

CAMBRIDGE PLANNING BOARD HEARING
CITY OF CAMBRIDGE

GENERAL HEARING

Tuesday August 16, 2016

7 p.m.

in

Second Floor Meeting Room.
344 Broadway, Cambridge, MA

H. Theodore Cohen, Chair
Hugh Russell, Member
Tom Sieniewicz, Member
Steven Cohen, Member
Louis J. Bacci, Member
Mary Flynn, Member
Thacher Tiffany, Associate Member

Community Development Staff:

Jeff Roberts
Suzannah Bigolin
Swaathi Joseph
Sandra Clarke.

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Public Hearing

7:00 p.m. Healthy Pharms, Inc. Zoning Petition, c/o Nathaniel Averill, Executive Director, Healthy Pharms, Inc to amend the Zoning Ordinance of the City of Cambridge in Section 20.700 Medicinal Marijuana Overlay Districts by creating an additional Medical Marijuana Overlay District MMD-4.

The new MMD-4 District would be coterminous with the Business B and Office 3 Districts that are within the Harvard Square Overlay District.

The petition would also establish as criteria specific to the MMD-4 District that permissible dispensaries must be retail only, with no cultivation must be set back from the sidewalk by a minimum of 15 feet and be appropriately shielded from public view, must be less than 10,000 square feet in size, preferably located in areas with access to pedestrian and public transportation and may be 250 feet, instead of the standard 500 feet, distant from a school, daycare center, preschool or after school facility or any facility in which children commonly congregate or closer only if it is determined by the Planning Board to be sufficiently buffered such that users will not be adversely impacted by the operations of the dispensary. 7

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P R O C E E D I N G S

August 16, 2016

CHAIR H. THEODORE COHEN: Good evening, everyone. Welcome to the meeting of the Planning Board.

We'll start out with an update from the Community Development Department.

SANDRA CLARKE: Good evening, Planning Board and Chair. And welcome everyone. Sorry for the delay getting started. Sometimes when we take a step forward, we end up taking a couple steps back.

So I just wanted to update you on a couple of items going on.

First of all, this evening we are going to have on our agenda Healthy Pharms, Inc., as anew petition that pertains to medical marijuana Overlay District changes, so that is the only

item on for this evening for a presentation.

Next week, on August 23, the Planning Board meeting agenda will include Urban Agriculture zoning petition.

And then on September 6 that meeting there will be three items on the agenda for the Planning Board, including William Wexler Foundation, a zoning petition, a continuation of 135 Fulkerston Street in Cambridge and then lastly 249 Third Street, amendment for a basement GFA.

For the City Council public hearings, I wanted to bring to your attention a few items that are planning-related for the city.

On August 23, also the same day as the Urban Day Planning Board agenda item, there will be an Ordinance Committee Joint Health and Environment Committee Hearing on Urban

Agriculture, zoning petition, that will be held on the same day, and on August 31, there's going to be an ordinance committee hearing on Healthy Pharms, Inc., so the counterpart to this evening's Planning Board hearing.

While this occurred last night, I wanted to bring to your attention the Housing Committee hearing that took place with the City Council Committee.

It was for the inclusionary housing zoning recommendation, so that was heard at a public hearing. There's going to be a follow-up to that, I believe the fourth public hearing regarding inclusionary zoning on August 30.

So those are all the items that are forthcoming.

CHAIR H. THEODORE COHEN: Thank you. Are there any transcripts to be approved?

JEFF ROBERTS: Yes, I did receive a transcript for the July 12 Planning Board meeting and we'll have that posted shortly.

CHAIR H. THEODORE COHEN: That's been certified?

JEFF ROBERTS: It has.

CHAIR H. THEODORE COHEN: Can I have a motion to accept the July 12 transcript?

MARY FLYNN: So moved.

STEVEN COHEN: Seconded.

CHAIR H. THEODORE COHEN: All in favor?

(All Board Members in favor).

CHAIR H. THEODORE COHEN: Thank you.

It is now a public hearing on Healthy Pharms zoning petition to amend the Zoning Ordinance Section 20.700 Medical Marijuana Overlay Districts by creating an additional Overlay District to be known as MMD-4 would be

coterminous with the Business B and Office 3 Districts within the Harvard Square Overlay District. And there would also be specific criteria in that district.

Other than going through those criteria, I assume it is part of the presentation.

And if you could proceed with the presentation.

ATTY VALERIO ROMANO: Thank you Mr. Chairman and Members of the Board. Thanks for your time this evening.

I'm Valerio Romano. I'm an attorney with VGR Law Firm. I represent Healthy Pharms and have done so for about three years now.

I want to start out just by talking a little bit about Healthy Pharms' background. I think what's valuable for that is that Paul Overgaag, one of the founders of Healthy Pharms,

to briefly describe himself and his relationship to the City of Cambridge.

I'm cognizant of the issues that are specifically in front of us as far as the zoning petition so at any time the Board wants to interrupt on some of the background information, feel free to do so and we can skip to the real nuts and bolt of the petition.

But I thought it may be nice for you to learn a little about Healthy Pharms.

PAUL OVERGAAG: Good evening. My name is Paul Overgaag. I am a restaurateur and a liquor license operator in the City of Cambridge for 30 years.

I started with a restaurant in the Charles Hotel.

After that, I took over Charlie's Kitchen and I had an opportunity to buy the Red House

building and develop that together with the City of Cambridge into a lovely restaurant and unique spot where there's one kitchen for two restaurants.

And after that I had a chance to get -- develop the Beer Garden which was always an eyesore for the City of Cambridge and it is a nice little spot and great restaurant operation.

A while ago I got involved with medical marijuana because, of course, most of us have family members with cancer and it was the access, trying to get the medical marijuana was difficult, the consistency of the medical marijuana which was difficult, and I had this opportunity to do something to make this better, and I got involved with Healthy Pharms and we were one of the 12 originally approved by the state.

The team is very small. It is me and Nat Averill who run the company and we did the application process and we are now currently building a facility up in Georgetown and we are looking to do a second location.

Over the years, I talked to a lot of people in Harvard Square about it and they said "Well, you know, it does belong in Harvard Square. It doesn't belong in Alewife or someplace where it is dark or in an alley."

That's what we are here for tonight to see if we can make medical marijuana more accessible to the city residents of the City of Cambridge. Thank you.

ATTY VALERIO ROMANO: Thanks, Paul.

I would like to introduce you to Nathaniel Averill who is a co-founder of Healthy Pharms and he'll run through quickly some of the

slides regarding the Healthy Pharms team so you can get an idea of who is proposing to site in Harvard Square.

NATHANIEL AVERILL: So my background is biotech pharmaceuticals. I have been doing it 25 years.

And I have been setting up systems that are FDA compliant and regulated by the FDA for many years, specifically (inaudible) culture operations, set up some of the biggest facilities in the country, one of them in Devens, Mass. I designed automated systems. Designed the systems and managed those companies for a long time.

HUGH RUSSELL: Would you step closer to the mic?

NATHANIEL AVERILL: Sorry. Yeah. I tend to be a soft talker.

So I also want to just introduce the rest

of the Board members.

We talked about Paul.

Steve is a retired foreign service officer. He has been working with NGOs and USAID setting up mostly healthcare systems but projects in developing countries for most of his career. He's a great project manager and a good person to have onboard.

Joy is our nonprofit expert. She's worked for non-profits for about 15 years. And she also does a lot of international healthcare systems in developing countries.

And lastly is Amy. She is an epidemiologist.

She currently works for the CDC, and is interested in medical marijuana for statistical analysis, how effective it is. That's why she joined our Board.

This is really the end of the section on the team.

ATTY VALERIO ROMANO: I'll try and keep things moving.

Healthy Pharms was part of the 2013/2014 application process under the Patrick administration.

Out of 181 original applications during that early time, there were 15 applications granted for 12 groups and Healthy Pharms was one of those groups.

They have been vetted by The Department of Public Health perpetually for three years now. They are a strong group with a good background that's proposing to site.

They currently have cultivation and processing and an additional retail location that will be moving into Georgetown, Massachusetts.

They have a 65,000 square feet location there.

They will be doing all three activities there.

The plan for Cambridge is to do dispensing in Harvard Square.

This is their second time through the application process.

In June 2015, they submitted an additional application and they have been brought through the third stage of that application process.

