One is that it would not be very pleasant space at all.

Secondly, it would not add to the capacity of the retail space because you would not want the retail space to go below ground.

And a thirdly, the three -- I don't know what it

actually would be used for in other words. What the use would be used for. We could provide space down there for services or mechanicals, but a building that size doesn't require --

ALISON HAMMER: I guess my follow-up question to that is whether, you know, it seems that this, you know, Harvard area on the ground floor seems to be mostly, you know, mechanical support spaces, things like that.

ALEX KRIEGER: Right.

ALISON HAMMER: So my question would be if you moved some of the things down to maybe a partial basement, non-GFA space, if that could be used for some of these spaces that necessitate pushing into setbacks? And it would be, could be lovely space on the passive green space.

ALEX KRIEGER: Some of that, the tan space in which you're looking at is also part of the -- would be the back stage for the restaurant. In other words, it's not quite as, it's maybe a little bit unclear. It's not the



only space devoted to a restaurant is in the light colored space. Some of the ground space there would also be part of the back storage areas and support spaces for that.

ALISON HAMMER: Right, which could be underneath. I'm just asking as a consideration.

ALEX KRIEGER: No, it's true. It would be terribly expensive to do so but I suppose we could.

BRENDAN SULLIVAN: Anything else?

LAURA WERNICK: Just what is the height of 1617-1619 Mass. Avenue? Do you know what the overall height is?

ALEX KRIEGER: We probably have a drawing like that, but I don't -- it's a mansard roof, so sorry.

LAURA WERNICK: There's nothing in here that I could find.

ALEX KRIEGER: Let me check it. I think it's in one of the elevations.

LAURA WERNICK: It doesn't have.

ALEX KRIEGER: Could we possibly have left some drawings behind? It's 40-some feet to the bottom of the mansard, and the mansard goes up. And I don't quite remember the exact amount that the mansard goes up.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: 45.

BRENDAN SULLIVAN: Anything else?

LAURA WERNICK: No.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to comment?

JANE DARWIN: We are the abutters at 1617-1619.

BRENDAN SULLIVAN: If you give your name to the stenographer, please.

JANE DARWIN: Yes. Jane Darwin and we are submitting a letter that we are in favor of the proposal.

BRENDAN SULLIVAN: Thank you.

Anybody else wish to comment. Sir.

FRED MEYER: My name is Fred Meyer, M-E-Y-E-R, 83

Hammond Street. I'm the moderator of the Agassiz  
Neighborhood Council, 20 Sacramento Street. Three points  
for you in three minutes:

This does not comply with a memorandum of  
understanding between my council and Harvard prepared many  
years ago.

Secondly, it does not comply with the requirements  
for a Variance.

And thirdly, it does not comply with the standards  
of the zoning.

First point, I'd like to read for you from a  
memorandum of understanding between --

JANET GREEN: She still can't hear you. You have  
keep your mouth right up to it.

FRED MEYER: All right. How's this?

JANET GREEN: That's better.

FRED MEYER: I appreciate your letting me know.

I'm reading from what Harvard had signed more than

ten years ago. (Reading) In response to community interest, Harvard University and its law school have agreed it will not apply for a building permit for a new building at 1607-1615 Massachusetts Avenue site any time before 2021 unless necessary for regulatory compliance or from restoration or construction after fire or other casualty loss. This commitment is not meant to preclude Agassiz Neighborhood Council and neighborhood non-representatives from waiving this agreement by Harvard should there be a project proposal for development prior to 2021 that neighborhood groups favor.

I can't tell you whether the neighborhood favors it or not because we've never had a meeting on waiving this requirement, nor has Harvard requested one. I will tell you that I've repeatedly asked Harvard to prepare a design for a smaller building without retail, because at least to me, and I can't speak for the neighbor, but as one member of the neighborhood, I'm not at all sure the neighborhood still

wants retail. This was done in the pre-Amazon Prime era. A lot of our neighborhood isn't using retail stores. They use that service. The largest toy store in Inman Square just closed specifically saying they couldn't compete with Amazon Prime.

As far as a restaurant use, the main restaurant that the neighborhood wanted tenured was a bakery and a neighborhood coffee shop. In the interim, we've gotten that from Lesley University where we supported zoning, not just a Variance, but a major rezoning from Lesley. And we lobbied the City Councillors and got an eight to one vote to rezone that to allow that coffee shop.

So to assume that because the neighborhood wanted retail ten years ago, doesn't mean it wants it now. I want to be very clear I'm not speaking for the neighborhood. I'm just telling you we haven't had any chance to have a meeting to discuss it to decide. That's point one.

Point two, (reading) The requirements for the C-2A

zone, Section 20.1 13 is the purpose of this section to create a more harmonious and consistent and an element along the avenue and adjacent good building design and site development. And to encourage those values and to discourage new development inappropriate to both scale and design.

Well I'll ask you to take a look at the setbacks of this block of Mass. Ave. and this neighboring block of Everett Street which were shown on this map. They cite in question is right here in question in yellow. Look at the setbacks of these buildings along Everett Street. Many of them are 20 feet, going up almost the whole block.

Now look north on Mass. Ave. at the block from here to Mellen Street. Look at the setbacks there which are also 15, 20 feet or so.

Look at the next block, the same thing. And it goes -- it's just amazing how wide that is.

Now, what's blocking it is the existing building

which is going to be demolished, and one small structure which Harvard has given great weight in this building design, and that is the one-story brick building, building 1950, not as a barber shop, but as an apartment rental office. It's hard to believe this now, but in 1950 it was hard to get the apartments in that building rented so they had to put a building right on Mass. Ave. to get people in to rent them. And then later it was converted to a barber shop.

Now when you're designing a building for the principle of good design, you don't design around the aberration, you design against a historic setback elsewhere. These buildings that -- this building here where Lesley has its administrative office was 100 percent residential. It was built in the Civil War in 1862. Lesley converted it to 100 percent institutional and didn't have one word of objection from the neighborhood because the setback was restored and the building wasn't changed. But this, I've

heard a lot of objection because it doesn't match the setback. And that's right in the Zoning Code if you empower to consider neighborhood design and good design for.

Now, is the design good? If you look at this corner, and a meeting where Harvard didn't describe the architecture, I give them great credit for that. They never requested the waiver. We've repeatedly asked that that pole at the corner, this -- look at the corner, there's a pole there.

ALEX KRIEGER: There is no pole.

FRED MEYER: There's no pole? You eliminated the pole? Well, I thank you for that.

But it's so close to the corner. I want to stress this, as you're driving down from the north to -- this is the first Harvard building you see and it doesn't look like a distinctive building, it looks like a suburban insurance office going on. It's not set back, it's not striking. Similarly this is the gateway to our neighborhood when you



come from the other direction and it's not a good gateway.

Third point is the requirements for a Variance.

I'm reading that your requirements for a Variance in Section 10.20.31 are the requirement that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship, financial or otherwise, because the petitioner -- Harvard doesn't have any financial hardship. It's one of the wealthiest institutions around. And I don't see any other hardship. It is true that they had an unusual environmental condition to overcome. I'll tell you a little background about that that you really need to know.

I was involved in the purchase of this building.

I'm a real estate broker. I had a buyer who wanted to put a small apartment building there, New Hampshire Development. He knew that there was a dry cleaner in the site and he and I said well, we'll be sure to get a 21-E. And what happened is the seller went to Harvard and said, hey, we've got a good other building, build high and make it as simple as

possible. So Harvard waived the standard 21-E inspection for environmental damage and they bid way up and they got it. There's no grudge on my part because my client never would have bought it. So I don't call it a hardship that Harvard didn't do proper diligence. If I had done that, you would have called it stupidity. And it's not hardship.

BRENDAN SULLIVAN: Okay.

FRED MEYER: The second requirement for a Variance that I'm reading is no detriment to the public good or derogating from the intent and purpose of the Ordinance. Well, the Ordinance, as I've just cited to you, is pay attention to setback. Pay attention to good design. This could be a round building at the corner set back which Harvard could build by-right. And I begged Harvard build a design that you could do by-right, let me present to the Council a waiver of the retail, you may not need any Variance, you can sail right through but they wouldn't give me the design. So that's why you're here today and don't

blame me that you have to sit through a hearing. If they had listened to what I've said, you wouldn't have had to waste time on this.

So my request is, either turn this down or better because I think there's good intent here and it's been miscommunication and misunderstanding, ask the petitioners to withdraw it, design a smaller building, bring it to the neighborhood council and if they want a Variance for retail and let's see if they get it. If they get that, they don't need to come back to you.

BRENDAN SULLIVAN: Thank you, Fred.

Is there anybody else who would like to speak on the matter? Yes. Come forward, please. Give your name and address.

JUDITH POLE: My name is Judith Pole. I'm an abutter on the north side and I'd like to speak in favor of Harvard's proposed variance and also speak to your question about light. I suffer from seasonal affect disorder and I

live on the third floor and I've looked at their shadow study very carefully. And there will be a great diminutization of the light, but the fact that they left open a quarter in the back brings equal -- continues to bring eastern sunlight into my living room. If they built as they were allowed to by-right with no variance, there won't be any sunlight in my apartment. So among other reasons, because Harvard's been very cooperative with us talking about other issues we've had, privacy and other things, we're in favor of the variances. And we find that the building they could build as-of-right would be much worse impact on our association.

Thank you.

BRENDAN SULLIVAN: Thank you.

Anybody else wish to -- Ma'am.

JANE DARWIN: Jane Darwin. I live at 1619 Mass. Ave. I'm also an abutter. And I'd like to say that the neighborhood would very much like retail space specifically

a restaurant. When the stores were shut down, we lost the Three Aces, which was a mainstay of our neighborhood and we've been desperately missing it. And we think there's a real need there for that kind of retail space, and in particular the neighborhood eating place. And the bakery that was put in was in no way a substitute for that.

BRENDAN SULLIVAN: Thank you.

Anybody else? Yes, Ma'am.

CHARLOTTE MOORE: I brought a copy of this for each of you so....

BRENDAN SULLIVAN: Is it long?

CHARLOTTE MOORE: No. There's big pictures, which is why I brought the copy actually.

My name is Charlotte Moore. I live at 9 Rutland Street. I've been in the neighborhood almost -- I can see Mass. Ave. from my window for the last over 50 years.

I'd like to comment specifically on the applicant's request for a Special Permit to waive the three

to seven retail or restaurant parking spot requirements.

Frankly, I think this is premature.

To begin with, there's not yet been a proper and former community process similar to that which has occurred with almost all prior development proposals on the avenue. This is a case of a procedural irregularity. Last week's large project review, conducted to provide an opportunity for neighborhood comments, was unfortunately mishandled according to your published notification procedure that says: Abutters and representatives and various agencies and interest groups shall be invited to participate. Agassiz Neighborhood Council has been for decades the official neighborhood representative in organizing editing for all Zoning Variance and Special Permits. The council was not notified about the project review. Therefore, no general notice of the meeting was made.

Also, as far as we know, because it's not in the application, they've not conducted traffic and parking

analysis required to appropriately decide the disposition parking.

Finally, Harvard is unclear about what non-conforming use they intend to put in. There's a significant detriment to the neighboring communities by not establishing a process for reviewing the issue of providing parking before it is clear what the actual retail use will be. Harvard says the non-conforming space will be used by locals and will not require parking. There's a big difference in parking needs between and among different retail or restaurant types. Again, we're being asked to determine the need for parking before the actual use has been specified. The apparent default, according to the drawings but not in the proposal, is a non-conforming restaurant that doesn't need parking. I maintain that such non-conforming uses are not needed as they were ten years ago. The displaced local businesses, fast food restaurant, barber shop, cleaners, and women's clothing store have all

been replaced or increased between Everett and Porter Square. They're now three cleaners within one block, for example.

The precedence. The recent request for a Dunkin' Donuts fast food restaurant was turned down nearby in the commercial part of the overlay district on the grounds that more fast food was not needed. Nothing has changed since then. And we already have too many restaurants. There are six within two blocks. A real estate sign for the open property one and a half blocks away says "No restaurants, please," and you have that picture. Parking pressure has worsened in the last decade and is a major concern in both Agassiz and Neighborhood 9. Opening the Wasserstein building came with losing about six spaces on Everett that were formerly the closest to the best businesses. With those closed, this loss was not material. It will be material if the applicant's proposal to add this business is okay. This proposal for non-conforming retail just



increases the pressure.

Why don't we go back to the drawing board, conduct a proper review process, let Harvard answer all the questions. There's time. The memorandum of agreement between Harvard and Agassiz is still viable until 2021. When it was signed, the neighborhood was concerned about keeping the existing retail and the lack of activity and light at night and the building's appearance as the front door to their neighborhood. With busy Wasserstein in place and more retail on the avenue, there is time and room for an amendment to the MOU before 2021.

Thank you.

BRENDAN SULLIVAN: Thank you.

Anybody else wish to -- yes, sir.

RON AXELROD: My name is Ron Axelrod. I live at 26 Shepard Street. I've been in the neighborhood for about 50 years. I'm an architect and urban designer. And I've been working quite often on trying to develop the avenue as

a vibrant sort of community center for our neighborhood.

Can you hear me?

JANET GREEN: Just like that.

RON AXELROD: Sorry.

As a vibrant community center that really represents the neighborhood and also has a development. So I wanted to talk about three things, and I'll try to keep to three minutes as Fred said.

The history of this is what -- there was a memorandum of understanding. It was based on a building that at the time was a viable retail building. It's not anymore. It's been vacant and empty and drab and not a great place for the last five, seven years. I don't know how many years.

The idea to build something to the full envelope would be maybe not as good as what has been proposed. On the second part of this, there was a community process that started back in January -- I think it was in January. I'm

not sure exactly the date when Harvard came to much -- many of the people who were involved in the development of Mass. Ave. and of the passed history of development along there with first with the Harvard Law School with the Wasserstein building, which was a task force that was formed by Bob Healy (phonetic) in 1999 to develop that, and then with Lesley in their dormitory process and then into the Lunder Center. So that group, along with others who were involved in the development of the streetscape improvement district, got together with Harvard and there was some -- as I said in my note, I'm for it, all -- no ands, ifs, or buts, but because we came to some compromise on what needed to be done. And I think we need to have some compromise to come forward with a project instead of trying to be continual adversaries.

On the third part of this, as an urban design piece, I think that it's very effective building to have something as you go north on Mass. Ave. after Wasserstein

and after that block, I think it's called 1580 or something, that big block there, where you have two buildings and you're sort of forming the entrance to the avenue going forward so that there's a plain of building. And in fact, you'd be the middle of Mass. Ave. and these would be the two buildings. And I think it's a very effective urban design project that's gonna really benefit the neighborhood. I think it's gonna benefit the whole district of the avenue and the way things look at Mass. Ave. And I think it's a -- I think it's a well thought out compromise solution that will help us all.

BRENDAN SULLIVAN: Thank you.

You wanted to speak, sir?

JOSHUA FAY: I'm Joshua Fay, F-A-Y, 55 Garfield Street.

There are two, at least --

JANET GREEN: Get close to the microphone.

JOSHUA FAY: There are at least two retail spaces,

ground floor retail spaces that have been vacant for sometime. I'm also not sure that we necessarily would benefit from more retail space in the neighborhood.

I think that the setback that Fred Meyer mentioned would be great.

I think that the design is not a great transition.

And I think that darkness is really precious, and I think that we should think long and hard before we add more light to the neighborhood, any more light. That's the, that's the biggest thing. That, and the -- well, they're all big things, but I think that the light may be under-appreciated. You spoke very nicely about the light, and I appreciate that, but I would ask everybody else to think a little bit more about the light. And that we need less light. We don't need any more light. And that darkness is really precious.

And that the neighborhood council is a terrific group, and I would invite and welcome and encourage

increased interaction with the neighborhood council.

Thank you very much.