So they are very similar to where the Sage petition and Sage group was when they came to Cambridge for their zoning amendment, their building out, their external cultivation and processing facility and also at the siting profile stage of the third -- of the second application process.

So I think it is important really to talk

about Harvard Square and think about the value of having an RMD or dispensary in Harvard Square.

This would be potentially the greatest patient access in all of the Commonwealth. You know, it could be argued that potentially some locations in downtown Boston -- currently there's one site at 21 Milk Street. Another one in Allston/Brighton on Harvard Ave just provisionally registered last week.

But Harvard Square has absolutely fantastic patient access. And that's really the goal of Healthy Pharms in siting in Harvard Square is to help the patients of the Commonwealth.

Let's keep going here.

As we know, Cambridge, 79 percent of the residents, the voters, voted in favor of medical marijuana. And I won't get into too much into

the pros and cons of cannabis or the status of that.

So the benefits to Cambridge in siting an additional RMD in Cambridge are multiple.

I know Cambridge isn't one of those host communities that's really just knocking the applicants back for some incredible host community agreement that probably is not enforceable or legal anyway but it's much more thoughtful how this should move through.

There is a financial commitment.

Paul, as you know, has been committed to Cambridge for decades.

Property taxes -- we are a non-profit but we're not public charities.

We don't get a 501(c)(3) designation given the fact that it's still a Schedule 1 controlled substance in the IRS.

That location will continue paying property taxes even if the DEA or Congress were to act to reschedule cannabis and they just declined to do so in the last week, Healthy Pharms would commit to making sure the property taxes keep flowing from that location.

They are also responsible actors as we've talked about, they are a great group to have sited. I've worked with many groups throughout the Commonwealth. We've obtained registrations, provisional and final, all throughout the Commonwealth.

I've work with many, many of the dispensary applicants, and I know these guys very well and they are just a fantastic group.

So what would it look like.

HPI would maintain the urban character of Winthrop Street and we have a slide that will

come up and it shows the front door and the limited change to Winthrop Street.

The path in the front would remain a food service establishment.

It is only the entrance along the side of the Red House that would be used for the RMD.

It is set back 19 feet back from the street similar to the Sage petition where one of the factors was that it was below ground, so it didn't change sort of the character of the location. The same thing, or very close to it, with this particular application is that it is set back almost 20 feet. It is really changing one doorway.

The back dining room, I don't know if you have been in the Red House, but the back dining room becomes the actual dispensary.

And so we know, per the state regs,

there's no flashing cannabis or marijuana signs. You have just the logo of the dispensary and their registered name, that's all you can do. You can't have public view of cannabis or marijuana from the outside.

It is low-key and we'll get to the slide that shows it.

So here is the patio that will remain. This is what it will look like if Healthy Pharms is allowed to move forward at that location.

Really the goal here is not just for this location. The goal is making the reduced setback, and we'll get to that, it's really to widen the zone for Harvard Square.

We found that it was virtually impossible to find locations with a 500-foot setback. This is widening the zone. But our proposed location, we think it is germane, would be the Red House

Restaurant, so that path would remain approaching from the Eliot Street side.

You would not even know it is there and simply that doorway on the left of the slide would be the dispensary.

That door would lead to the dining room in the back of the building and that would be the location of -- I don't know if I'm in your way over here. That would be the location in the back of the building there.

And so one of the issues we found, in looking to site, looking for locations, and although the map that was produced, we'll get to this, shows that that Winthrop Street location may not be in a 500-foot buffer, we did our diligence and looked around and we found Universal Lutheran Church about 315 feet away and we'll get to our meeting with them.

So that's why part of what we propose is to reduce the 500-foot setback. We met with UniLu and we had a wonderful, really productive meeting. It must have been well over an hour that we were sitting with them, answered all of their questions and they met together as a Board and they decided not to oppose.

They were in the meeting there, on the fence, whether just to all out support us or not. But for whatever reason they went on record that they don't oppose the proposed siting of the Healthy Pharms dispensary.

They got to know us as a team and got to know the location and they felt comfortable. They had some of the most thoughtful questions. It was really a great meeting.

So, you know, that's the place where children commonly congregate. It is a one-time

on Sundays that we know of, but there may be other times during the week and we are not trying to hamper that. We are trying to lower the setback requirement.

So the 500-foot regulation, what is the 500-foot regulation? It really comes from The Department of Public Health originally.

They created this 500-foot setback from places where children commonly congregate. There's really a three-prong analysis. People under 18, do they show up in a scheduled manner? An ice cream store doesn't count. Do they come in numbers? And so that's the sort of the three-prong analysis we felt the Sunday school at UniLu does, in fact, implicate that children commonly congregate.

Other communities have, in fact, have actually reduced that setback requirement.

In Brookline. They just say that RMDs can't be in the same building as a daycare and they kept the 500-foot setback from elementary or secondary school.

Holyoke eliminated any setback whatsoever. These are just some examples.

There are many more throughout the Commonwealth as far as zoning bylaws.

Kingston reduced their setback to 100 feet.

Rowley reduced their setback to 200 feet.

Amherst, Belmont, Dedham, Fitchburg, reduced their setback to 300 feet.

So it would not be an out-of-left field thing to do to allow a medical marijuana dispensary in Harvard Square by reducing that setback. It is not without precedent.

So we look at the memo from the Community

Development Department from August 9, 2016 and we thought it was important to address the factors in that memo in our proposed zoning amendment. And the first factor described in that memo -- there's a previous one. They are the same five factors, but three were reanalyzed in a new memo so that's what we went off.

The first factors are the allowed uses and they would only be allowed in districts that otherwise allow commercial uses. And so our proposed zoning amendment only contemplates siting in just districts that allow commercial uses.

Public safety, areas that are isolated and difficult to reach for emergency vehicles would be excluded. It is Harvard Square, so it is about as central as it gets.

Transportation. So one of the thoughts

was, you know, now The Department of Public Health is siting a dispensary in any municipalities that will have them, is it so important to be near this regional transportation hub. And you know, we still believe that it is. That's why we want to be in Harvard Square.

Harvard Square is near Mass. Ave and Memorial Drive, Auburn Street, Eliot Street, Brattle Street serviced by the Red Line and ten different bus lines. So there's access to Harvard Square, as we all know.

And that's really the basis of this petition is just to bring patient access to Harvard Square. And there's public parking available. So the urban character -- we went through the urban character a little bit in the slide when you got to see what it would change into. Just that one door. We don't ruin the

urban character of that Winthrop Street, that restaurant street at all.

And so, in fact, The CDD memo on Page 4 discussed that and the Healthy Farms proposal suggested setting the RMD back from the street with only limited frontage allowed for entry and exit of the RMD, so that was contemplated in that memo as one of the ways that we could mitigate any harm to the urban character.

And similar to the Sage petition in putting it below ground in that one location.

It is the same idea. Buffers for sensitive uses. So we talked about that.

We saw -- I went through the fact that the UniLu church was there and they do have that daycare. And that's why we proposed to lower the buffer to 200 feet.

So here is the proposed Overlay.

Let me tell you real quick what we intend to do.

We want to add to ordinance 20 -- Cambridge Zoning Ordinance 20.702 and create an MMD-4, a Medical Marijuana Overlay District 4, which shall be coterminous with the portion that -- zoning district Business B and Office 3 that are within the Harvard Square Overlay Zoning Districts.

So that's specifically the added text that we want to add to 20.702 in creating the Medical Marijuana Overlay District 4.

Additionally, we want to add some language to 20.705, subsection B, except as provided for in 20.702.2, the very first clause there. Because we add 20.705.2, which would be additional Special Permit criteria for any RMD that were to site in Harvard Square.

And we tried to really use the rationale and the thought process behind the Sage petition in coming with our Special Permit criteria.

So retail only, no cultivation or processing on site.

Setback from that minimum of 15 feet. The RMD facility side shall be less than 10,000 square feet.

Patient access, storage, support, access with pedestrian and public transportation would be preferred.

And then subsection E of that is where we hoped to reduce the buffer to 250 feet because otherwise it is not practical to add an RMD to Harvard Square where there's a desperate need for that patient access.

And we have some patients in the audience tonight that hopefully will speak to some of that

required patient access.

That's our specific proposal and amendments to the Zoning Ordinance for the City of Cambridge.

Now, one of the powerful meetings -- we actually had a number of them -- with the Harvard Square Business Association, and they quizzed us thoroughly. They asked us ever bit of our plan.

Fortunately, they know Paul extremely well and this -- I have been doing this all over the state for about three years now.

But this is one of the most supportive letters I've ever got from any client or seen for anyone in an application.

A super majority of the officers and directors of the Harvard Square Business Association Board believe that Paul and Healthy Pharms are well-qualified to operate a dispensary

in Harvard Square.

We support, not non-opposition, but we support the efforts of the team at Healthy Pharms to locate an RMD in Harvard Square.

So we went to the businesses. We got a super majority support of the Harvard Square Business Association in this petition.

So we went to the local place where the children congregate. We got no opposition from them. And we went to the businesses and we got super majority support. So we feel like we have done our homework in siting and we're not just trying to plop it in with significant opposition.

So, in summary, we believe that the zoning petition satisfies the factors considered by the City of Cambridge, as outlined in the CDD memo, and in the previous zoning amendment petition that was supported ultimately by the

City Council.

And we thank you very much for your time and attention, and we're available here for any questions that you might have regarding the petition, the team, anything we've talked about.

Thank you.

CHAIR H. THEODORE COHEN: Thank you.

Do Board members have questions right now?

Steve?

STEVEN COHEN: Thanks for the presentation.

The case for this particular location of Winthrop, and Paul, you make a strong argument, but I note that you are not seeking approval for maybe this one location and this one operator but we're talking about a large district covering the bulk of Harvard Square.

I guess I was wondering, why you are seeking the change for the entire district rather than a much more narrowly-tailored zoning amendment that would address the needs of this particular applicant in this particular dispensary.

ATTY VALERIO ROMANO: Certainly, Mr. Cohen. Thanks for the question.

So unlike Medical Marijuana Overlay District 3, in the Sage petition, where there's that narrow zoning district, which is just that one city block, there's not really a zoning district that's narrow.

And, frankly, Healthy Pharms is not doing this just for Healthy Pharms. They are doing this for the patients of the Commonwealth.

And, you know, let's say Healthy Pharms were not to open up, they own the property,

they're already vetted by The Department, they are going to open, they are funded, but this is really to provide patient access in Harvard Square, and not just for the benefit of Healthy Pharms.

But that being said, if you take the 250 foot-buffer, even at that buffer, and you look at the Overlay District that we are trying to create with MMD-4, there actually isn't that many spaces that finally work when you look at other offending uses.

We looked and looked at 500 feet and had trouble finding it. One, we are trying to conceptualize, put ourselves in your shoes as far as what would be a valuable zoning petition, and not just doing it for one group, and so that's how we came up with this.

We met with various constituents in the

city and stakeholders and talked to all of them and the guidance we got was, it doesn't make a lot of sense for you just to do it for one group either.

It is because -- it is about patient access. It is about not just doing it for Healthy Pharms and trying to have a thoughtful approach to Cambridge zoning for the medical use of marijuana dispensary that we came with this Overlay District.

STEVEN COHEN: We can discuss the substance of that in the later portion of that.

One more thing, we saw the rendering of the sign for the dispensary, and am I to take it that the Red House is going to close? That's currently the entrance to the Red House.

PAUL OVERGAAG: The new Red House entrance will be on the patio, and you go

straight into the bar area.

STEVEN COHEN: Thank you.

PAUL OVERGAAG: So 98A and 98B.

STEVEN COHEN: Thanks.

ATTY VALERIO ROMANO: That whole front of the building would continue to be the Red House and just going down the corridor to get in the dispensary in the back. That's all we would be using without ruining the frontage and the urban character of Winthrop Street.

STEVEN COHEN: Thank you.

CHAIR H. THEODORE COHEN: Hugh?

HUGH RUSSELL: I'm curious as to why you included the Office 3 District.

The streets that are in the Office 3 District don't really have much retail business on them.

The District doesn't actually permit

retail business. The one on the right is so close to some of the sensitive receptors on the map, I'm curious why you would put --

ATTY VALERIO ROMANO: Certainly.

So one of the things -- just to sort of approach that from a different angle, Mr. Russell, is that we did not include C2 and C1 which were also in the Harvard Square District because we didn't want to use anything that had residential.

So we kept residential entirely out of it.

We did find that the Office 3 District did allow commercial use, albeit, potentially not retail, and like I said, we -- the subject to the guidance that we got, but also just thinking about this from a more holistic approach, we wanted to include as much of Harvard Square

possible without implicating residential and we chose to do BB and Office 3 as well.

So, you know, if the Board believes that having a more restrictive approach would be preferable, then we would absolutely do what we can to amend our zoning petition between now and the next zoning hearing.

This is not something we are absolutely wedded to. The feedback we got, and our sense of trying to be sort of a larger picture, Mr. Russell, and how to zone registered marijuana dispensary in Cambridge was to allow for more rather than less restricted use, so it didn't look we are just doing the zoning just for us. And frankly, like I said, these guys are really patient-focused.

That's what it is all about, and it seemed like the best way to achieve that goal.

If having a more restrictive approach is more preferable we can certainly amend our zoning petition to remove Office 3, for instance, from the proposed overlays.

LOUIS BACCI: You said you had a hard time locating a location at the 500-foot buffer.

How many locations did you find at the 250-foot buffer?

ATTY VALERIO ROMANO: Matt, do you have any input on that?

LOUIS BACCI: Roughly?

ATTY VALERIO ROMANO: I mean, there are some around Harvard Square.

Probably ten.

That doesn't mean they are vacant locations or something we could use but --

PAUL OVERGANG: Plus the restriction of it has to be 15 feet away from the street and it

cannot have a bigger frontage than ten feet, now
you are talking --

LOUIS BACCI: But there are ten
possibilities? Maybe less or more?

ATTY VALERIO ROMANO: I mean, we would be
happy to do a real definitive search for every
address that would fit. It is really very
difficult to do, frankly.

LOUIS BACCI: I understand.

NATHANIEL AVERILL: What we didn't do is
walk down 500 feet for every address that might
be possible, and we needed to do that in every
little side street to make sure there is not a
daycare there.

ATTY VALERIO ROMANO: We only found UniLu
Sunday School because Nat was walking around
everywhere trying to find something.

HUGH RUSSELL: Another question.

So the 15-foot setback and 10-foot frontage are restrictions you are placing? They aren't somebody else's restrictions?

ATTY VALERIO ROMANO: That's correct, Mr. Russell.

In order to sort've match the sentiment from the Sage zoning petition in order to make it so that we don't disrupt the urban character with our proposed zoning, so in the Sage petition, the Special Permit criteria was added that it is not at street level. That didn't quite work for us.

So what we did was, we tried to figure out another way to get at the same idea.

While we are not turning the whole Red House into an RMD that's only serving patients and their caregivers but we are maintaining the Winthrop Street, the restaurant feel, the urban feel, and so we decided that instead of just

upstairs or downstairs, we limit it by having really just one door or less than ten feet and a minimum of 15-foot setbacks.

It was really to achieve the same goals that were persuasive in the Sage zoning petition.

HUGH RUSSELL: So it seems like the 15-foot setback is a way of also eliminating most of your competition because most of Harvard Square is built up. Very few parts are built in. You know, 1800 century residential buildings, although it is a loving building, and very glad it has been lovingly taken care under your ownership, but I think that kind of cuts against your argument of trying to encourage this use because there are very few places in The Square that meet those standards, and it strikes me that setting the door back from the street is really not particularly relevant.

ATTY VALERIO ROMANO: The goal was to, Mr. Russell, to maintain that urban character that's one of the factors in the CDD memo.

Like I said, if there's any aspect of our zoning petition, that the Board finds less compelling or, in fact, working against us, we would be happy to amend the petition to resolve that aspect.

But it really was our effort at maintaining that urban character and satisfy. If you look at the Sage petition, the Sage petition does their Overlay District in just one city block. And on that city block there's one --

HUGH RUSSELL: I'm not very interested in discussing the Sage petition tonight.

And I would -- I'm trying to tell you that the urban character of Harvard Square does not have building setback 15 feet or doors

setback 15 feet.

So if you are trying to be responsive to the Harvard Square character, you ought to eliminate that provision.