BRENDAN SULLIVAN: Okay.

Anybody else wish to speak?

GORDON MOORE: May I ask a -- this is my comment for you to hand out. Thank you very much.

Can I ask a point of information first? The audience --

JANET GREEN: Make sure so she can hear you.

ANDREA HICKEY: And that she gets your name as well.

GORDON MOORE: Yes, I'm sorry. My name is Gordon Moore. I live at 9 Rutland Street. I moved to the neighborhood in 1965 and I served on all three institutional developments with Harvard and Lesley on the task force during the last 15 years. And that task force was appointed officially by either the Community Development Department or by Healy. I thought they were very productive.

And the memorandum that Fred outlined that said that the site would not be developed unless the neighborhood requested it by 2021 was part of the hard work that we did to come up with an agreement to build a very large building, the Wasserstein building, which frankly I think is too big, but the intent was to house all of Harvard's programs. And now we hear it's not large enough and so they're going to develop some more space and put more programs into Wasserstein.

That aside, I'm going to comment on two topics:

One is that there are, in my view, serious irregularities in the large project review process.

And second, I want to give some input on the appropriate use design and compatibility with the neighborhood of the larger project.

They -- the first thing that I would say is that several people have already mentioned the fact that the memorandum of understanding outlines that there would be

meetings with the neighborhood council and extensive interaction between the council and the proposers. And this was supported by the staff from the CDD in the past.

And -- so you already know that that has not happened.

However, there's another irregularity that has also blocked our ability to both understand the project and to provide input along Section 19 in the large project review, and that was unfortunate, and I don't hold anybody responsible for this. But when I -- we had the single meeting of the council last week, there was no mention of the Board of -- excuse me, of the large project review. And I found out two days after the large project review had been held that there was one. So I called Liza Paden who was the person in charge of this, and I said your own documentation says that neighborhood organizations should be notified.

The council has been the conduit for virtually every one of these developments on the avenue and the convener of the process and the signatore of the agreements between Harvard



and the neighborhood. So it's been an official process.

And the -- there was no notification. Liza said, I'm really terribly sorry, but you'll have to bring your topics up with the BZA, which is really not fair to you guys, I think, to be talking about the design elements of this and the neighborhood interaction. So I want to give you that little bit of background.

But I think the important point is that we've had a very successful process. It has not been used this time, and thus people are inadequately informed. And some of them feel a little bit isolated. I did speak with one of the trustees in the abutter building and I said, are people for it? And he said, well, they're, they're not sure. Harvard's just worn us down. It's taken too long. We would like to see something built in that area and so we've signed stuff.

Relevant to the building itself, I do feel that it is too large for the location. And I also feel that it

doesn't reflect the appearance and character of the adjoining neighborhood as been mentioned.

It's really an extension -- if you look at the building, it's boxy, it creates a canyon out of two sides of the avenue, it's completely inconsistent with what happens in the, in the neighborhood behind it. It wasn't mentioned, I was gonna ask, it has a 12-foot heating ventilation and air conditioning that's visible from all sides on the street which wasn't mentioned in the height. The height referencing in the proposal is that it's taken off the Wasserstein building, which is a huge building. The height referencing is not the neighborhood buildings that it's near to but rather the Wasserstein building and the campus. And so the height mass and the wall face reflect Harvard's Wasserstein building and the campus. And the neighborhood, in the earlier reviews, 10 and 15 years ago were adamant that Harvard had a fringe and they shouldn't go into this neighborhood. Yes, they acquired a property, but that that

fringe should be respected by creating a building that doesn't look like the campus has been extended, but rather that looks like that's where the avenue north of the campus begins.

So on design criteria, I think it's really been inadequately planned and certainly inadequately discussed.

And so the third point is that I want to contest the statement of need or hardship that they made where they've said, they haven't said they have a hardship. They said the neighborhood had a hardship. A number of people have mentioned the fact that we haven't had a process, so we don't really know what the neighborhood thinks. But I do want to point out that the retail reviews on which the earlier agreement that encouraged retail at that site was carried out starting in 2003, excuse me -- yeah, 2003. And the issue has not had a current review and comment process at all, either officially or within the neighborhood, and conditions have changed dramatically on the avenue since

then. And the question of the need for or the type of retail in the C-2A block between Everett and Wendell Street is still an open one in my view. In fact, retail on this section of the avenue is in chronic oversupply.

Two or three -- there are four stores open at the moment. About 15,000 square feet are unfilled on the avenue between the Wendell -- excuse me, the Everett Street and Porter Square. There are two or three stores in the avenue, if you look over the last 10 or 15 years, which are always empty.

And I spoke with the owner of the closest store, the Montrose Spa across the street, and Eddy told me that he is barely struggling, that he was grateful that they closed the retail that the law students went to but he was really worried about whether he could stay alive if in fact they opened up a competing use for, that would draw off local business from him. He's been in the neighborhood for 40 years, 50 years, I don't know exactly how long.

So I think that one other point and that is in the last two years there's been an extensive community and City Council process that revisited the retail issue in the overlay district. And the City Council voted to require retail in all buildings except in this block. And in this block they did not require -- they allowed the existing C-2A of retail to persist. And my view is that there was plenty of time and many opportunity at that time to include this block for retail in this course of this process about the avenue and how to make the avenue better. And the Council didn't take it and I think there were good reasons why it was not approved by the Council.

Dennis is here and he can talk a little bit about that, but there was a good opportunity that just didn't happen.

So, I don't think there's a persuasive statement or a need or a hardship. And I also feel that without the retail, you really don't have to ask for the waiver -- the

Special Permit for the parking because you wouldn't require the parking.

Now, let me finally say that I am by no means against institutional use for this site or even some form of ground floor retail and the right kind of building design. However, not enough thought and community involvement has occurred. And what I would request is that you all ask humbly the CDD to do is what it's done in prior projects, convene a working group, give it some support, support a thorough review of Section 19 criteria and other issues, see that the neighborhood approval process indeed takes place. We will get a better building. Harvard will get a better building and a better relationship with the neighborhood. And short of conducting this review, I believe that it is premature to try to award these three variances and the waiver of parking in the absence in what really for a sentinel building because this is the front door of the neighborhood. I think it could do better.

BRENDAN SULLIVAN: Thank you.

Anybody else who -- yes.

COUNCILLOR DENNIS CARLONE: Hi, my name is Dennis Carlone, 9 Washington Avenue. I live in Neighborhood 9, and I was part of the group that was invited to work with Harvard on this project. I think we met all in all four times whether informally or formally, and I must admit I was not aware of this neighborhood agreement or the detail of the year. And, of course, any group should meet with neighborhood groups. I actually thought that's what we were doing. And granted, no one appointed us, but many of the people were from the earlier design review groups. And I was involved with the rezoning of Mass. Avenue and the Mass. Avenue group in many ways, and my background is architecture and urban design. And I've always known this is a difficult site. I was a consultant to Lesley for many years and tried to encourage them to buy it from Harvard. I was a consultant to Harvard for some years and I was well aware of

the law school even though I wasn't associated with it, the effort there.

I do want to say that when the law school, the major building was built, a number of us independently I found out said, you know along Everett Street the building is so deep, you really should set it back because it's going to be imposing on Everett Street. And I have to admit I was shocked. I was not a City Councillor then, that happened. In this case the building is not that deep and that's why some of us -- I thought all of us, but I guess some of us encouraged respecting the front setback requirement, in fact, even doing a little more at the ground level. But Everett Street given its thinness, the depth of the building wasn't quite as critical. So a few of us encouraged Alex and Alexandra to approach it this way.

I don't like speaking against -- not against, a different opinion of people I respect, but at the same time I have to say what I believe as an urban design architect.



I think if the immediate neighbors sign a letter of support, the ones that are most affected, then the question is what is happening on the streets? And this is a transition building. Everything I heard I agree with in the presentation. It is mitigating the size of the larger law school building. It has the texture that is more residential in scale. It respects in many ways the intentions of what I thought the neighborhoods wanted, that is the ground floor retail to come in. Harvard didn't have to do that. Now, I think it does serve their own building and their own campus. I get that. But nevertheless, women in particular have told me they wanted retail there to have some life and activity when it's dark outside. I can think of three women who said that separately. I think what this building does, and I saw the pushing and pulling as the building relates to the two apartment buildings, and the end result I think is a winner. You know, we could all be picky about little design things because we all come from

different backgrounds. Alex can look at something I designed and say gee, I wish you had -- but in reality if you look at the urban design aspects, I think this is a winning building.

I agree with Ron Axelrod that it does frame Mass. Avenue. I think it's a nice building and I think it does fit into the urban design.

Now, ideally maybe there would be front lawns going all the way down on this block, but ideally is not what the zoning is. The zoning very much says a building five foot back from Mass. Avenue. As far as ground floor retail, I actually think there should be retail in front of the Harvard Law School dormitory whenever they rebuild that, to complement Montrose Spa and Marathon Sports across the way.

So I -- it's all perspective. I think this is a good building and I encourage you to support it. At the same time I respect the neighborhood saying we thought you

were coming to the council, but that is a separate issue from the Variance.

Thank you.

BRENDAN SULLIVAN: I would be interested in your thought. From an urban design, do you see in a perfect world Wasserstein being the end of the campus and that this building then sort of extending that or do you have a problem or not?

COUNCILLOR DENNIS CARLONE: I think the beauty of the ground floor retail is it takes the curse off of an institutional building, and I suspect that was part of the rationale. It makes it this building that brings two sides together, the neighborhood --

BRENDAN SULLIVAN: But it's the --

COUNCILLOR DENNIS CARLONE: The height matches pretty much what's across the street.

BRENDAN SULLIVAN: So it's an extension of the campus then? In other words --

COUNCILLOR DENNIS CARLONE: No, I think it's both. I think it has the bulk of a building that is like the apartment building across Mass. Avenue. It's about four stories as I recall.

ALEX KRIEGER: One of them is taller.

BRENDAN SULLIVAN: The one across the street is six.

COUNCILLOR DENNIS CARLONE: Yeah. And the ground floor retail and the texture of the elevation of the building, the facade --

BRENDAN SULLIVAN: All right, so you still see it as a transition?

COUNCILLOR DENNIS CARLONE: Yeah.

BRENDAN SULLIVAN: Yeah.

COUNCILLOR DENNIS CARLONE: No, no question --

BRENDAN SULLIVAN: Okay.

COUNCILLOR DENNIS CARLONE: -- in fact, I think that was a goal right from the beginning.

ALEX KRIEGER: Yes.

BRENDAN SULLIVAN: Yeah, okay.

COUNCILLOR DENNIS CARLONE: And I saw that. And some of the things we encouraged are in this building.

BRENDAN SULLIVAN: Yeah, okay. Thank you.

COUNCILLOR DENNIS CARLONE: So, thank you.

BRENDAN SULLIVAN: Thank you.

COUNCILLOR DENNIS CARLONE: It is the question. You asked the right question. It's -- and different perspectives will say different things.

BRENDAN SULLIVAN: Right.

ALEX KRIEGER: It's considerably shorter than this building. It's about the same height as this building.

COUNCILLOR DENNIS CARLONE: This says it all.

ALEX KRIEGER: And this is much larger except for heights.

BRENDAN SULLIVAN: Yeah, it just dwarfs the building behind it.

Anybody else? I'm sorry, are you done?

COUNCILLOR DENNIS CARLONE: I was just going to say you do expect, despite the historic architecture of the houses up the block, normally on a Mass. Ave., on a main street, you expect a taller building than what's behind it on a side street. You expect four stories down to two-and-a-half, three. That is traditional. And in fact, I'll say it, the Planning Board has told us when we -- oh, by the way, the reason why we didn't include these blocks in the rezoning of Mass. Avenue was a different district and all the zoning for the ground floor retail is in a BA-1 and this was BA-2 and we were encouraged to stay away from that. So I said all right, we'll do it the next round. Maybe I shouldn't have. But the Planning Board is looking at raising height limits, which I think all the neighbors ought to be concerned about, including myself. So in some ways this might be less than what the Planning Board wants for what that's worth.

BRENDAN SULLIVAN: Okay.

COUNCILLOR DENNIS CARLONE: But you can talk to them separately and berate them about that.

BRENDAN SULLIVAN: Well, they talk to us.

COUNCILLOR DENNIS CARLONE: Yes, I know.

BRENDAN SULLIVAN: Anyhow.

Yes, sir.

COUNCILLOR DENNIS CARLONE: Thank you.

BRENDAN SULLIVAN: Thanks, Dennis.

STEVEN LaPOINTE: Thank you.

My name is Steven LaPointe and I am a condominium owner at 1619 Mass. Ave., the abutter to the north of this proposed building and I want to speak in favor of this proposal. It seems to me that one of the really important things about the newer urban design principle is mixed use, and not only mixed use in neighborhoods but mixed use within blocks. And I feel for some of the reasons that have already been stated, that having this non-conforming retail

in this, restoring that really that first floor is not only a good thing but really essential for public safety reasons as was just said. But also to really embrace that new urbanism that we need in the neighborhood. I haven't owned a car in 15 years, and I think for walkability, for liveability, for many reasons, it is what the neighborhood really needs and I speak in favor of it.

BRENDAN SULLIVAN: Good. Thank you. Anybody else?

(No Response.)

BRENDAN SULLIVAN: Let me close that portion of public comment. There is correspondence --

JANET GREEN: Hold on.

BRENDAN SULLIVAN: Oh, I'm sorry. I overlooked you.

TOM LUCY: I'm actually with Harvard but I wanted to -- there's been some --

BRENDAN SULLIVAN: Name and address.



TOM LUCY: Tom Lucy with Harvard University. I just wanted to address some of the process questions. And some folks have brought up a memorandum of understanding and I want to clarify that.

I understand that folks in the neighborhood don't have to remember all of the details and there are some things in there, but it's my job to sleep with those agreements under my pillow and understand them through osmosis. The overlying, overarching portion of the memorandum of understanding only speaks to buildings that 25,000 square feet or larger. I have it here in this document. Despite the fact that this building is only 20,000 square feet and didn't meet the standard of process that we would use with the MOU, we undertook the spirit of that process anyway. I think you heard from Councillor Carlone, Mr. Axelrod that we formed that dual neighborhood committee that had representatives from Neighborhood 9 and representatives from Agassiz. We met with them on a regular

basis. We had a community open house back before the summer, took the comments from that. They informed a lot of the changes. After we made those design changes based on those dialogues, we re-presented in the fall. In fact, the Agassiz Neighborhood Council had a special hearing where we were the only agenda item for that evening. I agree that there was some difference of opinion at that, but we encountered that and I'm sure that you'll see when it comes to designing the building there's lots of opinions at community meetings.

And so the abutters, as you've seen in the package and have testified here, we've done a lot of work with our abutters that are the most impacted by the setbacks and are supporting those setback variances. So I feel like we have done a lot of work. I know I've done a lot of work in a lot of meetings and a lot of cups of coffee. And I think someone referenced that some of the folks felt worn down by it, but that's because I wanted people to know about it that

needed to know about it and to try to get us into a win/win situation. So I hope that clarifies that.

BRENDAN SULLIVAN: Okay.

All right, let me read into the record a letter from the -- (Reading) Dear Members of the Board of --

JANET GREEN: They can't hear you. You're not close enough.

BRENDAN SULLIVAN: (Reading) I am writing on behalf of the 1617-19 Mass. Avenue condominium association to voice our strong support of Harvard University's proposed new building. The 1617-19 Mass. Ave. condominium association represents the owners of the building property that abut 1607. We very much appreciate the efforts Harvard University put into the dialogue with owners in our building and the design changes incorporated. We believe that the current proposal nets a better building and site condition that would be achieved with the base zoning. And it's signed by one, two, three four, and by the trustees.