If you are trying to make it difficult for anybody else to use these provisions, then you should keep it in.

But it seems to me that -- I mean, my own viewpoint is medical marijuana should be sold at CVS pharmacy in Harvard Square but that's not what the state is and CVS probably doesn't want to because of all the layers of stuff the state is putting on.

I mean, this is medicine. You know, jeez, you have to have 15 employees to sell medicine.

CHAIR H. THEODORE COHEN: Perhaps we should save our comment after the public

discussion.

HUGH RUSSELL: I'm trying to --

ATTY VALERIO ROMANO: I could not agree with you more, Mr. Russell.

I'm a firm believer in the value of cannabis for helping sick people and I agree with you, that Congress needs to reschedule it and it needs to be sold at Walgreen's. But, unfortunately, right now that's not happening.

And, you know, this is probably my fault. When I thought about the urban character requirement, I thought what that was really getting at was the idea that we don't want to take away large swaths of retail uses where you have the general public accessing them and turn them into registered medical marijuana dispensaries, where you only have patients and their caregivers showing up, which is a far more

limited, probably maximum two percent of the population of the Commonwealth.

HUGH RUSSELL: That's where the 10-foot frontage makes sense.

CHAIR H. THEODORE COHEN: Am I wrong, the 10-foot frontage is not in your proposed amendment, is it?

NATHANIEL AVERILL: That's correct.

That was only in the memo that came out recently as a suggestion that maybe that was a more appropriate fix to the -- we would be appropriate --

CHAIR H. THEODORE COHEN: But the proposal before us right now doesn't have the --

NATHANIEL AVERILL: Only describes the 15 foot.

CHAIR H. THEODORE COHEN: Only describes the 15-foot setback.

ATTY VALERIO ROMANO: But I'm listening to what I'm hearing from the Board, and given the opportunity to amend the petition, the 15-foot setback is definitely going to get swapped for the 10-foot frontage, you know, without a doubt.

So I'm trying to be -- I want to be responsive to the Board's thoughts how this best works in Harvard Square.

HUGH RUSSELL: Our role is to recommend to the Council. They have the ability to amend the petition and it is pretty common they do.

CHAIR H. THEODORE COHEN: Anyone else have questions right now?

Jeff, before we go to public comment, is there anything else you want to call to our attention?

I think we covered a lot of the issues

that were in the memo.

JEFF ROBERTS: Yeah.

This was a little bit of an unusual scenario for us and we took the opportunity as this petition is before the City Council.

There's also another medical marijuana zoning petition that will come before the Council, the Board will be hearing that on September 6.

And at the -- for the previous medical marijuana petition that was adopted, one of the issues that came up at the City Council, and I think a little bit in the discussion with the Planning Board, should we be looking at this in a more holistic, citywide way.

And so we took this opportunity to do that, to take a little bit of a review of what is happening with medical marijuana at the state

level. What does that mean for Cambridge. And how might we kinda reanalyze the analysis that we did back in 2013 when the zoning was first established.

So I can go through that now or we could have public comment just on this petition and we could segue into that.

The reason why I bring it up is because the Ordinance Committee will be hearing this in a couple weeks. And I thought it would be a good opportunity if the Planning Board had a communication to the Council and wanted to weigh in at all on those broader questions and broader issues, that might be an appropriate time for the Board to do so.

CHAIR H. THEODORE COHEN: Why don't we hear from the public first and you can shape part of our discussion that follows.

So we'll hear from the public. There's been a sign-up sheet. Three people signed up. But anybody else that hasn't signed up, of course, can speak.

When I call your name, please come forward and state your name and address for the stenographer, and we ask that you speak only for three minutes. There's a functioning lighting system and you will see a green light means your time begins, as you are getting near the end of three minutes, the yellow light will flash and when the three minutes comes, the red light will flash.

The first person is Nichole Snow.

If you could also spell your name.

NICHOLE SNOW: N-I-C-H-O-L-E S-N-O-W.

I'm residing at 190 First Street in Salem, MA.

I'm the Executive Director of the Massachusetts

Patient Advocacy Alliance, which represents patients that stand to benefit from medical marijuana in the State of Massachusetts.

I'm here to speak in support of this provision to locate at this particular address in the City of Cambridge.

I was watching the proposal with you all and thought about this location for many different reasons and one of those things was the access point.

It is close to public transportation. But also as I was thinking of this very beautiful location, which is not as important, but very beautiful and appropriate for Cambridge, I thought about the privacy of the working professionals in the area.

You know, the dispensary are spread out and, you know, people want to go to work or

school, zip through Harvard Square and, you know, walking by the Red House Restaurant might add to their own privacy, I think.

You know, folks might have to suggest that they are going out of town to access a facility in another city, so this might be a way to add more to their privacy.

Also Healthy Pharms, they are executives and their representatives are very experienced and very responsible.

And I was delighted to hear of their proposed location because they have been looking for another location for a while, and when they brought up their own Red House, I was relieved because they have experience taking care of this location.

I'm speaking to the safety and privacy of patients in the community. This is great.

Thank you very much.

CHAIR H. THEODORE COHEN: Thank you.

MARY BETH DEGRAY: Hi. I'm Mary Beth
M-A-R-Y space B-E-T-H. D-E capital G-R-A-Y.

I'm owner of Cannibis Consultants, LCC.
Resident of 291 Huron Avenue. I'm a consultant
for Inhale MD Health and Wellness, which is
therapeutic cannabis practice in Cambridge and
Brookline. I'm a graduate of The Northeastern
Institute of Cannabis in Natick, MA. I'm a
medical cannabis patient with PTSD and Crohn's
disease and a native of Cambridge.

I'm here to support and participate to
grant expansion of the zoning to allow them to
move forward with this project.

As a resident of Cambridge and cannabis
consultant, I'm in contact of a growing
population of people that want safe access to

cannabis needs close to their home. I feel this establishment will benefit the community without posing a risk because of its retail designation rather than its cultivation. These facilities serve some of the most vulnerable people in Cambridge including myself and we do not deserve to be discriminated against and cast to the outskirts of the community.

I had lunch in the area at the Red House and walked around to get a sense of the street in question.

I feel that if we were not forced to perform this bureaucratic demand that the community in which Healthy Pharms's business will be located would never notice the difference.

Medical marijuana patients deserve safe access and locations where other health facilities are located in the central parts of

Cambridge.

Cannibis is not radioactive plutonium.

Cannibis is not an entrance drug. It is an exit drug from pharmaceuticals and narcotics.

Thank you.

CHAIR H. THEODORE COHEN: Thank you.

Jeremiah MacKinnon.

JEREMIAH MACKINNON: Hello. Thank you.

My name is Jeremiah MacKinnon: I'm a medical marijuana patient.

J-E-R-E-M-I-A-H. Last name

M-A-C-K-I-N-N-O-N.

25 Warren Street, Methuen.

I briefly just wanted to say I'm here today as a medical marijuana patient for chronic pain and I support this dispensary. I find the RMDs along public transit, I have easier access to those, and I know many patients that feel the

same way.

I thought it was great the Harvard Square Business Association gave them a letter of support. I think that shows that the area is supportive of this sort of thing and I really like the look of it. I think it is not really going to change the look or the feel of the neighborhood.

So I really like that. And I support the creation of the MMD-4 zone.

CHAIR H. THEODORE COHEN: Anyone else that wishes to speak?

Please.

SUNNY ROSE ROBERTS: Thank you.

My name is Sunny Rose --

CHAIR H. THEODORE COHEN: Please speak into the microphone.

SUNNY ROSE ROBERTS: S-U-N-N-Y R-O-S-E

R-O-B-E-R-T-S, I live at 20, that's 20, Ware Street in Cambridge. My age is 70.

I have been a resident of Cambridge since 1978, although I grew up in Boston. I am a world traveller.

I am here to ask that we consider yes on this proposal to welcome this dispensary and also to recognize that Sage is also close by. And also that that the City Council legislators -- excuse me, I do have panic attacks or anxiety attacks -- but you represent many. We that are medical marijuana patients are one. But within your many, we are one. So yes, it is important that we have access to dispensary, but it is also important that you consider the well-being of us in placing these dispensaries and not too soon and not too late.

Because there's a niche and there's a

place for all of us to contribute, so that we don't go forward in the wrong direction with the pharmacy and the overdoses and that in some ways we back off and we look at this in a collective manner.