There is correspondence, Tom Lucy. There is a letter from Douglas Yoffe, Y-O-F-F-E. (Reading) This letter is in support of the Zoning Variance proposal, 1607-1615. I am the owner of 3-5 Everett Street, a seven-unit apartment building that abuts the property in question immediately. To the east I have reviewed the plans for the building and the operations as proposed. I have no objection.

There is correspondence from Peter Kroon, K-R-O-O-N. (Reading) I am pleased to submit this letter in support of Harvard's proposed new building. He lives at 16 Linnaean Street. (Reading) Harvard's application respects the spirit and goals of the recently adopted zoning amendment to the MAPOCO area of Mass. Ave. located immediately to the north of the site.

I have correspondence from Mr. Axelrod that we have. I will enter his letter and also his comments into the record.

There is correspondence from the Traffic and

Parking. (Reading) The Cambridge Traffic, Parking and Transportation Department has met with Harvard University on their proposed project at 1607 Mass. Avenue. The project proposes a four-story mixed use building with approximately 1875 square feet retail or restaurant use on the ground floor and Harvard Law School public service law clinic programs on the upper floors. Harvard University is seeking relief from zoning parking requirements for the retail or restaurant uses, three to seven spaces, depending upon the final use as retail or restaurant. TP&T, Traffic, Parking and Transportation, supports the request for parking reduction relief for the following reasons:

The building is located within a ten-minute walk of Harvard Square, including the Harvard Square MBTA station is even closer, about a five-minute walk, to MBTA bus stops and a block from the Harvard shuttle stop on Mass. Avenue in front of Wasserstein. Because it will not be a destination retail restaurant use in nature, most retail or restaurant

trips are expected to be by walking, biking, and transit. The project will include new bicycle parking spaces. Ten short-term and three long-term bicycle spaces. There are existing on-street meter parking spaces in front of the building and on Mass. Avenue to serve the retail restaurant uses. Approximately 153 on-street meter spaces within a five-minute walk of the site. The reduction in parking will not cause a substantial adverse neighborhood impact. Thank you for providing us with the opportunity to comment.

Joseph Barr, Director.

Correspondence from the Cambridge Planning Board.

(Reading) The Planning Board reviewed the request for the zoning variances for retail use, front and side yard setbacks, and Special Permit for reduction of required parking for retail use submitted by the President and Fellows of Harvard College for a mixed use retail and institutional educational building at 1607-1615 Mass. Ave. The new four-story building will combine retail or

restaurant use in the ground floor with a public service law clinic program associated with the Harvard Law School in the upper floors. The Planning Board voted to support the request -- voted to support the granting of the requested relief. For many years the community and city have wished to see retail uses reestablished at that particular location since the existing retail building was vacated for environmental reasons. The Board finds that the proposed development to be an appropriate scale and use transitioning between the academic campus and the Mass. Ave. mixed use corridor. The Board also believes with deference to the Traffic, Parking and Transportation Department that on-site parking for retail is not necessary given the area's ample access to multiple modes of transportation and on-street metered parking. The Planning Board recognizes the community engagement efforts that this proposal has gone through in order to optimize the ground floor use while appropriately responding to the surrounding streetscape.

The Planning Board also encourages the screening of the rooftop mechanical equipment to reduce the visual impact.

I would add a visual as well as sound attenuation.

That is the sum substance of correspondence.

Any comments, questions by any members of the Board at all?

LAURA WERNICK: No, I'm ready to vote.

ANDREA HICKEY: I had one question.

One member of the neighborhood talked about some kind of a mechanical piece of -- something in the front of the building that was mechanical. Is there -- maybe I misunderstood.

JANET GREEN: A pole?

ANDREA HICKEY: No, not the pole. Is there some kind of a compressor or anything mechanical in the front of the building?

ALEX KRIEGER: No.

ANDREA HICKEY: Maybe I misunderstood.



BRENDAN SULLIVAN: Rooftop I think.

ALEX KRIEGER: It's on the roof. It's on the roof.

ANDREA HICKEY: Okay.

BRENDAN SULLIVAN: Any questions at all?

JANET GREEN: I'm comfortable.

BRENDAN SULLIVAN: Well, the only question I had was this memorandum of understanding. And, again, if we could just briefly, again, just go back over that, because, you know, there's a copy here, but had that been addressed?

LAURA WERNICK: Yes.

BRENDAN SULLIVAN: In response to community interest, Harvard University and its law school has agreed it will not apply for building permit for a new building 1607-1615 Mass. Ave. any time between 2021 unless necessary. Regulated, the commitment is not meant to preclude the Agassiz Neighborhood Council and Neighborhood 9 representatives from waiving this agreement by Harvard.

TOM LUCY: There's also a clause, and I think it's the paragraph before that that speaks to loss, and we would maintain that the environment situation there has put the building at a loss since it's been unable to operate for the past eight years. And again that --

BRENDAN SULLIVAN: My retort for that is that's a self-inflicted wound.

TOM LUCY: Okay. But it does, it does talk about the loss of the building.

And more importantly, this is -- the memorandum of understanding, the way we set it up with the community was there was an overarching memorandum of understanding, and then as we went into different developments, we would had letters of intent. The overruling thing is the memorandum of understanding with this paragraph that I've referenced in my previous testimony down at the bottom where the memorandum of understanding relates to the building's 25,000 square feet --

GORDON MOORE: Here is the memorandum of agreement that was signed.

FRED MEYER: Casual and not, not --

BRENDAN SULLIVAN: Fred, Fred, that's okay, Fred, we're not going to -- that's my thought is that I wish we had this to review prior to tonight. That's my thought. This is sort of hitting us blind and we're having a difference of interpretation or a difference of presentation, and it gives me a little bit of pause here to digest the whole thing. That's my problem.

I don't know if anybody else has a problem with it or not.

JANET GREEN: Which one is it? The one we have has the six items. Does that have more than six?

BRENDAN SULLIVAN: Well, this --

ANDREA HICKEY: Right, but we only have one page of this.

BRENDAN SULLIVAN: Page.

ANDREA HICKEY: This is really out of context.

It's, I think if we're to consider this one page, we need to know what the whole thing says.

BRENDAN SULLIVAN: Right. The whole thing is.

And that's what I'm saying is I wish we had had it. Here it is in its totality I guess.

TOM LUCY: They are separate documents. Again, the document that I handed in was the original memorandum of understanding. That was the overarching agreement under which these individual development agreements would be negotiate.

BRENDAN SULLIVAN: Okay. Under --

TOM LUCY: So the overarching principles are spelled out in the document that I handed in that relates to the 25,000 square feet.

BRENDAN SULLIVAN: Page 5, three, build out predictability. Agassiz and Harvard recognize the long-term predictability as part of the MOU. Each offers mutual

assurance regarding future north campus development.

Bullet point 3, assurance that project will proceed. This MOU assures that there will be, broad, direct, and ongoing consultation including presentations of project design for significant projects 25,000 net square feet or greater with the Agassiz community and permit granting authority regarding Harvard's north campus.

So that is the threshold.

TOM LUCY: If I could also just add that we made community presentations, as I said originally. We lived up to the spirit of that agreement. Now, that doesn't mean that everybody in Agassiz liked the design of the building, but we had several community meetings. We put a working group of folks together from Neighborhood 9 and Agassiz that we made presentations with and took comments. So I would suggest that there was a lot of community consultation. Again, not everybody likes a design, but we did do the process.

GORDON MOORE: Mr. Chairman, I request since he got a second shot, I would like to respond.

BRENDAN SULLIVAN: Well, no, I think I was asking him a direct question from the memorandum of understanding. So I really don't want to get into a back and forth, Gordon. I asked about and he presented the document in total which is what I wished I had received because I only received one page which was not the complete story to me anyhow.

Okay, Alexandra, do you have any final comments that you wish to make?

ALEXANDRA OFFIONG: I just wanted to respond to one of the questions that came up about the transportation process. So I -- one thing that I neglected to mention was that we actually did hire VHB Transportation Consultants and they did do an assessment of the building and they did determine that given the proposed retail use, there would not be any significant impact to the neighborhood parking and it was also mitigated by the ample transportation

resources in the area. So I just wanted to mention that.

ALEX KRIEGER: May I make a final comment?

BRENDAN SULLIVAN: Yes, sure.

ALEX KRIEGER: I hope that you might have had a chance to look at the exhibit page 16 which shows a much larger stretch of Massachusetts Avenue. One of the, one that I think very interesting unique and charming things about Massachusetts Avenue, unlike say the Rue de Rennes in Paris that does not have a consistent cornice and does not have a consistent setback and it's very substantially from Porter Square over to Harvard Square. That's the character of Massachusetts Avenue rather than some absolutely straight line either in terms of height or in terms of the setback, and that's the way we feel we've actually contributed to that character as the design of this building.

BRENDAN SULLIVAN: Okay. That's it?

Okay. Anything else to add?

LAURA WERNICK: No.

BRENDAN SULLIVAN: Any questions?

ANDREA HICKEY: I just wanted to ask whether you wanted this memorandum in our files since we reviewed it briefly and discussed it. It's different from the one that's signed.

JANET GREEN: The one page?

ANDREA HICKEY: Yes.

BRENDAN SULLIVAN: I have included that in the --

TOM LUCY: I'd be happy to provide --

BRENDAN SULLIVAN: -- in the folder.

ANDREA HICKEY: That's different. NO, this is different.

TOM LUCY: This is different. They are two different documents.

BRENDAN SULLIVAN: You have --

TOM LUCY: I can provide the whole thing.

BRENDAN SULLIVAN: You have copies of that?

TOM LUCY: Yeah, I can get you that.



BRENDAN SULLIVAN: We'll take that.

ANDREA HICKEY: Thank you.

BRENDAN SULLIVAN: And you can get your own.

Okay.

ALISON HAMMER: I am still very confused about all of these different memorandums. There seems, I just don't --

BRENDAN SULLIVAN: I'm uncomfortable doing this on the fly.

ALISON HAMMER: Yeah, exactly. I just have no idea what the structure is, what governs what, what's between who. So it just makes me a little bit weary.

BRENDAN SULLIVAN: Well, there's an option that we can continue this and do it in -- next month and so that you -- you should not feel uncomfortable ible.

ALISON HAMMER: Right.

BRENDAN SULLIVAN: You know, it's very important and your vote is more than important, crucial, and I would

respect your wanting to step back. If other members of the Board feel they want to --

ALISON HAMMER: I mean personally I have no idea what's in these documents. We've had seconds to look at them.

BRENDAN SULLIVAN: Right. I feel the same way. I wish that all of this had been submitted prior so that we could have reviewed these things.

When I review these cases two weeks before, excessively and I'm down there going over, going over, going over correspondence, so on and so forth, and --

TOM LUCY: I understand the comment, Mr. Chairman. As you saw what I was reading, the 25,000 foot space --

BRENDAN SULLIVAN: Right.

TOM LUCY: -- we didn't think it applied. If we did think that it had applied, we would have provided the documentation or referenced the document for your benefit.

BRENDAN SULLIVAN: Right.

Would you prefer to step just step back?

ALISON HAMMER: I mean, I would prefer to just know whether -- I mean, I understand you're telling me that it doesn't apply, but I have, I just don't know that it doesn't apply. I don't -- I mean could you point to me where it -- how do I know that that's -- where does that section say that that 25,000 has anything to do with the other pages that we saw?

TOM LUCY: The overarching agreement is called the memorandum of understanding. The second document is called an implementation agreement. The memorandum of understanding describes the relationship and the relationship between how we're gonna negotiate development with the neighborhood and how we're gonna engage with the neighborhood. And what that paragraph of 25,000 square feet says is that we're gonna engage the neighborhood in a certain way for those significant projects that we're raising, and significant projects as defined by 25,000

square feet or more. What we're talking about here is 25,000 square feet, because the notion that, you know, the larger buildings need more consultation.

ALISON HAMMER: Right. And so but this thing -- and this other piece that we got that says you won't build it at all until this date doesn't, that is -- that doesn't apply because --

TOM LUCY: Because it's 20,000 square feet.

ALISON HAMMER: Because it's under 25,000 square feet?

JANET GREEN: Under 25,000.

ALISON HAMMER: Under 25,000?

BRENDAN SULLIVAN: I tell you I would not be adverse to continuing this until November 7th when we meet again. That will give us a chance to really get into a comfort that we're doing the right thing. That we understand exactly what's going on. And it also would give, should somebody else wish to add some correspondence to us,

because I hate doing -- this building is too important to do it on the fly and that's sort of where I'm at. And I really, would -- it would not be comfortable.

ALISON HAMMER: Yeah, I mean I feel a little bit uncomfortable.

BRENDAN SULLIVAN: Other members of the Board?

LAURA WERNICK: I'm ready to proceed.

ANDREA HICKEY: Yeah, I'm ready to proceed as well.

Correct me if I'm wrong, but these two documents are really sort of -- are they enforceable between you and the neighborhood or are they just -- how does Harvard view these? Is this a contract or what is it?

TOM LUCY: It's an agreement. It's -- it dates back to when, you know, the relationships between Harvard and some of the neighbors weren't so good. I think we've come a long way. And those outlined how we would engage around the development projects. And so the notion was that

folks did not want to be surprised by Harvard development. That folks wanted to be consulted. And so we drew up this overall arching agreement that described how we would engage. Also, in there were things like we engage construction mitigation for what we are building and things like that. So it it's an, it's an agreement but the agreements are outlined as I've said.

JANET GREEN: I -- sorry.

ANDREA HICKEY: No, no, please go ahead.

JANET GREEN: I was going to say it makes sense to me why they didn't bring this, since they felt that it was under 25,000, there was no reason to present this document. And I feel like they've gone -- there's immediate abutter agreement. There was somebody who was an urban design specialist speaking to the quality of the design for the neighborhood, people who have had a history with the neighborhood who feel comfortable with that transition. And even, I was particularly struck by this, someone who has

seasonal affect disorder, and she looked at the shadow study and she thought it was fine. I think I'm ready to proceed.

BRENDAN SULLIVAN: Okay.

I'm not sure if you get the necessary four affirmative votes.

And you're still not comfort because I'm not.

ALISON HAMMER: Right. You know, again, there are many things I like about the building and the positive testimony, so I'm not blanketly opposed to it, but, you know, I just -- you know, while obviously you guys didn't bring this forward because you felt it didn't apply, they presented it because they feel it does apply, and I haven't had time or information to make my own judgment of where I feel it may or may not apply.

BRENDAN SULLIVAN: I could not vote in the affirmative until I really digested this.

And so maybe not receiving the necessary four affirmative votes you as the petitioner could request a

continuance until the next -- what is the next date?

MARIA PACHECO: November 17th.

BRENDAN SULLIVAN: November 17th.

TOM LUCY: So, Mr. Chairman, we'd like to submit appropriate material so people have time in an organized fashion to you so you have time.

BRENDAN SULLIVAN: Can we all make it on the 17th?

ANDREA HICKEY: I need to check.

JANET GREEN: Yeah, I'll be here.

BRENDAN SULLIVAN: Do you have a waiver form?

MARIA PACHECO: Yes.

ANDREA HICKEY: I'm fine with that, too.

LAURA WERNICK: I'm fine.

BRENDAN SULLIVAN: All right.

ALEXANDRA OFFIONG: Okay.

BRENDAN SULLIVAN: A request is in order?

ALEXANDRA OFFIONG: Yes.

BRENDAN SULLIVAN: Let me make a motion, then, to



continue this matter until November 17, 2016, at seven p.m. on the condition that the petitioner sign a waiver to the statutory requirements for a hearing and a decision to be rendered thereafter.

Also that the posting sign be changed to reflect the new date of November 17, 2016, at seven p.m. And that any material, pertinent submissions and documents relating to their submission, that the petitioner have them filed by five p.m. on the Monday prior to the November 17th hearing.

Is there anything else that would work?

Okay. All those in favor of the continuance reluctantly?

(Show of hands.)

BRENDAN SULLIVAN: Four? Five?

LAURA WERNICK: Sorry. For the continuance? Yes.

(Sullivan, Green, Hickey, Hammer, Wernick.)

BRENDAN SULLIVAN: And I would ask the public community if you have any correspondence that you would

like, please get it in the file to us so that we can review it. Okay, so that we can make an intelligent decision on this.

Thank you.

\* \* \* \* \*

(9:25 p.m.)

(Sitting Members Case BZA-011371-2016: Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco, Laura Wernick.)

BRENDAN SULLIVAN: Let me reconvene case No. 011371-2016, 40 Cottage Street. Is the petitioner here?

ROBIN CHASE: Yeah.

BRENDAN SULLIVAN: Counsel for petitioner? Oh, okay. Robin, you wish to continue the matter?

ROBIN CHASE: I do.

BRENDAN SULLIVAN: Until?

ROBIN CHASE: Until the next time.

BRENDAN SULLIVAN: November 17th?

MARIA PACHECO: We have two. You want three?

BRENDAN SULLIVAN: Yeah, okay.

JANET GREEN: Should we have two or three? Are they large?

MARIA PACHECO: No.

ROBIN CHASE: Is there a date, that's not actually --

MARIA PACHECO: December 1st?

ROBIN CHASE: Okay.

BRENDAN SULLIVAN: December 1st?

ROBIN CHASE: Yeah.

BRENDAN SULLIVAN: Okay.

Let me make a motion, then, to continue this matter until December 1, 2016, at seven p.m. on the condition that the petitioner sign a waiver, which I believe you already have.

That the petitioner change the posting sign to reflect the new date of December 1, 2016, at seven p.m. And that any new submissions be in the file by five p.m. on the Monday prior to December 1st. In other words, we're going to change the drawings or any dimensional forms or something like that. Mark would know all about that, and that they would be in the file by five p.m. on the Monday prior to.

ROBIN CHASE: Okay. I'll note that here and thank you very much.

BRENDAN SULLIVAN: Okay. And you can review the file any time you wish. Okay.

(Sullivan, Green, Hickey, Tedesco, Wernick.)

\* \* \* \* \*

(9:30 p.m.)

(Sitting Members Case BZA-011491-2016: Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco, Laura Wernick.)

BRENDAN SULLIVAN: The Board will hear case No. 011491-2016, 50 Inman Street. Introduce yourself for the record.

SCOTT CULLEN: Thank you, Mr. Chairman, I'm Scott Cullen. My wife and I are the owners at 50 Inman Street.

WALTER BEBE-CENTER: My name is Walter Bebe-Center and I'm the general contractor.

BRENDAN SULLIVAN: Okay, before we -- again, there is a letter in the file from the next-door neighbor at No.

48 Inman Street, No. 2, I don't know if you've had any conversation with them.

SCOTT CULLEN: Multiple.

BRENDAN SULLIVAN: They are in strong opposition.

I don't know if this letter had come before the new plans -- I mean after the new plans, before the new plans.

SCOTT CULLEN: Before the new plans.

BRENDAN SULLIVAN: Pardon?

SCOTT CULLEN: Before the new plans.

BRENDAN SULLIVAN: And they have not seen the new plans?

SCOTT CULLEN: They have seen the new plans.

BRENDAN SULLIVAN: Oh, okay. Well, anyhow, in other words, shall we proceed forward or --

SCOTT CULLEN: I would say I would be in favor of proceeding, yes.

BRENDAN SULLIVAN: Your case.

SCOTT CULLEN: We appreciate the Board's time and

consideration of our case. If I may, let me begin by stating our objectives and explaining in summary what we hope to achieve assuming the Board's already absorbed the basics in the case from our initial and our revised submissions.

So in short, we're hoping to gain adequate living space for our growing family in our principal residence with three bedrooms, an office, and family space. We're currently living in 1200 square feet and hoping to move up to 2100 square feet. We also want to maintain existing rental unit income, restore period features of the Greek Revival to the building while also gaining comfortable and energy efficient environmental control in 180-year-old uninsulated house. All in 3,000 square feet on 4100 square foot lot.

In addition we were hoping to gain garage parking for at least one vehicle, but there's not been a carriage house on the property since 1880 when the zoning had 6500 square foot lot.

Since our neighbors and the Historical Commission were opposed to our plans for a front-facing attached garage, we acquiesced and removed that feature in our revised submission which you should have as well.

The principal relief we're seeking, then, is for the rear setback in order to extend the current structure and add 930 square feet of living space primarily to move the existing rental unit which is on the first floor to that rear extension space.

And this is the summary view of the project. We went into great detail there and happy to answer questions.

So the hardship for us basically relates to an existing non-conforming lot which was actually 50 feet deeper when the house was first built in 1854 by Francis Hunt. And then Ella Bog subdivided the lot and removed the carriage house which -- sometime in 1875, which then resulted in and even more non-conforming situation. Basically the rear setback, which is currently



non-conforming at 15.7 feet was even more non-conforming when it was 22 feet long apparently. That was true from about the turn of the century to about mid century. So as you can see from the flag maps, this one appears to date from about the 50s, you can see their in proportionery in scale. The existing L at that time came within six feet of the property. Or six feet of the property line.

So, you know, we're obviously not seeking that much relief. We understand that this an irrelevant but interesting precedent. What we really have been trying to do in the course of communications with neighbors, we were initially challenged to elicit specific feedback on what would be acceptable in spite of iterative approach. So on their request we actually engaged an architect and shared a second iteration with them, which you have as our initial submission for tonight. The revised submission that you see was the outcome of actually a very fruitful and specific conversation of the Historical Commission on the 17th. So

at that time we decided to forego the garage, but the feedback from this second iteration wasn't received positively either. And, again, we were challenged to get specifically what would be acceptable to you.

So at the current iteration right here where we've dropped the roof line by a foot, brought in the inset eight inches on one side and eliminated the garage and just added a small mudroom and lab on that section of property is still probably reasonable from the perspective of us achieving our objectives. But anything smaller is probably not gonna get us there at this point.

So to summarize our case, the non-conforming lot creates a hardship for us in achieving our stated objectives in the absence of relief without having either to reduce the building to a single living unit and forego rental income, reducing housing stock, and of course, you know, putting ourselves in a financially challenging situation. Or leave Cambridge altogether and rent out the entire property at two

or three units which is it zoned for.

So we respectfully ask the Board to grant a Variance on the rear setback and on free space requirements to find within the code to allow for a rear expansion of the building according to this proposal.

BRENDAN SULLIVAN: If you were to take the entire house, it would give you enough room, square footage, to satisfy what your needs are as far as --

SCOTT CULLEN: In all ways except financially, yes.

BRENDAN SULLIVAN: One of the -- it's funny, if you go through case law, and I have a whole file full here and it cites financial hardship. And case law will cite a number of cases that the courts have overturned. They are more at depth at telling us what financial hardship is not rather than what it is. And what they have told us is that one of the things that financial hardship is not is of a personal nature. So that if a person and, again, there's

any number of ten cases there that I can cite, finds the project not feasible because they need rental income or whatever, that's a personal financial hardship and it's not one to grant a Variance for. It's only that if the imposition of the Ordinance would deny you the fair and reasonable use of your property. And so I guess what I'm saying is that you could still achieve your objective if you took over the entire house and not ask for variances to expand the house.

SCOTT CULLEN: Okay. Well, except the current zoning for the unit is two, is -- well, actually on the books it's three, but it's currently being used as two separate units. And so, I think that in that case the impact of lack of relief on the zoning would -- aside from that lack of re -- or aside from that impact to housing stock, I think would change the nature of what is possible for us to do in the building.

BRENDAN SULLIVAN: Okay.

PATRICK TEDESCO: Can I ask what the rental unit, is how many bedrooms?

SCOTT CULLEN: The rental unit is two bedrooms. Approximately 900 square feet.

LAURA WERNICK: And in the drawing that's the upper?

SCOTT CULLEN: No, actually we are occupying the second and third floor. The rental unit is the first floor.

WALTER BEBE-CENTER: These three drawings represent the first design.

LAURA WERNICK: Right.

WALTER BEBE-CENTER: And then feedback. And second design --

LAURA WERNICK: Right.

WALTER BEBE-CENTER: -- and the third design.

SCOTT CULLEN: And so we have an existing non-conforming situation as it now stands with the rear L of the building as you would see that on this drawing here. So

the proposal is to take this existing extension and raise it, and really we're looking for additional relief on four feet. So that would be a higher extension than the first story extension right now. Right now that's a one-and-a-half story extension off the back.

JANET GREEN: And you've had a two-story extension?

SCOTT CULLEN: Yes.

JANET GREEN: That same footprint?

SCOTT CULLEN: Well, this outer footprint right here.

JANET GREEN: Okay.

WALTER BEBE-CENTER: Proposed, and then this is existing.

PATRICK TEDESCO: And existing is one story or two stories?

SCOTT CULLEN: It's one story. But the plan is all within setbacks in every way except for the rear

extension.

PATRICK TEDESCO: And the height is --

SCOTT CULLEN: The height is 35 foot limit.

LAURA WERNICK: So why was the suggestion made to drop the roof of the addition?

SCOTT CULLEN: That is a Historical Commission aesthetic point of view based on their guidance that the existing structure should be respected as a, as an existing structure. And that any additions should be somehow massed down and distinctly separate from the original structure. I think if you look at, you know, the irony is that if you look at the current photographs of the property, you're looking at a completely stripped property that has vinyl siding and no great features whatsoever. So our, you know, our focus as part of this project was going to be to restore the, restore the period features of a Greek Revival and make it a bit more harmonious with the neighborhood. And so in part of serving that was making these changes that the

Historical Commission suggested.

JANET GREEN: How long have you lived there?

SCOTT CULLEN: We've been there two and a half years. And part of what precipitated this is, you know, our daughter was born four months ago and so 1200 square feet is just not enough.

BRENDAN SULLIVAN: You're going from a 0.52 to a 0.75 in a 0.75 area. So that you're within the Ordinance there.

The dimensional violations, the rear is in violation now, the front is compliant, the rear is not. The left side is compliant. The right side is compliant. The height is compliant. The usable open space is not compliant now, it's 0.30. Right now you're at a 0.70, but you're going down to a 0.10.

SCOTT CULLEN: Correct.

BRENDAN SULLIVAN: So you're reducing the usable open space rather dramatically.



SCOTT CULLEN: Yes. Legacy of the lot that's no longer what it once was.

BRENDAN SULLIVAN: And the parking is going to be -- you have two parking spaces there now?

SCOTT CULLEN: That's right, that's unchanged.

BRENDAN SULLIVAN: Okay.

And with the addition and those steps coming out, you'll still have room in the front and not park in the front yard setback?

SCOTT CULLEN: That's right.

Right, the existing parking as it's laid out here at the top is compliant and would not change.

BRENDAN SULLIVAN: Okay.

SCOTT CULLEN: And for the demolition of the front steps -- well, the new steps here would be beyond.

BRENDAN SULLIVAN: Okay.

SCOTT CULLEN: And in fact, this is actually scaled to be a driveway because we were thinking that we

would end up with a garage, but without the garage need, the required parking space is actually smaller. So we could restore some of this, some of this rear square footage of parking or driveway right now to free space.

BRENDAN SULLIVAN: Okay.

Any other questions?

PATRICK TEDESCO: My only question, the letter of opposition which you say predated this redesign, that was from the abutter in the rear?

SCOTT CULLEN: Well, from abutters in the rear and in the front.

PATRICK TEDESCO: Okay, and now you're saying even though there's not a record on file, you're saying that they're comfortable with the proposed design?

SCOTT CULLEN: No, I'm not saying that at all.

LAURA WERNICK: Maybe we should read the letter or --

BRENDAN SULLIVAN: Yeah, I'll read that.

ANDREA HICKEY: Or we may have some testimony.

SCOTT CULLEN: Well, at least two of them are here tonight.

PATRICK TEDESCO: Oh, okay.

BRENDAN SULLIVAN: Okay. Any other?

LAURA WERNICK: I would just like to hear.

BRENDAN SULLIVAN: Any --

ANDREA HICKEY: No, I mean I'd like to see more green space. I like the idea of that driveway extension sort of bringing you closer to the number that, you know, we think is ideal.

SCOTT CULLEN: Right.

ANDREA HICKEY: Is that something you'd be willing to commit to?

SCOTT CULLEN: Oh, sure. We could bring the line right up to here and make this all free space right here.

ANDREA HICKEY: Yeah.

BRENDAN SULLIVAN: Well, just that you have to

be -- that you don't bump up against parking within the front yard setback.

ANDREA HICKEY: Right.

SCOTT CULLEN: That's already been established.

BRENDAN SULLIVAN: Okay.

SCOTT CULLEN: That's already legal per that standard.

BRENDAN SULLIVAN: Okay.

SCOTT CULLEN: So for the one space here -- so there are two spaces, one of them being in this area right here. So if we were to simply cut it off at the same depth, we'd still be not taking up the front yard setback for the required length of the parking space.

BRENDAN SULLIVAN: Okay.

ANDREA HICKEY: Thanks.

BRENDAN SULLIVAN: Janet, any questions?

JANET GREEN: Not yet.

BRENDAN SULLIVAN: Let me open it up to public

comment. Is there anybody here who would like to speak on the proposal?

Yes.

JAMES HUNG: Good evening. My name is James Hung. I live at 48 Inman Street. So I'm a direct abutter to the proposed property changes and I've been an owner for about eight years now of the property. This is my first zoning meeting so I'm a little bit of a novice, but I would say that I've learned a lot from the previous discussion with the Harvard University plan about the impact of light and the impact of privacy, and I think those are the two factors that really impact my property in terms of this proposal.

The proposed addition is two stories where originally it was one, and it directly affects in terms of the light the way the sun rises from in that direction directly into the windows of my unit. And having a two-story addition in that direction, would be a direct impact on the light.

We did receive the new proposal, and I know this is a new proposal that was just submitted. We received it last night around 9:30 p.m. so I'm just trying to process. The original proposal with the large garage, they had done light studies, which I appreciated, but we didn't receive any of those types of information for this proposal of the changes. So we would like to get more information. Unfortunately we just received it all last night.

Also in terms of privacy, having a two-story addition with windows facing directly into my unit would affect in terms of privacy and that's a concern for me.

WALTER BEBE-CENTER: The windows are both there?

JAMES HUNG: Yeah, those are the windows. The unit I live in is right here, 48-1 and there's 48-2. So two adjacent townhouses.

BRENDAN SULLIVAN: Okay.

WALTER BEBE-CENTER: So this is existing. And this is proposed.

JAMES HUNG: And if you -- I don't think you have a pre-existing picture of what it looks like. Right now it's a one-story space which does not impact at all.

BRENDAN SULLIVAN: So your question is obviously more privacy but the light study, shadow study?

JAMES HUNG: Correct.

BRENDAN SULLIVAN: And what effect this would have on your property?

JAMES HUNG: Yes.

BRENDAN SULLIVAN: All right. Thank you. Anybody else wish to speak on the matter?

DAVID RING: Do I need to come up there?

BRENDAN SULLIVAN: Yes, come forward and give us your name and address, please.

DAVID RING: David Ring, 67 Jay Street.

I just have a question about the details in the application. The ratio of usable open space to lot area says it's decreasing from 0.27 to 0.08; is that correct.

SCOTT CULLEN: No, the revised submission is 0.10.

DAVID RING: So it's going from 0.27 to 0.10?

SCOTT CULLEN: Correct.

DAVID RING: So you're expanding the size of the building and that's creating more open space?

PATRICK TEDESCO: Less.

SCOTT CULLEN: That's correct.

DAVID RING: Okay.

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

DAVID RING: Well, I mean, when I'm looking at it, I mean quickly.

BRENDAN SULLIVAN: Yeah.