Thank you very much.

CHAIR H. THEODORE COHEN: Thank you.

Is there anyone else who wishes to speak?

JOHN HAWKINS: John Hawkins,

H-A-W-K-I-N-S J-O-H-N.

I was just curious, and I thought some member of the Board might indulge me by inquiring of the petitioner, why the 02 district was omitted. It guess that's the games people play. It just seems like an obvious hole. And I wondered about it.

You look puzzled.

CHAIR H. THEODORE COHEN: Oh. "Games

people play" I was taking a moment.

ATTY VALERIO ROMANO: Mr. Chairman --

CHAIR H. THEODORE COHEN: Let's continue with the public.

Is there anyone else that wishes to speak?

None appearing, we'll open it up to our own discussion.

And, Jeff, if you had further comments you wanted to make to shape our discussion, please make them.

JEFF ROBERTS: All right. I'll try not to make this long. But I am going to borrow this.

So in the memo that was prepared we talked about what's been happening at the state level, why sort of in 2016 we notice a little bit of difference in how we've been seeing medical

marijuana, how it has been addressed at the state level, and it is probably because of changes that's happening at the Massachusetts Department of Public Health, so when the regulations were first put in place in 2013, following the 2012 ballot initiative, there was a process set forth by which registered medical marijuana dispensaries, what everybody has been referring to as RMDs, would be approved, or registered, at the state level.

And under the law, it says that there would be no more than 35 of these RMDs across the state.

And it gave some flexibility for The Department of Public Health to grow that number, but at least in the initial process, the way they decided to approach it was through a competitive selection process anticipating that they would

get a lot of applications, and as noted, they got 181 applications in that first round.

That they would go through a process of vetting them and then decide where they would go across the state.

That process did not result in that many dispensaries actually being approved.

There seemed to be just -- it seemed to be a slow process. And the administration just, over the past year, has implemented more of a rolling application process where they simply say, Does this meet the requirement? And they look to see if it has a local support or non-opposition.

So what it means for Cambridge is that while in 2013 we were looking at this as something that the state -- at the state level they would be determining what the geographic

distributions of these would be and with the expectation that in a community like Cambridge, we would only be getting one, if any, RMD selected to serve, not just Cambridge, but an entire region around Cambridge.

We looked at the zoning to say "Well, given those constraints, where would we want to locate a regionally-serving RMD?"

And that was the rationale for coming up with the medical MMD districts in Alewife and North Point areas, and those being selected as the areas with immediate access to regional public transportation through the MBTA as well as roadway systems, including Route 2 and Monsignor O'Brien Highway.

So, for us now, and I think because this was evidenced by the Sage petition, under the new process, there's the potential to look at

Registered Marijuana Dispensaries not just as a single use serving a large regional population but we, in Cambridge, can now look at the possibility that it may be a more locally-serving use, not necessarily serving just exclusively Cambridge but serving somewhat smaller areas and areas that are accessible to different kinds of alternative modes of transportation.

There are a couple of issues that are raised by this.

And one is the question of, well, if the state is not going to be determining how many RMDs there are serving a particular area, then that question sort of falls to Cambridge. How many RMDs would we expect to want to have serving the City of Cambridge.

Or if we are looking at a more focused local area, how many RMDs should be serving the

east part of Cambridge, west part of Cambridge, Harvard Square, and just how do we think about that question.

Of course, we -- there are different ways we could approach that through zoning with limitations on RMDs within a certain proximity or within a certain area.

But we wouldn't necessarily have to do that.

It could be a more flexible, laissez-faire approach, that sort of works the same way as zoning does, where if one thing is allowed in a district, then it is just generally allowed in that district.

And it would still, presumably, be subject to Planning Board review and approval at least for the time being.

So that's one question.

Then the other question is, Should there be -- if the state process is different, does that mean the local process of reviewing and vetting the particular RMD operators should be different.

The state law and regulations do provide for local communities to have their own process for vetting and reviewing RMD operators.

It is not something that is particularly well-suited to zoning because zoning is only focused on land uses.

The Zoning and Planning Board, through the Special Permit process, is not necessarily looking deep into the organization the way that the state regulators are or other systems of regulations could be at the local level. So that's another piece of that question.

Just to jump back into the zoning

question and revisiting this issue of where in the city would it be appropriate to allow RMDs. And there were a set of factors put forward back in 2013 when we first studied this issue.

The petitioners went through those -- I won't go through them in detail, but we looked at transportation, access to transportation.

We looked at -- we looked at districts that only allow commercial uses. We did look at retail. We also looked at office.

And just to address the question that came up about office districts, it can be a little tricky to think about registered marijuana dispensaries trying to figure out, you know, do they seem more like retail or do they seem more like office given they are selling products there.

But on the other hand, they are not

public spaces, they are not shops or restaurants or stores where members of the public are encouraged and enticed to walk in.

So in some ways they take on the characteristics of something a little more akin to like a medical office.

So we looked at retail and office districts.

We looked at areas of transportation and areas where the emergency vehicles could get to.

That was really the key concern from the police department.

And there were a few areas of the city where you can't get there without going outside of Cambridge and we excluded those areas.

And urban character was one of the key issues. And they went over that again, and again through this petition, through the prior

petition, there were ways to address that were put forward.

And then the final piece, which is sort of illustrated on this map with the bubbles, is the proximity to uses that are identified in the state law as being sensitive uses that need to be buffered, and those include primarily schools and youth centers and daycare centers, but as questions have been raised, the notion of what is the full range of uses that could possibly be placed where children commonly congregate has been pushed back and forth a little bit.

And it is noted it is very difficult from a zoning perspective to be able to have any certainty that you've covered absolutely everything that might fall under that category.

In this map we have done our best to highlight the ones that we're the most aware of.

But if there's a home-based daycare or Sunday school, or something of that variety, we wouldn't really know unless we looked carefully at that site.

So, what we did, with the new criteria in mind, we thought, Well, are there some areas of the city that we may want to revisit given that the different nature of the use, the different nature of the selection process, and the -- but still looking at those same factors, and you could look at Porter Square, Harvard Square, Central Square, those areas that have good public transportation access.

They are central commercial areas in the city with good access and allow a wide range of commercial uses and have a fairly commercial character.

There are also some areas that we might

characterize as transitioning into industrial areas that includes a large portion of the Alewife area that is included in MMD-1 but it doesn't include some other areas that are adjacent to MMD-1.

It also might be worth looking at areas along the grand junction rail corridor in Cambridgeport and nearby areas where there's been a transition.

And those are a little bit more complicated because the access to transit is not necessarily as good.

Also because those are areas that are seeing decreasing amounts of residential use and taking on an increasing residential character over time.

And then there are some more smaller-scale neighborhood-oriented retail and

commercial areas, places like Inman Square, Cambridge Street, Huron Village, North Mass. Ave, those types of areas, where, again, you could look at those as areas where you could put -- where RMDs might be compatible with the commercial area of the street but on the other hand those retail areas tend to be more residential serving in character and there would be more potential for conflict.

They do tend to be closer to residential uses. So those would probably be lower on the list of potential areas for looking at that.

So we put this analysis out there really for the Planning Board to look at, for the City Council to look at, and in the process of reviewing these particular petitions, maybe made some suggestions or provide some thoughts as to what direction we might want to take at a

citywide level, and not just looking at each proposal as its own zoning petition.

That it would have to go through the zoning process and then go through another Special Permit process.

I'm happy to answer questions about this or see what the Board has to say.

CHAIR H. THEODORE COHEN: Well, I have a question.

Do you know why the 02 district exists?

JEFF ROBERTS: Why it exists as a district?

CHAIR H. THEODORE COHEN: Yeah.

Is it just this one location between Mass. Ave and Mt. Auburn Street?

JEFF ROBERTS: I don't think I could hazard to guess why the Harvard Square area was carved up into the various base zoning districts

that it has been carved into.

It's true if you take -- the proposal here is to take the Harvard Square Overlay District and only to allow RMDs in Business B or Office 3, and that does leave a hole in the street scape, but again, it makes the area less contiguous, but I don't have an explanation for why the Office 2 is -- sort of interrupts that stretch.

CHAIR H. THEODORE COHEN: Without looking it up now, the difference between O2 and O3 in terms of what is allowed or dimensions or ...