DAVID RING: It looks like the ratio of open space, or the amount of open space is decreasing. But this makes it look like the amount of open space is actually increasing.

BRENDAN SULLIVAN: The amount of open space is



decreasing from 0.27 to 0.10.

DAVID RING: From 0.27 to 0.10. And you ran the ordinance requirement is 0.30.

BRENDAN SULLIVAN: 0.30.

JANET GREEN: Right.

DAVID RING: Okay. I mean, so it -- I mean there are a couple of big issues here. It seems like this is not just the small Variance request, this seems pretty big. You've got neighborhood opposition and it sounds like the neighbor who -- one neighbor in opposition wasn't given advanced notice to even review the plans that he's asking for. So I mean I think the most reasonable thing would be to at least offer a continuance to give the neighbor a chance to look over the material.

So that's it.

BRENDAN SULLIVAN: Thank you.

Anybody else wish to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see none.

There is correspondence dated October 22nd from Roman Stocker, S-T-O-C-K-E-R and Micaela M-I-C-A-E-L-A Pilotto, P-I-L-O-T-T-O. (Reading) Dear Board Members, we are writing in reference to a proposed expansion at 50 Inman Street to be discussed by your Board on Thursday, October 27th. We are the owners of the property next-door, 48 Inman Street, No. 2. We regret that we will not be able to attend the hearing in person as we will be abroad and are writing to share our views and concerns about this project. While supporting the value and need of renovations at 50 Inman Street, we are troubled by the scale of the project and how it impacts our unit. The proposed addition and extensions will fill the space between our unit and that at 50 Inman Street in a way that completely changes the character of that space with major detriments to privacy, views, and light.

The side of our unit that abuts 50 Inman Street

represents an important and integral component of living at 48 Inman Street, both because of the multiple windows facing that side and because of the smaller yard that is in direct contact with 50 Inman Street. The highly protruding additions proposed at 50 Inman Street would result in a large wall directly in front of windows and yard obstructing views and access to sunlight and causing visual intrusion through windows only a few yards away. We have zoning laws for many reasons, but one main goal of them is to prevent development on one property from hurting the value of a neighboring property. The proposed expansion is at the very least hurting our perceived value of our property by removing privacy, sunlight, and views, and that's likely affecting its real value as well. Thus the Variance request essentially increases the value of the property at 50 Inman Street at the expense of ours in violation, we believe, of the laws that are meant to protect us from such a transfer of value. We are open to our neighbors pursuing an

expansion that is in conformity with zoning laws or one that requires a Variance that does not decrease the value of our property. But we cannot support an exception to the law that is to their gain but to our detriment. We thank you for the opportunity to express our concerns and we hope that they can be taken into account in your deliberations.

Sincerely, Roman Stocker and Micaela Pilotto.

And that is --

JANET GREEN: When was that written? Was that written before that big addition was taken off?

SCOTT CULLEN: Yes.

JANET GREEN: And it was changed? Okay. But they haven't seen the change yet?

SCOTT CULLEN: Yeah, they're out the country. I mean, the plan was sent to them.

BRENDAN SULLIVAN: This was written five days ago. This was written October 22nd.

WALTER BEBE-CENTER: So this addition is the one

that they're mentioning between 50 and 48, and then in the revised, that two-and-a-half story addition has been reduced to a one story down here. That's approximately five-by-ten feet.

ANDREA HICKEY: And when was that plan sent to the people that are out of the country?

WALTER BEBE-CENTER: This one?

ANDREA HICKEY: Yeah.

SCOTT CULLEN: 24 hours ago.

ANDREA HICKEY: Yeah.

JANET GREEN: So they haven't seen that?

SCOTT CULLEN: Yeah, no, I mean, you know, since the 17th when we've made the changes it's been scramble to put it all together.

JANET GREEN: Right.

WALTER BEBE-CENTER: We recently went to the Historical Commission, they made suggestions and -- but just in reference to the last point of the letter, this addition

requires a Variance from the setback. This one does not. This one does not violate side setback. So the, so Scott and Liz are moving in the direction of appealing that neighbor but relief would be required.

PATRICK TEDESCO: So are you suggesting that that first proposal did not -- would not have required zoning relief?

SCOTT CULLEN: No. This is --

WALTER BEBE-CENTER: This is within the side setback.

BRENDAN SULLIVAN: In the first rendition that we're going to go from a 0.52 to 0.90 in a 0.75.

SCOTT CULLEN: Right.

WALTER BEBE-CENTER: Right.

SCOTT CULLEN: So we went down on that.

BRENDAN SULLIVAN: So it may not have violated setbacks, but it was an addition to a non-conforming building and it was more building.

PATRICK TEDESCO: Right.

SCOTT CULLEN: I mean to take it, you know, to take it, if we were to do this all within conforming --

BRENDAN SULLIVAN: Do you have an existing plan there?

SCOTT CULLEN: Yeah.

BRENDAN SULLIVAN: An existing graphic of the building.

WALTER BEBE-CENTER: Existing back. This is the rear.

JANET GREEN: A whole picture.

SCOTT CULLEN: Like an elevation? The photographs that are on page A-10.

ANDREA HICKEY: There's just one in the file.

LAURA WERNICK: Do you know when your neighbors are coming back from their trip?

SCOTT CULLEN: They're on their prolonged sabbatical. They're in academics and so I'm not really

sure. Do you guys know? No idea. Maybe a year for all I know.

I did want to respond to a couple of points that Doctor Hung made as well so when it's appropriate.

JANET GREEN: And I don't know if you can do a quick calculation about if you did that with the driveway and made it the green space.

SCOTT CULLEN: Not in my head.

JANET GREEN: Not in your head but just --

SCOTT CULLEN: I would say roughly that this is certainly going to fall within the 15-by-15 rule, and it probably does map to approximately the front of this bump out here. So I would say you would gain all of this area here as free space.

JANET GREEN: As green space?

SCOTT CULLEN: Yeah.

ANDREA HICKEY: So in reference to the 0.10 as originally proposed, how do you think that number would



move?

SCOTT CULLEN: It would probably come closer 0.15 but, again, I'd have to get you a specific calculation.

ANDREA HICKEY: Thank you.

SCOTT CULLEN: And this is a non-conforming lot.

WALTER BEBE-CENTER: It's about 500 square feet is the answer to the question approximately.

SCOTT CULLEN: It's okay to add at least ten percent, so essentially a 0.2.

ANDREA HICKEY: Well, I have two comments that sort of lead me to thinking that a continuance might be in order.

I think the shadow study is important.

SCOTT CULLEN: That's one of the things I was going to comment on. The original shadow study actually showed no impact to their unit that wasn't already covered by a tree that's on their property. However, that, all of that impact was due to the, to the side garage addition. So

I'm perfectly happy to provide the shadow study again but it will show no impact at all.

PATRICK TEDESCO: I think it's a reasonable request. I just want to say that shadows created by trees are very different than shadows created by buildings.

SCOTT CULLEN: True, but this shadow only applied in the height of summer.

PATRICK TEDESCO: Well, that's fine. But usually with the shadow study you don't take into account trees. It's just structure.

SCOTT CULLEN: Okay. Sure, I'm happy to provide that very easily.

ANDREA HICKEY: Right. Just getting back to my reasoning behind why I think a continuance is appropriate, the shadow study is one, but I'd also like to see the real calculation on open space. To me that's really important. That we get you sort of off that original number and closer to what our ideal is.

SCOTT CULLEN: Okay.

ANDREA HICKEY: So I'd be in favor of a continuance on those two issues. I'd be interested to hear what my colleagues have to say.

LAURA WERNICK: I think that's very reasonable.

BRENDAN SULLIVAN: I think it's reasonable that you should have time to review it and not, you just got it last night? Yeah, that's insufficient, too. Now, it was in the file from Monday, but still I think courtesy would have been that you would have -- as this was filed, that it also been given to you, too, so that we could have possibly avoided this anyhow.

So, I think you're right.

SCOTT CULLEN: Can I ask one question?

BRENDAN SULLIVAN: Yeah.

SCOTT CULLEN: You raised the hardship issue earlier. If your perspective that there's no hardship, than there's no reason for continuance.

BRENDAN SULLIVAN: Is that --

SCOTT CULLEN: If your perspective is that there's no hardship, there's no point in a continuance.

ANDREA HICKEY: Well, we'd have to take a vote I think in order for you to know what that -- and I'm -- it's your call.

WALTER BEBE-CENTER: We don't want to risk that.

ANDREA HICKEY: It's your call, exactly.

BRENDAN SULLIVAN: You would need four out of five. So I may be the lone ranger here on that.

WALTER BEBE-CENTER: And the applicant that preceded us also claimed financial hardship. I don't know.

ANDREA HICKEY: All right. But you'd also have more time to think of other hardship theories that might be there that perhaps you'd not considered.

SCOTT CULLEN: Okay, fair enough.

JANET GREEN: And the green space number would look better. It just would.

SCOTT CULLEN: It would, all right. Thank you.

BRENDAN SULLIVAN: Well, anyhow, I think the original plan was large.

JANET GREEN: It's really much nicer.

BRENDAN SULLIVAN: Let me make a motion, then, to continue this matter to allow the petitioner to provide necessary documentation to the abutter as necessary. I don't know if we could possibly reach the people who -- Roman Stocker and Micaela. Do you know them?

JAMES HUNG: We do know them. They're very accessible electronically.

BRENDAN SULLIVAN: Yeah, so if that could be somehow given to them, I would welcome their feedback. I just want to render them the due respect. They took the time to write the letter, and I would welcome their feedback.

JAMES HUNG: Sure. They're very, very involved at least electronically.

SCOTT CULLEN: And they did receive it at the same time.

BRENDAN SULLIVAN: So it's just out of respect for them. If I lived there, I would like to know what was going on, too.

JAMES HUNG: Thank you.

BRENDAN SULLIVAN: I'll make a motion, then, to continue this matter until December?

MARIA PACHECO: The 1st or the 15th.

BRENDAN SULLIVAN: It has to be the 15th. I'm not here on the 1st.

Are we all here on the 15th?

LAURA WERNICK: I'm not here on December 15th.

BRENDAN SULLIVAN: January?

JANET GREEN: I'm okay.

MARIA PACHECO: 12th.

BRENDAN SULLIVAN: January 12th.

ANDREA HICKEY: December 15th is not --

BRENDAN SULLIVAN: She cannot make it.

LAURA WERNICK: I cannot make it.

BRENDAN SULLIVAN: You could be heard by four.

SCOTT CULLEN: Too risky.

ANDREA HICKEY: So what's our date?

BRENDAN SULLIVAN: That's the roll of the date.

ANDREA HICKEY: January?

LAURA WERNICK: January 12th.

MARIA PACHECO: January 12th.

JANET GREEN: Let me make sure.

It's good.

BRENDAN SULLIVAN: You all set?

PATRICK TEDESCO: Yes.

BRENDAN SULLIVAN: Okay. I make a motion, then,  
to continue this matter until January 12, 2017, at seven  
p.m., on the condition that the petitioner, which I believe  
have -- do we have a waiver? Yes. Sign a waiver of the  
statutory requirement for a hearing and a decision to be

rendered therefore.

That the petitioner change the posting sign -- which oh, by the way, it's on the neighbor's fence?

SCOTT CULLEN: Yes.

BRENDAN SULLIVAN: Okay, I guess it's probably right on the --

SCOTT CULLEN: It's within the 20 feet.

BRENDAN SULLIVAN: Yeah, it should be on your property, but I guess maybe it's close enough I guess.

SCOTT CULLEN: Okay.

BRENDAN SULLIVAN: I think we'll allow it because it's there anyhow.

That you change the posting sign to reflect the new date January 12th at seven p.m.

That there be any new submissions, dimensional form, revisions, or any other submissions that are pertinent to the petition itself, they be in the file by five p.m. on the Monday prior to the hearing date of January 12th. And



we would encourage the petitioner to provide revised drawings and/or requested documents to the abutters of concern.

SCOTT CULLEN: Agreed.

BRENDAN SULLIVAN: Any other?

ANDREA HICKEY: No, thank you.

BRENDAN SULLIVAN: All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five. Thank you.

(Sullivan, Green, Hickey, Tedesco, Wernick.)

\* \* \* \* \*

(10:05 p.m.)

(Sitting Members Case BZA-011495-2016: Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco, Laura Wernick.)

BRENDAN SULLIVAN: The Board will hear case No. 011495-2016, 100 Concord Avenue.

ATTORNEY DANIEL GLISSMAN: Good evening.

BRENDAN SULLIVAN: Introduce yourself and give us the spiel.

ATTORNEY DANIEL GLISSMAN: Absolutely. Good evening, Members of the Board. My name is Daniel Glissman. I'm an attorney with Prince, Lobel, Tye. I'm here on behalf of my clients T-Mobile Northeast. We're here in connection with T-Mobile's proposed wireless facility upgrade at 100 Concord Avenue.

This is part of T-Mobile's systemwide upgrade for the L700 networks to increase capacity and data for their

users in the City of Cambridge. This is similar to many of the more recent applications that have come before this Board.

This site is unique in that -- one, in that it's a site that has four sectors. Generally you only see three sectors at a typical wireless facility, this has four. And it is also entirely concealed within the existing church steeple. We're seeking relief under Section 6409 of the Middle Class Tax Relief Act, as we believe this does not substantially increase the facility.

And I'm happy to answer any questions. I believe the -- I provided plans because the sims -- there isn't really much to see other than the photo of the steeple. And if you have any questions, I'm happy to walk you through the installation. But I believe that they speak for themselves.

BRENDAN SULLIVAN: The proposal is exactly the same as the existing?

ATTORNEY DANIEL GLISSMAN: Well, we're adding four

new antennas.

BRENDAN SULLIVAN: I mean visually?

ATTORNEY DANIEL GLISSMAN: Correct, yeah.

BRENDAN SULLIVAN: Okay.

If you could just run through some of the prerequisites Section 4.32.

ATTORNEY DANIEL GLISSMAN: So this site is located in the residential district, and we respectfully submit that consistent with the Board's previous decisions, that residential uses do not predominate in the area. Directly across the street we have Harvard. There's a number of retail uses. Right -- within the immediate vicinity there's a dental office, I believe, Didriks Elements of Life retail store, and Sarah's Market and Cafe.

BRENDAN SULLIVAN: Yes, okay.

And also that the Board has previously determined that residential uses do not predominate in the area and that there are other carriers on the location also I

believe, so that....

ATTORNEY DANIEL GLISSMAN: Just is actually only T-Mobile, I believe, at least in the steeple.

BRENDAN SULLIVAN: What about Verizon? Is there Verizon there, too?

ATTORNEY DANIEL GLISSMAN: I don't believe so. There's only space for I think the T-Mobile antennas in the carrier unless they are --

BRENDAN SULLIVAN: Okay.

The Board has previously determined that because of the existence of the Harvard Conservatory also, there's an office building on adjoining property --

ATTORNEY DANIEL GLISSMAN: Correct.

BRENDAN SULLIVAN: -- and the stores, that residential does not predominate in the area. Okay.

You're a licensed carrier and authorized to -- and you still comply with all the other previous regulations and requirements?

ATTORNEY DANIEL GLISSMAN: Correct.

And there should be a copy of T-Mobile's FCC license in the submitted materials as well as a more detailed explanation of how we comply with the Special Permit requirements and the requirements under 6409.

BRENDAN SULLIVAN: Okay.

And all of those are incorporated by reference.

ATTORNEY DANIEL GLISSMAN: Correct.

BRENDAN SULLIVAN: All right.

Any questions? Is there anybody here who wishes to speak on the matter 100 Concord Avenue?

(No Response.)

BRENDAN SULLIVAN: I see none. There is no correspondence in the file. We'll close public comment.

Any questions from anybody?

ANDREA HICKEY: I'm ready.

BRENDAN SULLIVAN: Okay.

The Board finds with respect to the Special

Permit, to modify the existing wireless telecommunication facility, that as the per the application, thereby calling for new L700 antenna concealed within the church steeple, together with supporting equipment, as per the plans submitted, that the Special Permit is granted on the condition that those plans be adhered to.

The Board finds that it appears that the requirements of the Ordinance can be met.

That traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character.

The Board finds that continued operation of or development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the proposed use.

There will be no nuisance or hazard created to the detriment of the health, safety, and/or welfare of the occupants of the proposed use or to the citizens of the

city.

And the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

The Board finds that this is a continuation of an existing use and the Board finds that it is consistent, the proposal is consistent with the existing facility.

The Board also finds that the modification of its existing telecommunication facility at 100 Concord Avenue proposed by the petitioner does not substantially change the physical dimensions of the existing wireless tower or base station at the facility within the meaning of Section 6409(a) of The Middle Class Tax Relief and Job Creation Act of 2012, also known as The Spectrum Act.

The Board finds that the granting of the Special Permit subject to the following conditions:

That the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair.



That upon completion of the work, the physical appearance and visual impact of the proposed work will be consistent with the photo simulations submitted by the petitioner and by the Chair.

That the petitioner shall, at all times, maintain the proposed work so that its physical appearance and visual impact will remain consistent with the photo simulations.

And that should the petition cease to utilize the equipment approved tonight for a continuous period of six months or more, it shall promptly thereafter remove such equipment and reinstate the building of which it is located to its prior condition, and appearance to the extent reasonably practical.

That the petitioner is in compliance with and will continue to comply with all respects the conditions imposed by the Board with regard to the Special Permit granted to the petitioner in a previous Special Permit.

I'll give you a copy of that just so you have it,

our spiel.

Inasmuch as the health effects of the transmission of electromagnetic energy waves is a matter of ongoing social concern and scientific study, the Special Permit is also subject to the following conditions:

That the petitioner shall file with the Inspectional Service Department each report it files with the federal authorities regarding electromagnetic energy waves emissions emitting from the petitioner's equipment on the site.

Each such report shall be filed with the Inspectional Service Department no later than ten business days after the report has been filed with the federal authorities.

Failure to timely file such report with Inspectional Services, shall ipso facto terminate the Special Permit granted tonight.

That, in the event that at any time federal

authorities notify the petitioner that its equipment on the site, including, but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulations, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner, with within ten business days of receipt of such notification much such failure, shall file with the Inspectional Service Department a report disclosing in reasonable detail that such failure has occurred and the basis for such claimed failure.

The Special Permit granted tonight shall ipso facto terminate if any of the petitioner's federal licenses are suspended, revoked, or terminated.

That to the extent that a Special Permit has terminated pursuant to the foregoing paragraphs A and B, the petitioner may apply to this Board for a new Special Permit provided that the public notice concerning such application discloses in reasonable detail that the application has been

filed because of a termination of Special Permit pursuant to paragraphs A or B above.

Any such new application shall not be deemed a repetitive petition, and therefore will not be subject to the two-year period during which repetitive petitions may not be filed.

That within ten business days after receipt of a building permit for the installation of the equipment subject to this petition, the petitioner shall file with the Inspectional Service Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner with a geographical area that includes Cambridge, stating that:

A, he or she has such responsibility;

And B, that the equipment being installed pursuant to the Special Permit we are granting tonight will comply with all federal safety rules and will be situated and maintained in locations with appropriate barricades or other

protections such that individuals, including nearby residents and occupants of nearby structures, will be sufficiently protected from excessive radio frequency radiation under federal law.

Is there anything else to add or have we covered it?

ANDREA HICKEY: You covered it, yes. You have covered it.

BRENDAN SULLIVAN: I think so.

Let me make a motion, then, to grant the Special Permit as per the application.

All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Green, Hickey, Tedesco, Wernick.)

\* \* \* \* \*

(10:15 p.m.)

(Sitting Members Case BZA-011512-2016: Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco, Laura Wernick.)

BRENDAN SULLIVAN: The Board will hear case No. 011512-2016, 318 Harvard Street.

BRITTANY MILAS: Hello.

BRENDAN SULLIVAN: I can't believe you're doing this entire huge project without some tweaking. I always thought that there would be there has to be some tweaking somewhere. It can't be perfect the first time around.

BRITTANY MILAS: My name is Brittany Milas, with Maryann Thompson Architects.

FRED GUTIERREZ: Fred Gutierrez with Shepard PMC Construction.

BRITTANY MILAS: So for a very brief introduction to the project, we already have been approved for a house currently under construction. And the north most volume of the property which you see on the drawings is the

pre-existing historic piece of the building. The central connector piece maintains the pre-existing footprint of the building, and then the south most volume, what you see on the drawings, to be L condition is the addition.

So in the process of construction the clients experienced what will be their master bedroom space along with the openings and they felt strongly about a greater need for privacy for that space, and so in order to minimize the effects to the design and the character of the space we essentially relocated the bathroom to the rear corner of the property to give them, to allow for that privacy. And thusly the window at the rear edge that you see in the drawings along with the skylight was maintained for the bathroom there. And then we removed the large skylight for the master bedroom, which was in fact closer to the Hancock Street side more visible to the street and to the neighborhood.

And then the additional request for relief

fenestration is a window at the basement location where we have such a large expanse of space now in the basement the clients really were hoping for additional window for this large expansive space that doesn't have much air exchange. And we maintain that window to be within the backyard that is fenced in so it's not visible in fact to the neighborhood. And that's all. That sums it up.

BRENDAN SULLIVAN: That's it.

LAURA WERNICK: Just explain, so where the bathroom's going to be located, one window and one skylight?

BRITTANY MILAS: Yes. So there was an associated window and skylight to the original design of the bathroom, and we really basically just relocated the bathroom along with the window and skylight to the rear corner of the property. And then as a result, we were able to remove a large, that large skylight from the master, what is now the master bedroom. So we maintained the window there however for egress purposes. We originally had the egress located



at the steel windows at the opposite side, but this would allow for a greater opening for the egress window as well.

BRENDAN SULLIVAN: Okay, so basically just a rethinking of how you're going to use the space?

BRITTANY MILAS: Yeah, during the process of construction it came up.

BRENDAN SULLIVAN: Yeah, and that's quite normal.

Any other questions?

ANDREA HICKEY: No.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the matter at 318 Harvard Street?

(No Response.)

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

Any questions or concerns? Motion?

JANET GREEN: I'm good.

ANDREA HICKEY: Ready.

BRENDAN SULLIVAN: Let me make a motion, then, to grant the relief requested to amend the previously approved case, BZA No. 007457-2015.

The Board accepts the request to amend the Variance to add three openings; a window and a skylight, for ventilation in the second floor master bedroom and a window for ventilation at the basement. Also a realignment of the interior space necessitates the repositioning of windows; one, to give the occupant more privacy. And the other reason for the relocation of a window would be to -- how do I say face -- not to face the public space? Or is that what it is?

BRITTANY MILAS: The basement window?

BRENDAN SULLIVAN: Is that what it is?

BRITTANY MILAS: There's a new basement window to allow for more air exchange.

BRENDAN SULLIVAN: Okay. All right, to facilitate

better ventilation into the basement.

BRITTANY MILAS: Yes.

BRENDAN SULLIVAN: The hardship for any of this work is as stated in the previously approved case and accepted as still binding and A fair and reasonable request.

The Board may grant the desirable -- relief may be granted without substantial detriment to the public good.

The public good will not suffer since the increased number of windows will not affect the operation or development of any adjacent uses, nor will they affect the health, safety, or welfare of the occupants or citizens -- or, I'm sorry, of the welfare of the citizens of the city.

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

All those in favor of granting the relief requested to allow for the changes in the windows?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor. Good.

(Sullivan, Green, Hickey, Tedesco, Wernick.)

\* \* \* \* \*

(10:25 p.m.)

(Sitting Members Case BZA-011549-2016: Brendan Sullivan,

Janet Green, Andrea A. Hickey, Patrick Tedesco, Laura Wernick.)

BRENDAN SULLIVAN: The Board will hear case No. 011549-2016, 33 Kinnaird Street.

Mr. Hope.

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman and Members of the Board. For the record, attorney Sean Hope, Hope Legal Law Offices in Cambridge. I'm here tonight on behalf of the owner 33 Kinnaird Street Mr. Ryan Wittig. This is an application requesting a Variance and Special Permit relief. The Variance is for a building within the front and the right side setback. Also a Variance to allow an accessory unit because we do not meet the minimum lot size for the accessory unit provision. Additionally, we are requesting a Special Permit to locate parking in a driveway within five feet of the side yard setback, and also for tandem parking.

As the Board may remember, there was a case that

involved this property that came before the Board last March and concluded in June. Our petitioners were requesting a two-family on this lot. There was a Variance. Some of the same relief was requested. At that time there was an issue with outreach. Part of the issue by the time it came to the Board, we had a large group of neighbors that were in opposition. Primarily it was for the rear yard setback, but also the fact that it was combined that we were asked for a two-family.

The nature of the request is that this is a very narrow and long lot. This is -- the width of the lot is 34 feet, and the lot -- minimum lot size is 50 feet but the lot actually goes back fairly deep.

The lot contains now an existing single-family that's in deteriorates shape. Prior to coming before the Board we went to the Historical Commission and requested approval to demolish, demolish that house. Part of the approval process was to also show what the replacement

structure would be. And at the previous hearing that was a two-family house. Part of this application, we had to go back, not to the Historical Commission, but per administrative review. And this single-family with an accessory unit in the basement was approved in concept so we're here tonight requesting relief to be able to build within the right and front yard setback.

Specifically the front yard setback relief is driven by the request by the abutters to have -- maintain a generous rear yard. At the previous hearing we were proposing close to a 35 to 40 -- foot rear yard setback. That's still objectionable primarily because it did not meet the setback of the adjacent homes. The homes on either side are single-families, and they also have very generous rear yards. And so because we're asking for relief and I think because we were trying to get support, we've actually increased the rear yard setback to 50 feet, it's almost 50 feet, and so that the rear yard of the proposed

single-family with the accessory unit matches the rear yard with adjacent structures.

We weren't trying to preserve this rear yard, we would not be within the front yard setback. So that's part of the relief.

The right side setback, the existing house is also within the right side setback. Because of the narrowness of the lot, we need -- any structure, any viable structure would likely be within the setback.

The proposed structure is 20 feet in width, that's the width of the house. And so that is taken into account the right side setback.

The front yard setback is also co-planar with the adjacent properties. So this single-family with accessory structure as we've applied for matches in terms of the character of the adjacent homes.

The parking is not in the front yard setback, but it is visible from the street. If you go to Kinnaird Street



and you look at some of the houses, that is a pattern that is consistent with what's on the street.

Petitioners I think made the representation these are homeowners. The intention was for Mr. Wittig and his wife and also a friend of his who purchased the home together to be able to live there as a two-family. It was very clear from the neighborhood that that was objectionable. So part of the relief for the accessory unit would be allowed for his partner and co-owner to be able to live in a reduced sized, as the Board is aware, an accessory unit. And we don't meet the requirements for a Special Permit. Specifically we don't meet the lot size, but the accessory unit is limited in size and scope. It could only be 900 square feet, so it's not the same as having a two-family. We would not have come before the Board with asking for an accessory unit if we heard from the neighbors that that was objectionable. It is something that would allow for both units -- both owners to be able to habitate

in the structure. But most importantly the petition is really about allowing for people who want to live in Cambridge to be able to renovate and build a structure that they can live in. We think we've made some major concessions for the rear yard which seem to be appropriate and supported by the neighborhood. We don't have unanimous support, I believe, but I think at the last hearing there were several people who felt like they weren't communicated with. There were things about shadow and there were other issues that we made sure that we remedied and made sure that we had thorough dialogue about.

So I think the hardship really is for the setback, is the fact that we have a narrow lot and that to be able to build a habitable single-family structure on that lot we would need at least side yard relief. I already talked about the side yard setback relief. And I just overall, this has been a year process for the petitioners. There's partly is, you know, some, there's some blame to go around,

but they've been working at renovating and building the structure for a while now. They've had a thorough dialogue with the neighbors that they feel like this is a project they can support. We're going well beyond what the rear yard setback would be, but I think we've come to learn that's what is consistent in the neighborhood and that is something that the neighborhood has really rallied around, and we think we've achieved that goal. And while we don't have letters of support in the file, we have fairly confident that some of the major questions that we could answer from the neighbors who showed up to oppose last time have been answered. And so we're here to hear additional feedback, but I think we have done the best we could do with the single-family house in terms of making it so that it's habitable but also respecting the rear yard of the neighbors and also the character of the neighborhood.

BRENDAN SULLIVAN: Why take down the existing house?

ATTORNEY SEAN HOPE: So the existing house, one, was deteriorating, but, two, I think it wasn't of adequate size. As I said, the available lot is narrow. It is a decent size to allow for much more GFA than the existing house would allow. The existing house was limited just in terms of size and scope. And also I think in terms of cost maybe you can speak to that. But this is what they intend to be their home and have a family. And so the existing house, as the Board knows, is limited for additions. We've limited it to 25 percent, 10 percent as of right. We still could not get close to what we could get if we had a new structure, because the house was within the side of the front yard setback so that we would be applying for a Variance if we wanted to go above the reach for the lot would allow in terms of the FAR. So if it was a conforming house, we might be able to keep the structure and add to it into the rear yard which often times people do but we were limited because it's non-conforming.

BRENDAN SULLIVAN: Is the existing house quite dramatically off level at all? I mean when I saw --

RYAN WITTIG: Yes, if you walk inside the house --

BRENDAN SULLIVAN: I mean, the driveway goes down obviously. And it appears that halfway down the driveway, if you look at the house, it seems like the house is listing to one side.

RYAN WITTIG: Yes, I can't speak to which side but it's, if you go in the house and if you were to roll a marble or a baseball, it would roll on its own. The house is off kilter.

BRENDAN SULLIVAN: I mean, I would suspect that if you put a shovel in the ground you wouldn't have to go down too far before you come to water.

RYAN WITTIG: We don't have any water in the property as it is now.

BRENDAN SULLIVAN: The foundation is somewhat intact or is it somewhat -- I guess what I'm trying to -- at

what point did you make a decision it's better to tear this thing down than it is to work with it?

RYAN WITTIG: Sure. We had a few general contractors come and take a look at it and give their assessment of what it would cost to renovate it, and basically they said it would cost just as much if not more to work with the existing structure than it would to build from scratch.

BRENDAN SULLIVAN: And that the existing structure would be more of a hindrance?

RYAN WITTIG: Yes.

BRENDAN SULLIVAN: As far as upgrading the mechanicals, and I'm not trying to present the case for you, but this is being somewhat familiar with this type of thing, I think that's sort of the genre --

RYAN WITTIG: Yes. I mean it would have to go down to the studs to the shell of the building essentially and their beams -- who knows once you get down to the shells

and the beams, what are we trying to save? That this is the -- the Historical Commission said look, there's no overarching reason to save this thing and it's -- you're basically trying to work within a, you know, confining box working with that type of structure.

BRENDAN SULLIVAN: When I first reviewed the case, and I saw the Special Permit for the accessory unit and then I sort of went to the Ordinance and what have you, and I may have raised a flag on that because I said, you know, it doesn't work.

Now, and I guess I'm wondering why are you still calling it an accessory unit as opposed to an apartment?

ATTORNEY SEAN HOPE: The way I approached this, there is a new accessory unit provision, but it has requirements. And one of the requirements having 5,000 square feet of lot size. We don't have that, we don't need that dimension. And so similarly if we were not meeting the dimensional requirements of a certain section, we would then

require a Variance for that section. And so as we communicated to neighbors and our understanding when I talked with the Commissioner was it's triggering a Variance. We wanted to have an accessory unit, which would be allowed by Special Permit. We don't meet the Special Permit criteria --

BRENDAN SULLIVAN: Right, that's what I'm trying to drive at, Sean. Why are we calling it an accessory unit as opposed to another apartment?