JEFF ROBERTS: There's not much difference in terms of what is allowed.

The allowed uses are pretty similar.

It would be the dimensional requirements.

Office 2 is slightly lower density than Office 3.

CHAIR H. THEODORE COHEN: Anyone have questions for right now?

THACHER TIFFANY: So I just want to be clear. So the boundary of the area that the petition covers, is that exactly coterminous or contiguous with the Overlay District or has it been selected as part of this petition?

I'm sorry, is it the same as the Harvard Square Overlay District?

JEFF ROBERTS: It is not precisely the same. No.

We would describe it as a subset of the Harvard Square Overlay District. And I wish I provided a map of the entire Harvard Square Overlay District.

The Harvard Square Overlay includes a lot of residential area, so the petitioners were noting that.

There are some areas where, due to the residential base zoning, you would not necessarily want to have an RMD based on the commercial, office character of that use in that residential district.

Similarly, around Harvard Square, a lot of the districts that are zoned higher-density residential are really institutional in nature, and those areas were not looked as ideal candidates for RMDs.

CHAIR H. THEODORE COHEN: Jeff, I guess the question I have is: If we were to say there ought to be comprehensive reevaluation of all of the places where RMDs could be located, that would be something that would take -- presumably that would be something that CDD would do and it would take a period of time before something could be drafted and come back to us to review

and then if we approved it -- recommend it to the City Council.

JEFF ROBERTS: Yeah, I would say what we've done is really taken the first step in that process by preparing the analysis and laying out some different options, and if there was a particular direction, even if it wasn't that specific, even if it was just a set of broad parameters that the Planning Board and City Council wanted to give back to us, then we could work with that to develop a proposal.

Again, it is a -- it is not the way we normally do things, but we wanted to try to get out in front of this given we have that series of petitions.

So rather than wait for the petitions to get all the way through, we wanted to start the process, and obviously, these petitions would

have to be considered on their own, just as individual petitions, and if a broader petition were to move forward, that would have to be filed as its own separate petition but we could do that in a relative short period of time if we had the -- if we were given the direction from the Board and the Council to do so.

CHAIR H. THEODORE COHEN: Hugh?

HUGH RUSSELL: So I'm trying to think about if I were setting the standards, what would they be.

And first I think the exclusion zone is offensive and implies that somehow people who are sick and using this kind of a drug are a hazard to children.

I think it's crazy. So I would throw that all out, but I can't do that because the Commonwealth and the general court in their

wisdom has put it in. But I would certainly contract the distance to whatever the Council would go along with.

And then I think I would like to see, as a criterion, that these kinds of facilities be located in areas where a reasonable amount of pedestrian foot traffic, good access public transit in general but not necessarily.

I mean, if we are going to have a few of them we could have a drive-in one at Alewife and a walk-in one in Harvard Square.

And I think if we were to try to sit down and analyze the city block by block, it would be very tempting to include a lot of the commercial areas in the city, and then you could get, I suspect, of the 21 percent of the city that did not vote for this, would come out and say, Well, yeah, but it shouldn't be along North Mass. Ave

because X, Y or Z.

I think this process is -- although it is kind of bizarre -- isn't that bad if we develop through the process that Jeff has been using sort of general criteria, then someone who comes in and wants to site a place, then, yes, they are going to have to go get an Overlay District change, but that process is measured in months whereas I think a citywide study, siting study, would be measured in years.

You know, the other thing I wanted to think about was the notion that the office district, which permits medical facilities, is this more like, you know, a dispensing doctor's office rather than a retail business.

And the way it is currently, it is sort in between but it is probably more like a doctor's office.

So if someone -- I'm looking at the Office 3 District in Harvard Square, so I look at the one on the eastern part and there's Adams House is about -- Harvard dorm is about a third of that, maybe half of it, I think I'm not quite sure whether the Office 2 has the -- the office building that has a theater in it or not. I think that's where it is but I'm not totally certain. There's the old factory in there that's basically an office building. There's a strip of non-conforming retail businesses facing Quincy House.

So you say, Well, now, if you only -- are we contemplating that someone could simply rent an office on the fourth floor of one of those office buildings or University Place, which is about half the other Office 3 District? It would seem to meet the privacy requirements. It would

-- but they would actually have no exclusive street frontage at all.

And then I'm thinking about the Sage presentation to us and the floor plan of their operation, you know, with radiating security zones and loading docks, the desire to have an armored truck to be able to drive up to the back door, you know, guys in black uniforms getting out there to protect the transport of the product from the truck into the building, and I'm thinking, How is this going to work at the Red House?

I mean, that's not what is before us.

It is all so sort of crazy.

As Agatha Christie says, "There's evil people in the world." If there are products here that have a high street value, they pose a security risk to the people that are working near

it, principally, and so you can't be unmindful of that.

You know, you remember the signs that went up in the drugstore "We don't sell OxyContin." I don't know how many of those are left, but that was, I think, a safety issue.

So I'm trying to put all that together and think what we should do.

And I think we should recommend this favorably.

I think I would modify the 15-foot setback thing as being inappropriate in Harvard Square.

I don't feel too strongly about the office zone because I don't think it's too likely to happen. And if it is, it is going to be inside an office building and I'm not certain that will pass the muster of the state at the

moment.

So, anyway, I think we should encourage the staff to have -- maybe we should meet about sort of the criteria so if other people want to locate in other parts of the city, there's a base of thinking that's done. But I would not want to take on a rezoning effort that I think is largely pointless.

Maybe we should shrink the 500-foot zone to 100 feet throughout the city.

CHAIR H. THEODORE COHEN: I just wanted to remind people that even -- the 500 feet and now there's 250 feet also does allow the Planning Board to reduce it if it concludes that it is sufficiently --

HUGH RUSSELL: So it is already zero.

CHAIR H. THEODORE COHEN: Yeah, it's already zero, if the proposal came before us.

Steve?

STEVEN COHEN: First I just want to establish by saying I support the availability of medical marijuana and I would, given the opportunity, support the availability of marijuana for recreational use as well.

I'm a credible speaker on the subject.

My second point is that most, if not all, of the testimony we heard from both the applicant and the public was in support of a dispensary in this location by this particular applicant.

They make a strong case. And I don't think anybody on this Board argue with this being an appropriate location or this being an appropriate applicant for this use.

Thirdly, and I want to get to the point that I alluded to earlier in my question, and that is, the wisdom of establishing a large

district in Harvard Square for this use.

And while on the one hand, I support the use and I even agree with Hugh that ultimately it should be available in all pharmacies, on the other hand, this -- first of all, is an urban planning issue. It is not whether we support the availability of medical marijuana. Rather, it is a real estate issue and planning issue.

It is a new use coming into the state and it is a weirdly regulated use, and the more we learn of that, the weirder it seems, and I think last go around with Sage, the way I commented on it, it seems like these regulations are designed to protect us from some sort of radioactive material and make sure it doesn't get into the wrong hands to be used to create a bomb. It is a weird regulation.

I have seen the retail expression of

these uses in other places.

Not too long ago, I was in Venice Beach in California, and if you've before been there on the beach, every third storefront is either a dispensary of marijuana or a doctor willing to write you a prescription for access to medical marijuana.

I wasn't objecting to the fact that the doctors were writing a prescription for anybody that has an itch or a passing ache. But it did establish the character of that particular section of beach.

So it is the real estate and urban planning issue that I'm reacting.

I guess what I'm saying here is, we really don't know how this is going to play out in a large district and important district like Harvard Square.

And I wouldn't be surprised if the state laws change in the years to come.

And it seems to me that while I react, and I think we all react very favorably to this application, that it seems to me that the wise thing, the prudent thing, would be to largely review these applications on a case-by-case basis.

And not just with respect to the quality of the proponent per se, but very specifically to the appropriateness of the real estate proposal. You know, where it is going to be. What it will look like on the street and so forth.

And I think doing so, I would like to make those judgments on a case-to-case basis having beneath my belt the observations and experience of those that have already opened and operated. And thus far, there are none.

We have no idea how these things are going to play out.

We've now approved one. I imagine we are going to approve a second. I would very much like to observe and learn to determine how to react to other applications in the future.

As I said, I think that would be the safe, the prudent, the responsible approach here before we start granting broader approvals that we don't have any experience with at all.