ATTORNEY SEAN HOPE: Yea, I --

BRENDAN SULLIVAN: Are we dancing around semantics?

ATTORNEY SEAN HOPE: No. I think that there's a limiting process --

BRENDAN SULLIVAN: I mean as opposed to say a studio apartment, would not be, you know --

ATTORNEY SEAN HOPE: Yeah. I think an accessory apartment is a defined term. It's also limited in size. It



also has to be connected to the unit itself. So an accessory unit requires that the primary unit be owner-occupied.

BRENDAN SULLIVAN: Right.

ATTORNEY SEAN HOPE: Which is different than a second apartment or even a studio apartment. So I think that was important. I think part of the feedback we heard was that, you know, two units because of the sides that you need to have two units, it pushed into the rear yard. So this was trying to be sensitive to that maybe three units was inappropriate. So if you were going to have an accessory apartment, it has to be limited in size which also limits the intensity of the use, how many people can occupy it, which is much more akin to a single-family home. Also if you had a second unit, you could sell that. You could condo it no matter how small it is. As an accessory unit, you can't divide --

BRENDAN SULLIVAN: So the designation accessory

unit automatically ties it to the main residence?

ATTORNEY SEAN HOPE: That's right.

PATRICK TEDESCO: But, Sean, if I can clarify, your lot does not meet the requirement for accessory unit?

ATTORNEY SEAN HOPE: That's right.

PATRICK TEDESCO: So you're seeking relief from that?

ATTORNEY SEAN HOPE: That's right.

PATRICK TEDESCO: Okay.

ATTORNEY SEAN HOPE: And that's the reason for the Variance.

BRENDAN SULLIVAN: Rather than a Special Permit, then, it triggers a Variance because they cannot come under the tentille of the Special Permit because of some of the other deficiencies in meeting.

Any other questions?

JANET GREEN: No.

LAURA WERNICK: So the existing building is in the

side yard setback; is that right?

ATTORNEY SEAN HOPE: That's right.

LAURA WERNICK: And would the new unit be further into the side yard setback or about the same?

ATTORNEY SEAN HOPE: So the structure itself would be within the front yard setback and the side yard setback. The accessory unit is in the basement.

LAURA WERNICK: I'm just saying the side yard. I'm trying to see if the new unit isn't creating a worse condition in the side yard.

ATTORNEY SEAN HOPE: Yeah. So the accessory unit is within the footprint of the building. So the new unit is within the side yard setback and the front yard setback as well as the whole structure. But because it's the basement, it was the footprint of the building and the accessory unit is just a basement portion.

So even if we didn't have an accessory unit, if we had just a basement storage, it still would be within the

same footprint.

LAURA WERNICK: Okay, maybe I'm missing something.

RYAN WITTIG: You mean the new building, the new structure as a whole?

LAURA WERNICK: The new structure, yeah.

ATTORNEY SEAN HOPE: Yes, it's within the front yard setback.

LAURA WERNICK: I know that. Is it using up more of the side yard setback than the existing structure?

ATTORNEY SEAN HOPE: Yeah.

RYAN WITTIG: Yeah, the current building is four feet from the right side setback, and the proposed is three feet. And we've discussed that with the neighbor who abuts that side of the house. He's not here, so -- obviously we -- and he asked that it was to give really more consideration for the parking side of the house because that's where more activity is going to be going on. So there's consideration to the neighbors to left who have more

activity on that side.

BRENDAN SULLIVAN: Anything else?

Let me open it to public comment.

Is there anybody here who would like to speak on the matter? Yes if you come forward, please give your name and address for the record.

MAGGIE COMFER: Hello. My name is Maggie Comfer, and I live right next-door on the left side of 33 Kinnaird at 31 Kinnaird with my partner and our two 17-year-old boys. We, you know, have been involved in negotiating with Ryan regarding the building, what he's been wanting to develop next-door, and it's been a long process that started over a year ago. And he came back to us after it was denied through the BZA last time and really provided a lot of changes that made us feel pretty good about it. There was discussions and a plan that was drawn up, and on it it wrote easements. And there's an issue regarding our lot and a fence. And on the drawing it said that we were on their

property by 3.8 feet. And we were flush in the front but then the property diagonally got smaller, according to them. So our fence, which we've had for 20 years and we've been caring for and tending to, we were told that that was their property. And so Ryan was trying to reassure us he had no intent of taking down the fence, but as we got closer to, you know, this date, Ryan showed up at my front door with his site surveyor who had done the site survey five months earlier and said that he just wanted to check something in our backyard. And so he went in the backyard and then I thought well, I should go back there, too. And then he said well, it's not actually 3.8, it's only three. And I said well, how did you come to that? And he sort of said well, I remeasured everything. And, you know, I had been home during that day and I did not see him around at all, but -- and I bring this up because it's been an arduous year with this. And there have been times when not only myself but others have not been able to really trust what's going

on. So when that happened, after that site surveyor did that, we -- me and my partner talked and we said you know what, we, you know, he wants to give us an easement, I'm not sure what that means. We should really get our property surveyed. And so we told Ryan and Gal that that's what we were gonna do. We went to hire somebody, he said he would have it done, you know, I think maybe like the 20th of October or something. He ended up getting sick, it took four weeks instead of three. And on Tuesday we received the survey. And on Wednesday he had the opportunity to talk to me. And so we talked by phone and he said that he has basically come to the same conclusions that their site surveyor did. But, you know, I talked to him about the easement. And he said -- and then I also talked to him about the fact that we've had that fence for 20 years. And there is a chain link fence and there are posts in the ground in the way back right next to the fence and also at mid-property in direct line and then there's a post at the

front of the property. So it's sort of like this straight line which has been there for more than 21 years. So we did -- and he said to me, the site survey guy said well, was there something written up regarding the easement? And I said no, there wasn't anything. And he said you don't want to go ahead with this until there has been something written up that you can have looked at through a lawyer. And so I called Ryan last night -- or I e-mailed Ryan and Gal and asked them to meet this morning. They -- Ryan came and met, he met with me and Alita, and he said to me that you know what, we were worried that you would come back about this. And I don't do this for a living, I don't know what easements mean. We were sort of trusting him that he was really working with us and was gonna do a single-family and not go back into the backyard. And we want to trust him but there was something that we just felt like we had to take care of ourselves. And so then I contacted a lawyer today and he said that definitely there should be something in



writing and that there is the issue of adverse possession. But it's not an area we wanted to go in at all, and I don't think Ryan wants to do that either. We just want something written that explains what the easement is and that we all agree upon. And so I got really frustrated today because we have been trying to work with him and it's horrible that he came back today and bullied us basically and that's where we're at.

BRENDAN SULLIVAN: Okay.

You do have a certified plot plan anyhow and the revisions reflecting new plans, is that what that's all about; is that correct?

RYAN WITTIG: Yeah.

BRENDAN SULLIVAN: Okay. Have you concluded?

MAGGIE COMFER: I'm sorry, what?

BRENDAN SULLIVAN: Is there anything else you want to add?

MAGGIE COMFER: No.

BRENDAN SULLIVAN: Anybody else want to speak on the matter?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: One second.

BRENDAN SULLIVAN: Yeah.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: No, thank you.

NANCY CARPENTER: I would like to speak.

BRENDAN SULLIVAN: Yes.

NANCY CARPENTER: Hello, I'm Nancy Carpenter. I live at 27 Kinnaird Street on the other side of Maggie, and we have been involved for the duration of this with lots of meetings. And, again, we were pleased with the direction that things were moving when they decided not to do the two townhouses and move to a smaller structure. A thing I'd like to comment on, though, is that, you know, when you get involved in one of these situations and you're not, you know, a relator or a real estate, you're not involved in

real estate and this is new, I mean you really have to depend on the process. And that's what we were, you know, we all depend on the process. And it has been -- part of the arduousness about this is that the numbers aren't always right, things don't come forward in the right way, and, you know, we've talked about it a lot. About eleventh hour kind of decisions and requests that aren't in writing are very difficult, and I'm sad for my friend who is upset about this. I think it's eleventh hour and to have this easement issue come up when you don't know -- maybe all -- maybe it's a simple thing for people who are familiar with it, but if you're not familiar with it and it could be something that's going to be tacked on to your deed, you really want a little time to reflect on it and to talk about it. And that's what I -- I think there's so much upset today. It was mentioned, but you know, you assumed you're going to get something in writing to say that this is what this is about. That's all I think that people need -- and then they have time to hire

a lawyer, but that's fine, that's part of the deal, and go ahead and have somebody help them review that's independent and make sure that this is the right way to go. And I think that's what's at issue here. So for my neighbor I wanted to speak and bring that to your attention.

Thank you.

BRENDAN SULLIVAN: Thank you.

Anybody else wish to speak on the matter? Sir.

DAVID COHEN: Hi, my name is David Cohen. I live at 37 Kinnaird Street. I just want to speak to the easement issue. There were drawings from quite a few months ago showing 192 square foot area that is somehow contested. And so both sides I think have been aware of the issue. I think it's been around for quite a while. But somehow they didn't get stuff written down legally on paper even though they had a long time to do it. And so I'm a little bit querying this fact that they, that the legal paper showed up this morning, really only a few hours before this hearing. I think that

should have been taken care of and could have been taken care of a long time ago, that would have made this whole process cleaner, I think both sides would have agreed. So what I think might be the right thing to do is maybe give both sides a little more time to get that all squared away and have that just be a cleaner process in general.

Thank you.

BRENDAN SULLIVAN: Thank you.

Anybody else wish to speak on the matter? Sir.

DAVID RING: Hi, David Ring, 67 Jay Street. I'm just here in support of Maggie. This has been going on for a year and she has done an incredible job organizing the neighborhood, at least like 100 people are involved now. And the fact that this came before the Board twice and the Board vetoed it and rejected the Variance application.... It sounds like after everything and, you know, all the chaos and all of that, there's a settlement to be had. It sounds like they're almost in agreement and they just need time to

work, work it out in writing and that will make this whole sort of fiasco been going on for a year disappear. So I would just ask that you do a brief continuance to allow Maggie's lawyer and Sean Hope to work out an agreement and a settlement so we can be done with this and everybody can, the neighborhood can come together and feel that we've all gotten, you know, what we were looking for, you know, a fair solution.

BRENDAN SULLIVAN: Thank you.

Anybody else wish to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see none. There are no letters in the file. I will close public comment.

Mr. Hope.

ANDREA HICKEY: Could I ask a question first? So I'm trying to wrap my head around whether the easement issue is relevant to what we have before us today. So could I ask counsel to talk a little bit about whether that easement

area that perhaps is in contention, is that area sort of necessary for any of the relief that you're requesting or is that really a separate issue?

ATTORNEY SEAN HOPE: Exactly to the point that I wanted to make. So there is a good faith boundary dispute, I believe, I'm looking at both sides. The idea about adverse possession, it's really a fact and circumstance test. It's not something that either person could decide and is really for a trier of fact.

The concessions that were made in the building that was designed was designed based on the feedback outside of this easement area. I think the easement that was discussed was really to alleviate the abutter's concerns that there's some planting beds and there's a line and there was no idea to take that away in terms of the use. The idea of granting the land or an easement could have an impact on the lot size. And so I think that was discussed between the parties, but we didn't think that was germane to this

application. We were applying for the single-family, and I think the concessions we made to the rear yard setback had to do with the structure that we're building. I think the idea that approval should be contingent on whether or not, you know, there's a boundary dispute in the back of the lot, I feel like is not necessarily appropriate for this Board, but we're also at a, you know, the client is at a particularly vulnerable time. We're asking for a single-family house that's not even in the easement area and yet I think a continuance would put my client really at an unfair disadvantage. They've been working at this for a year. And I think if there was an opportunity for a settlement or if there was an attorney that reached out to me prior to, then that could have happened outside of this, and I would have recommended that we resolve this before to coming to the Board. I think this easement issue could confuse it. But there is a good faith dispute and I think the easement, and correct me if I'm wrong, Ryan, was an



attempt to take that off the table and to say what you're using it for as a planting bed is not gonna change. If that easement wasn't sufficient or they wanted that in writing, that could still happen outside of this hearing. But I think the idea that this came up last minute, and if there was an easement, that could be coming from both ways. To be frank I was directed today to try to draft an informal agreement that referenced an easement, that an agreement could happen so that we wouldn't have to have this in front of the Board, and this was definitely not something that was a legal instrument creating a deed, either way, because that has to be on the plot plan, all these other things, so I was frankly surprised when I got a call last minute to try to draft something to let both parties know they're going to work in good faith. And that's what I attempted to do today. It doesn't impact what we're looking to do today. I don't see how approval or not would allow for an easement to go forward. I think that, and I think this was on the

record, that Ryan in good faith said if they were approved, they would work something out on this strip of line. And the idea is not to take it away from their use and that's what the intentions are. But we made every effort today when I was brought into this to try to remove this from the Board's view, because frankly I feel like it's confusing and it's not really focused on what we're looking to do. If we had an easement, we didn't have an easement, it really wouldn't change what we tried to do in the terms of the rear yard setback, the front and side yard setback.

BRENDAN SULLIVAN: This is an opportunity to memorialize whatever the agreement is to solidify the status and also to put the abutter's mind at rest because she has a document and exactly what this means. The fact that she is also consulted counsel, I think throws it into a little bit that if you were counsel for her, you might -- well, I'm not sure -- I'm not going to give legal advice. Whatever the person, the abutter, the lady there has presumed standing.

And that you said, you know, you can work it out but if you don't work it out, if we were to proceed, then and she could contest our decision and that would tie it up. So I think there's an opportunity here of some few weeks to avert that, because should she really sort of back up, if you will, don't mean to minimize it, could contest it. And so I think it would behoove you to and her to come together and to shake hands on an agreement so that it would go along much more smoothly I guess.

JANET GREEN: And can I ask a question? Brendan, is this actually a boundary dispute? I mean it sounds like both surveyors said the line was the same, right?

BRENDAN SULLIVAN: Well, my understanding is that --

JANET GREEN: How does that work?

BRENDAN SULLIVAN: -- she wants assurance that that fence is not going to move over, all right? That she has been maintaining and using this strip of land for a long

time, 20 years and a day, whatever, more than that. He has assured her I guess that yes, it will continue the way it is.

JANET GREEN: Right.

BRENDAN SULLIVAN: But I think there's a level of maybe I want to see it in writing.

ANDREA HICKEY: Right. And I'm not sure what that has to do with the relief requested. I just don't see the connection other than the fact that she's an abutter and she has perhaps some kind of a claim. I just don't see how it's relevant to the relief being sought.

PATRICK TEDESCO: I agree. And the other thing I would add is that there's a plot plan with the proposed easement which was produced by your assessor, your surveyor.

RYAN WITTIG: We asked him to survey the property, right.

PATRICK TEDESCO: Which is basically assuring the abutter that they will have the legal right to use that

land. And maybe the paperwork has not been finalized, but it seems to me you put forth a legal document proposing just what they're seeking.

ATTORNEY SEAN HOPE: Right. And that wasn't last minute. We did that before we even applied knowing that that was going to be an issue that we were gonna try to accommodate. But I also think, too, you know, part of the conversation was if we are approved as consideration, then we would, we would take what is our land, excuse me, my client's land on the plot plan and work together. If we weren't approved, if opposed, this was like a barter for exchange. And so I think the idea that we would try to negotiate something without this, part of the reason we are saying we would memorialize it afterwards is only if we were approved. If we weren't approved then really what they were doing is giving up right now what is their legal right to be able to move the fence where they wanted to and putting it back to where the neighbors requesting it would be. And so

I'd also say, too, if the agreement couldn't be worked out and this were adverse possession, this could take years to work out. Boundary disputes aren't something quick to work out. I don't think it's going to go there, but I feel that bringing --

BRENDAN SULLIVAN: I'm wondering if this doesn't give us a window of opportunity to resolve the matter amicably.

I'll give I just a minute.

MAGGIE COMFER: I received a letter this evening at six p.m. stating that if we approved it tonight, that they would gift us the land. But if we didn't approve it, then all bets were off. And it was received at six p.m. tonight. I said to Ryan, listen, I have been advised by a lawyer today if we can just talk this out, let the lawyer look at it, and settle it then that would be, that would be great. But he said absolutely not. I, you know, I've done this in good faith. I told you this, and if you're not

gonna take it, then, then all is null and void if you do this.

RYAN WITTIG: I'll go on the record saying our position from the beginning from the very first day that we discussed this is that we have no intention of moving the fence and that we would like to continue to work in good faith and we want -- we've never from Day 1 had a desire to move that fence and we would like to allow to continue to allow them to use that land as they see fit. And we will continue to work in good faith just as the letter that we provided today stated as well. We've said from Day 1 in multiple audiences that we have no desire to change where the fence is now and we'd like to continue where it is.

JANET GREEN: And they have received a letter that says this?

MAGGIE COMFER: I received a letter at six p.m. -- an e-mail.

JANET GREEN: Yeah, but you received a letter.

MAGGIE COMFER: I've received a letter that if I don't say anything tonight, they'll gift it to me. And if I do say something, it's all here and I can show it to you, and if I do say something, then it's all null and void. That they will not work with me around this issue. And I just asked him, I said, Ryan, I just need to have a lawyer look at it and he said, no.

ATTORNEY SEAN HOPE: And I just have to -- I need to clarify this. This could have, this letter, this agreement could have been done months ago. The idea that a letter came tonight only because we were coming before the Board, we were told that this is the remaining issue for approval. If this was a remaining issue over approval. Ryan said, look, this is Maggie's issue. Can we actually draft something to assure her? We did the easement on the plan several months before we even applied. We showed that to them. So the idea that the agreement is coming at the ninth hour, this wasn't our doing. A month ago Maggie said



I will support you if you draft an easement and you record it, that would have been done. That wasn't asked to be done. So the letter I put together is not a legal document that can be recorded. You just can't transfer land or do an easement by agreement. You have to record it, you have to have a plan. So this was labelled as agreement of the parties. It's not an easement. It wasn't intended to be that. But this was to assure them that if the easement in the plan wasn't enough, we had a letter saying and signed by both owners, saying, hey, look, we're agreeing to agree. And it wasn't just about her approval. If we don't get approved, whether she could have supported us or not, but if didn't get approved, then there's no consideration. So it really wasn't just about making her support. First thing, if we were approved, we can build our home, we're going to be here. We're going to be a good neighbor. If we're not approved, we don't have that. But I think the idea that we gave this to her last minute, it's not signed by her. It's

just signed this way.

ANDREA HICKEY: Yeah, I have to get back to the sort of original comment: What does this have to do with the relief being sought? And I'm extremely sympathetic to --

MAGGIE COMFER: I can answer that.

ANDREA HICKEY: -- to a layperson trying to negotiate these really complicated waters. I am sympathetic to that, but frankly I don't see the connection between the relief being sought and this unfortunate sort of boundary dispute.

MAGGIE COMFER: Well, I mean I can answer that and I'm being forced into this, but basically Ryan told me today that he needs, he needs that six inches in order to meet the requirements. The six inches by the driveway.

ANDREA HICKEY: I'm not following, I'm sorry.

MAGGIE COMFER: In terms of having enough space.

ANDREA HICKEY: You'd be giving him an easement

for six inches?

BRENDAN SULLIVAN: No. He's saying that he needs to retain the ownership of that land basically. In order to be factored in, he would grant the easement for her to use it, to trespass on it.

MAGGIE COMFER: And I said --

ATTORNEY SEAN HOPE: The planting area. I only want to add to the Chair's point and I've advised Ryan, too, it doesn't sense for us to get approved and end up in and fighting over the strip of land and her appeal the decision and not build the house. So the easement plan and the letter was all to assure her that we were gonna work this out. So I don't think that we would go to get approval tonight if the Board chose to approve, and then not follow through. It's a small strip of land. It's about a planting bed. It's an easement that's not going to affect this application.

LAURA WERNICK: So can't we, excuse me. Can't we

just in terms of the normal language of granting  
a -- granting this, say that in accordance with the plot and  
the easement indicated on the plot.

ANDREA HICKEY: I'm not sure we have authority to  
do that.

LAURA WERNICK: It's part of the submission. It's  
part of the submission.

BRENDAN SULLIVAN: Yeah, we could, relief is  
contingent upon the acceptance of the plot plan, sure. And  
also the plans for the building situated which shows -- the  
plans for the building show one thing. The plot plan  
obviously the key as far as setbacks and all of that other  
stuff you have it there. But they are incorporated by  
reference so that we are approving basically the size of the  
building, but the siting of the building is contingent on  
those certified plot plan as is we are accepting all of  
those dimensions on the certified plot plans as being true  
and accurate.

ANDREA HICKEY: The problem is that the plot plan itself doesn't create the easement. So then there's this whole back and forth between the petitioner and the neighbor, well, who has responsibility for insuring that space?

ATTORNEY SEAN HOPE: The easement language would create the scope. There's an easement. What can you do in the easement? You know, can you walk on it? Can you build on it? Can you plant on it? The intention of putting it in the plans and the letter was all to give assurances that we would be able to work that piece out. The idea that this is coming up at the ninth hour, this is not our doing. If there's a neighbor that wants an easement, there was ample time. Just say hey, don't go to the Board until we work the easement language out. We had never heard that. Not blaming anyone. I understand people are lay people, but I think we've done everything we could do to have some assurances that it's in the plan. I think to Ms. Hickey's

point, we do have to define the easement, because it's not valid until it's recorded and it's defined. We went he on the record to say what we're going to do. We're not looking to move the fence. I would hope the Board would take the plan and what we've said at our word to do that. But this could have been taken care of a long time ago, and we would have gladly had done that. And the attempt today was to say hey, we would do this if we're approved. Because we couldn't say we're just going to grant an easement or doing anything -- and we also couldn't have gotten it done, I mean, the call I received was one o'clock today and so --

LAURA WERNICK: So does the plot plan show the fence?

ATTORNEY SEAN HOPE: No, the existing plot plan must show the fence because the fence is there.

LAURA WERNICK: Can we say that with the understanding that the fence would remain in its current location. Wood stockade fence would remain in its current

location. You're not establishing --

PATRICK TEDESCO: It's not a legal issue.

LAURA WERNICK: It's not a legal issue, it's just the fence stays where it is.

RYAN WITTIG: I'm fine with that.

ATTORNEY SEAN HOPE: And to the extent that a couple of weeks might solve it and I do think we can do an easement in a couple weeks, the client has been at this for over a year. And I think that the part of the idea is to get some certainty and to be able to move forward. Hopefully we have done enough in terms of the plan, the representation to the Board, and an agreement signed by them if we were approved, we are going to deal with this easement area in a way that is satisfactory --

BRENDAN SULLIVAN: There are two courses we can take. We can either continue it for two weeks and allow them to come up with a legitimate document that protects her, protects him, or we can vote on it tonight up or down.

Or you could ask for a continuance and -- there's three options. You could ask for the continuance to satisfy the abutter and your client and come back in two weeks and then we could probably dispense of it quickly I guess. Whatever.

ANDREA HICKEY: Yeah, or there's the other option is we could take a vote -- well, we could take a vote and have the decision be contingent upon mutually acceptable easement to be recorded. It just seems really cumbersome to me to do something like that.

BRENDAN SULLIVAN: Yeah.

JANET GREEN: It just seems to me that the people seeking the Variance have done a lot. I mean they have of spent a year on this. You know, we sent back after the last time. They've redrawn the plans, they've met with the neighbor, they brought it up for the back so there was more backyard. They did the -- I mean, they've just done a lot, and it seems to me coming at the last hour at some point, I mean, I'm very sympathetic to not knowing what the process



is, but I mean people still could call to find out what the process is. And there's some responsibility on the part of the neighbors especially when we've had somebody who is willing to read into the record that this is what he plans to do, that a letter was sent today that this was what they plan to do. I mean, I don't see the distrust. I don't see where the distrust is coming from.

MAGGIE COMFER: You should see the letter.

BRENDAN SULLIVAN: Ma'am.

JANET GREEN: I don't think it's the same issue that's before us.

ATTORNEY SEAN HOPE: And I would --

BRENDAN SULLIVAN: Anyhow.

JANET GREEN: That's my --

BRENDAN SULLIVAN: What do you want to do?

LAURA WERNICK: Well, first is there going, is there any interest in doing a continuance?

ATTORNEY SEAN HOPE: I just want to inform the

Board, so if we did do a continuance and we did work it out, any easement or anything would be held in escrow and contingent upon approval. So it wouldn't be done and recorded because we're not going to grant land on something we know we can't build. And part of the precondition for any agreement was the approval.

BRENDAN SULLIVAN: I think that I can understand that.

JANET GREEN: That's fair.

ATTORNEY SEAN HOPE: And also because this easement is a separate -- it's not part of the Ordinance. It's not really a purview for the Board. I think to be able to -- and because both parties are agreeing for it, I think it's fine, but this could be a contentious issue and I think it's a slightly dangerous precedent for the Board to force parties to negotiate over a boundary dispute. And, you know, we really would like to get approval today and be able to proceed with memorializing that agreement knowing that

we're vulnerable, they're an abutter with standing and --

BRENDAN SULLIVAN: All right, so you don't want to continue, you want an up or down? It's up to the Board. If you want to -- you ready to give an up or down?

ANDREA HICKEY: I am.

BRENDAN SULLIVAN: All right. Let me make a motion, then, to -- you're done?

ATTORNEY SEAN HOPE: Yes.

BRENDAN SULLIVAN: Sorry.

Let me make a motion, then, to grant the relief requested to build within the front and right yard setback and to allow for an accessory unit as per the drawings.

LAURA WERNICK: I think you've got them in front of you.

BRENDAN SULLIVAN: These are the latest one. As per the latest drawings amended dated October 13th -- stamped in October 13th, plans dated October 10, 2016, on the letterhead of JMA Architects and initialled by

the Chair.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner as it would preclude the petitioner from constructing a building, residence, that's more adaptable to the current standards.

The Board finds that the existing house is in great disrepair to through no fault of the petitioner, just age. Certain soil conditions have rendered the building quite unusable for living without a great expense of funds which would be prohibitive and would be -- not allow the petitioner a fair and reasonable use of the property.

The Board finds that the hardship is owing to the narrow and non-conforming shape of the lot and that would require some setback relief in order to accommodate a functional dwelling consistent with today's standards.

The Board notes that the petitioner has extensive outreach to the neighborhood and that the final plan is

acceptable to the neighborhood generally. And that the requested front yard setback is as per the neighborhood request to bring the building up to alignment with other buildings and in conformance with other buildings and to allow for a greater rear yard which is the desirability of the neighborhood.

The Board finds that desirable relief may be granted without substantial detriment to the public good.

The Board notes the extensive input of the neighborhood into the final design, and as such there is a benefit to the neighborhood.

The relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance because the residential is allowed within the district and it is the most rational use for the lot.

Is there anything else to add to it?

All those in favor of granting the Variance to allow for the construction of the building?

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Green, Hickey, Tedesco, Wernick.)

BRENDAN SULLIVAN: One opposed.

(Sullivan opposed.)

BRENDAN SULLIVAN: In opposition I find that the petitioner has not demonstrated a satisfactory hardship related to the size, shape, and soil conditions, and that does not meet the statutory requirement for the granting of a Variance.

On the Special Permit, to allow for tandem parking and parking within five feet of the side yard setback, the Board finds that the requirements of the Ordinance can be met.

It appears that traffic generated or patterns of access or egress would not cause congestion, hazard, or established change in neighborhood character. In fact it is quite consistent with the established neighborhood character

for parking, especially tandem parking, and narrowness of the lots.

Continued operation of or development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use or the parking plan.

There would not be any nuisance or hazard created to the detriment, health, safety and/or welfare of the occupants of the proposed use or to the citizens of the city. And the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

That the parking layout to allow for tandem parking is consistent and will allow for a parking space for another vehicle which will lessen the impact on the street.

All those in favor of granting Special Permit?

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Green, Hickey, Tedesco, Wernick.)

BRENDAN SULLIVAN: One opposed.

(Sullivan Opposed.)

\* \* \* \* \*

(11:10 P.M.)

(Sitting Members Case BZA-011572-2016: Brendan Sullivan,  
Janet Green, Andrea A. Hickey, Patrick Tedesco, Laura  
Wernick.)

BRENDAN SULLIVAN: The Board will hear case No.  
011572, 34 Washburn Avenue. You've waited all night. You



could probably do it in 60 words or less.

ROBERT O'REILLY: I think so. Robert O'Reilly. I live at 34 Washburn Avenue in Cambridge.

ARCH HORST: My name is Arch Horst Black River Architects, Cambridge, Massachusetts. And what we're asking for is basically a Special Permit to move two windows in the side yard setback. These two down here, and move this one laterally.

BRENDAN SULLIVAN: And the reason for moving them?

ARCH HORST: Just interior rearrangements.

BRENDAN SULLIVAN: Rearranging the deck chairs inside somewhat?

ARCH HORST: It's not sinking, Brandon.

ROBERT O'REILLY: It's not sinking, please it's not that.

ARCH HORST: Yes.

BRENDAN SULLIVAN: Okay.

ARCH HORST: It's a house with four bedrooms and

one bathroom so we're adding a bathroom. Yeah.

BRENDAN SULLIVAN: Much necessary work. Okay.

And you've spoken to the most affected?

ROBERT O'REILLY: I spoke to the neighbor on that side of the house and she's like why are you -- I said because I have to.

BRENDAN SULLIVAN: Okay. All right. Any questions?

JANET GREEN: No.

ANDREA HICKEY: No.

BRENDAN SULLIVAN: Concerns?

You've conclude your presentation?

ARCH HORST: Yes.

ROBERT O'REILLY: We could go longer if you like.

BRENDAN SULLIVAN: At 59 words the requirements the Ordinance....

Let me make a motion, then, to grant the Special Permit to relocate the windows and close up others within

the side yard setback as per the plan submitted and initialled by the Chair.

The Board finds that the requirements of the Ordinance can be met.

By relocating the windows, the immediate neighbor to the northeast would experience no loss of privacy and the residence will be brought into conformance with the zoning.

The Board finds that traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character.

There will be no additional traffic to or from the site.

The continued operation of or development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature, and there would be absolutely no impact to the adjacent uses. The neighbor most affected has been consulted as hand given full

approval.

There would not be any nuisance or hazard created to the detriment of the health, safety, and/or welfare of the occupants of the proposed use or to the citizens of the city.

The addition of the bathroom which necessitates these changing of windows that will create greatly enhance the welfare of the occupants of the proposed use.

And for other reasons the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Done.

(Sullivan, Green, Hickey, Tedesco, Wernick.)

(Whereupon, at 11:15 p.m., the

Zoning Board of Appeals Adjourned.)

\* \* \* \* \*

**ERRATA SHEET AND SIGNATURE INSTRUCTIONS**

The original transcript and Errata Sheet has been delivered to Inspectional Services Department.

**INSTRUCTIONS**

After reading this volume of the Zoning Board of Appeals transcript, note any change or correction and the reason therefor on this sheet. Sign and date this Errata Sheet.

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I have read the foregoing transcript of the Zoning Board of Appeals, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an

accurate record of the statement(s) made by me.

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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 the hearing herein before set forth is a true and  
accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 14th day of November, 2016.

---

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

My Commission Expires:  
April 29, 2022

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