I have good news for this applicant, is that in doing so it reduces the competition for a while, that's great for their business, but that's got nothing to do with my motivation here.

I would just like to review every applicant and every location on its unique merits. And if somebody comes in and says,

"Well, I would like to put it in a second-floor office, as Hugh speculates about, I would like to have the opportunity to think about that and to talk about the appropriateness of putting it in that second floor.

That's my bottom line. I feel pretty strongly about it that by all means we should do what it takes to support the application for this dispensary in this location with this operator, and that's pretty much all we heard about in the testimony today, but I would like to limit our approval to vet and review future applicants and future locations and designs and proposals on their individual merits.

In the absence of doing, I think that there are so many things we can speculate about that we don't know about, setbacks and width and all sorts of questions or even the number.

One of the possibilities we've talked about is putting a cap on it. Well, what number should that be? Five? Six? Two? I have no idea.

And even if it is only two, I would still like to have the opportunity to evaluate the appropriateness of that second location.

So that's where I'm at.

Again, just to reiterate, I strongly support the application for this location and this applicant and this use.

But I think the prudent thing would be to limit our approval to that, observe the experience in the months and years to come and use what we've learned to tailor either appropriate general regulations in the future or simply respond and evaluate the individual applications as they are presented to us.

Thanks.

THACHER TIFFANY: So I basically concur with everything Hugh said and I agree with Steve's concern.

I'm a little less concerned about setting this up as a relatively large district compared to our previous one because I think we still have the opportunity to turn down dispensaries at the Special Permit level.

And Jeff, please correct me if I'm wrong, if I have this wrong, but if we recommended this to the City Council and they approved it as a zone, this group would need to come back and get a Special Permit, as would any future project, so I think we would still have that oversight that, Steve, that you want which is each project.

And I was just checking the Special Permit criteria to make sure we really would have

justification, and it seems like the first one says, "the registered marijuana dispensary is located to serve in an area that currently does not have a reasonable access to medical marijuana," so I think if we felt like Harvard Square had five and that was plenty and we wanted to make sure of other things, I think we would be pretty justified in turning down applications.

So I would support recommending this to City Council with some of the changes that Hugh suggested.

CHAIR H. THEODORE COHEN: Mary?

MARY FLYNN: I agree with the approach that, that Thatcher outlined.

I think it is important for us to be able to review things on a case-by-case basis.

But you have to have the zoning in place before you can do that, so the size of district,

it doesn't concern me because I think there are going to be enough other restrictions that limit the number of sites that could be used and I think we'll have time to see how the uses play out that -- we've got two that hopefully will be opening in the not-too-distant future.

I personally think we should also be looking at Porter and Central Squares. And I understand Hugh's point of not doing a whole citywide look, but both Porter and Central have the characteristics that really do allow for great access.

So at a minimum, I think we could take a look at those two areas. You know, start with the Harvard Square one, don't hold this one up for those, but I would suggest that we look at those two areas next.

And I would agree also that a 15-foot

setback is not required.

I think that 10 foot of frontage -- limiting the frontage is more important than the setback particularly in Harvard Square.

Those are my thoughts.

CHAIR H. THEODORE COHEN: Lou?

LOUIS BACCI: I guess I have to agree with Hugh and Steve. And to Mary's point, when we do start in Inman, Kendall, Lechmere, it turns into the whole city, so I guess some criteria and I would like to see every one of them before they get there.

And we really need to get out of that cloak and dagger thing.

The proponent Nichole basically said this is a good location because it has good cover.

You know, this is ridiculous. You don't need any good cover to go to a pharmacy.

So those are mine.

I think somebody should -- we should think up a set of parameters and keep them fairly loose and look at every one of these.

CHAIR H. THEODORE COHEN: Okay. Thank you.

Well, personally I think the RMDs ought to be any place we allow a drugstore in the city or any place we allow a doctor's medical dispensary.

And I'm somewhat concerned about the concept that we create almost monopolies for one or two facilities. And when we talked about Sage, we talked about, well, it is an okay location but Harvard Square would be much better location and now we got this in Harvard Square.

I am not concerned about the size of the

district. I have been to Venice Beach and I have seen it.

I can't imagine Harvard Square would become that. I think the cost of the real estate in Harvard Square would prevent that from happening.

And I think the market would prevent it from happening because, based upon some of the information that we got during the Sage presentation, I don't know, with ten customers an hour, I mean there's just a ludicrously small number that I can't imagine there's going to be an overwhelming population of customers.

So I have no problem with the district and I would add the 02 district on -- between Mass Ave and Northern Street because it seems funny that it is eliminated and I can't imagine any particular reason if use-wise those districts

allow the same similar uses, why not to include it.

I do agree rather than create a requirement that only one particular location can comply with does not make sense if we are expanding the districts, and that if no more than ten or 20 feet of frontage is the appropriate standard, that could be fine.

I remember days when there were probably 20 record shops in Harvard Square. And they all came and went and then there were 20 telephone stores in Harvard Square and most of them have gone.

The biggest problem we have the number of banks that are in Harvard Square and we have been trying to limit that in other locations and limit the frontage in other locations.

So I'm not really concerned about The

Square being overwhelmed by RMDs, if we do get into recreational marijuana.

That's a different issue that the city will have to deal with but that's something else.

And I think that, as Thatcher points out, the requirements of a Special Permit is going to mandate each proposal will be judged on its merits and that the requirement of how many there are and the likelihood of access to people will limit the number that's going to happen in Harvard Square and I do agree that Central Square and Porter Square ought to be investigated and maybe Kendall Square too.

I think it's a retail operation and that wherever retail is allowed, it should be there. And you know, drug stores have security issues, jewelry stores have security issues. That's just a business decision that the proprietor will deal

with.

And the state's concept going back to 2013 that it needs to be like a jail somewhere with ten-foot fences and barbed wires and heat lights around it made no sense at all.

STEVEN COHEN: That's the law. That's the regulation.

CHAIR H. THEODORE COHEN: No. I think the regulation has been modified significantly since then.

STEVEN COHEN: Since the Sage application?

CHAIR H. THEODORE COHEN: Oh, the requirements of their security, no, I don't think that's changed, but the original regulation, as I recall them, you know, that was in part why we were at Alewife and North Point because they were the only places you could provide the external

security requirements and 500 feet away from anything else.

I mean, I think at that time the 500 feet was an absolute that couldn't be modified.

STEVEN COHEN: First of all, some of the individual regulations, 500 feet, 250 feet, 100 feet, it is a remarkable thing that maybe if the kids actually have feet, and they are in really good shape nowadays, they could probably walk 250 feet if they wanted to go there, so it seems silly.

But on the other hand, the notion that the Special Permit process would take care of any of the unknowns that we face here, I'm skeptical about that.

It is not easy to turn down a Special Permit application, and as a practical matter, we never do. In fact, we have been criticized for

almost never doing so. And you know, when somebody comes to us with an application for a building, we're able to really work the design and other elements of the building, and yes, we do ultimately approve it.

But here it is more a matter of location, and if we think a location is inappropriate, we are not going to be able to address the issue by saying "use this material rather than that material and kind of change the elevation a little bit."

I find it ironic even for myself taking this position, but I feel like "What is the rush for judgment?" Ultimately it is going to be available widely, and as I say, I think it should be available in pharmacies.

But it seems to me, as with any new program, or new use, or new technology, it is

imprudent to jump into it before you have any opportunity to observe and experience how it actually plays out in reality because it always plays out in some sort of -- in some sort of surprising way.

Again, I'm not saying "no" to anybody. I'm not saying there shouldn't be any more in Harvard Square.

I'm simply saying that we review the applicants on the merits of the individual application, and if they come to us with an application, even remotely comparable to this one, in terms of the parties and the specifics, we would undoubtedly grant it.

I also --

CHAIR H. THEODORE COHEN: Could I interject right there?

I understand what you are saying.

I want it clear that if we were to follow -- the city were to follow what you're suggesting, it would mean that any proponent would have to first file a zoning petition to amend the district which would then have to go through the hearing process and go back to the City Council to go through the Ordinance Committee.

STEVEN COHEN: Absolutely. And I guess I'm suggesting that be the case for the year or two years or three years that it would take to actually observe how these things play out.

And based on what we observe, it may be that we would seek to pass ordinances exactly like the one seen here, but I wouldn't be surprised if based on what we observe, that we would want to pass an ordinance maybe slightly different addressing different issues that we

can't even anticipate right now.

All I'm saying is, boy, I totally support this thing, but from an urban planning perspective, I'm suggesting we go at a little bit more slowly and give ourselves the opportunity to observe first.

As a political matter, it may be easier for the City Council to pass a more circumscribed zoning ordinance.

CHAIR H. THEODORE COHEN: So again, just to be clear, so if you were making a recommendation, it would be that the MMD-4 district would only be the Red House?

STEVEN COHEN: We would have to come up with something. Ideally, usually when we do these things we do a somewhat larger district in which -- you know, this is the only likely candidate, but that's what I would do for now.

CHAIR H. THEODORE COHEN: Any other comments?

HUGH RUSSELL: So one way of addressing Steve's concern is to set up a buffer distance -- not buffered from kids but buffered from other RMDs, until we understand them, we might have, like, a 250-foot buffer distance.

It doesn't -- it's a block, more or less. I suggest that, but then actually-- it is like we have to decide, is this just --

LOUIS BACCI: Another operation?

HUGH RUSSELL: It's another way people can live their lives and it's crazy because of the substance involved is getting caught up in Federal regulations.

And the other thought I had, you couldn't have any more RMDs than you have bars.

Remember the way bars used to be? They

had little, tiny windows facing the street so you couldn't see that your dad was in there drinking, I guess. But the police could look in and if there was a fight.

I'm just seeing if there's a way we can --

CHAIR H. THEODORE COHEN: I don't see a way particularly, and what I would suggest is -- we haven't voted on anything, but my sense of the group is that a majority supports -- we all support this particular location. But that the majority supports the concept of having the MMD-4 being essentially coterminous with the Business B and the 03, perhaps even the 02, in that portion of the Harvard Square Overlay District, but that there are some members that have concerns that since we don't yet have an RMD in the city that maybe it should be done more on case-by-case

basis and leave it as a political decision for the City Council to decide how they want to go about it.

My point of view is from a planning perspective, is that I think it should be anywhere in the city.

STEVEN COHEN: I just want to clarify one thing about my position. It isn't that I want to limit the number of dispensaries per se.

As I said, it's strictly the real estate, urban planning is sort of there, and in particular because of the weird regulations and security, and so forth, you know, what these things are actually going to look like and what the siting will be and the rest of that stuff, and so I would like to be able to freely say "no" if something comes into us that we really don't think looks great and seems

appropriate in that particular building and that particular location, and I don't think that we really have that power and that much discretion in the Special Permit.

Look, I understand. I don't have a majority here, but I just do want to express that. This is not about limiting the number.

CHAIR H. THEODORE COHEN: I think we understand that your concern is that it is something new and we ought to see how it plays out first before we go full hog forward.

HUGH RUSSELL: So can we go another step down the road that Steve suggested, which is to look at the criteria to satisfy ourselves that either there is our ability to say, "Now if there has to be some additional language put in the criteria that makes that clear and makes it clear to us as to the reasons we would say 'no' for."

I mean, there's loading, security, traffic.

I think the appearance is probably in there.

There's a great thing in there that which says "No, there has to be a need for this particular one."

That harkens back to the food ordinance, which was sufficiently vague that it allowed McDonald's to get -- worry and not to attempt to get any new outlets and the agreement -- I remember the argument being made 20, 25 years ago, there were 30 places in The Square to get donuts, we don't need another Dunkin' Donuts. The compromise was we allowed a Dunkin' Donuts that doesn't look like a Dunkin' Donuts.

STEVEN COHEN: If I could follow up on your point for a second and maybe to draw a

little bit on the language and concept in the neighborhood conservation district where there's the concept of appropriateness, a concept which goes to the heart of that whole regulatory structure and in fact, the ultimate permit need to be issued, a certificate of appropriateness.

CHAIR H. THEODORE COHEN: Could I just go through the criteria that are already in the ordinance.

So the Special Permit criteria in granting a Special Permit, in addition to the general criteria under Section 1043, Planning Board shall find the following criteria met: Registered marijuana dispensaries located in certain areas that currently does not have reasonable access to medical marijuana or if it is proposed to serve an area that's already served by other RMDs, it has been established by

The Department of Public Health that supplemental service is needed.

LOUIS BACCI: What does that area include? How big is that area?

STEVEN COHEN: It may be too restricted.

CHAIR H. THEODORE COHEN: You know, then it has the -- except as otherwise provided it has to be 500 feet distance from a school.

The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation including drivers, pedestrians, bicyclists and public transportation users.

3, traffic generated by client trips, employee trips and deliveries to and from the RMD shall not create a substantial adverse impact on residential uses.

4, loading refuge and services area are designed to be secured and shielded from abutting uses.

HUGH RUSSELL: One wonders how the Red House will meet that criteria.

CHAIR H. THEODORE COHEN: The building is designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required security measures and restrictions on visibility to the building's interior.

So those are the general ones.

Then for the medical MMD-3 one, we were added, it is for retail only with no cultivation activities on the site, which is also proposed in this MMD-4.

And in 3 they talked about it had to be below grade or above the street level.

The RMD facility shall be less than 10,000 square feet and 70 percent of the square footage shall be used for patient service and the remainder shall be devoted to administrative support, security and storage and security.

And areas with access to pedestrian, public transportation would be preferred.

So now in this case, with the MMD-4 the proposals are that the RMD facilities shall be retail only with no cultivation activities on the site.

And 2, it must be setback from the sidewalk by a minimum of 15 feet and be appropriately shielded from the public view.

Grade shall be less than 10,000 square feet and shall be used for patient service and administrative support, storage and security, and again, access to pedestrian public transportation

will be preferred.

And in this case that the buffer area could be reduced to 250 from a school, daycare center, preschool or other facility in which children commonly congregate or if not located in such distance determined by the Planning Board to be sufficiently buffered from such facilities that user shall not be adversely impacted by the operation of the RMD.

So there's already an enormous number of criteria that has to be met with.

STEVEN COHEN: My take on that is, first of all, I would eliminate the setback requirement. It doesn't make sense.

HUGH RUSSELL: I think just that it is appropriately shielded.

STEVEN COHEN: It is appropriate. To me, I would love to just see something in there

about -- maybe it is even in the design or use. You know, the appropriate concept in there, so we have some wiggle room to look at the whole picture including factors that aren't necessarily explicitly enumerated in there and say, you know, something, that particular design, that particular proposal, in this particular location just doesn't seem appropriate.

CHAIR H. THEODORE COHEN: I suppose that's mitigating any negative aesthetic impacts. I'm not sure there's anywhere else in this, in the ordinance, where we talk about aesthetic impacts. Hugh might know better.

HUGH RUSSELL: One could claim a lot of the urban design criteria.

STEVEN COHEN: We do that every day.

HUGH RUSSELL: I think -- I have been thinking, like, well, could they move into the

test facility in my office building, and what would we think about that.

And I think the answer would be is, we wouldn't like it because it would remove an active use on an important street that's, you know, 30 or 40 feet wide.

So, to me, that's sort've the particular Harvard Square criterion that it doesn't interfere with the retail street scape.

STEVEN COHEN: That's one of the interesting things. We don't know anything about the economics of this use. It may very well be they can afford to pay higher rents than others and crowd out other uses.

LOUIS BACCI: Does this not qualify as an active use? We don't know, right?

HUGH RUSSELL: It is deliberately designed so you can't see the product or

customers from the street, which is appropriate, I believe.

CHAIR H. THEODORE COHEN: If we were to go and test space, would we not feel that it has not been designed to be compatible with other buildings in the area and mitigate any aesthetic impacts resulting from the required security measures saying you can't block the windows, that you have to have windows -- I guess that's Mt. Auburn Street there.

HUGH RUSSELL: It is actually Brattle Street.

CHAIR H. THEODORE COHEN: Brattle Street. I mean.

STEVEN COHEN: Can we say that?

Can we say we want windows there and they are eliminating the windows?

Is that grounds for denial of a Special

Permit?

CHAIR H. THEODORE COHEN: I think that's negative aesthetic impacts.

STEVEN COHEN: Is that one of them?

CHAIR H. THEODORE COHEN: Yes. That's the criteria, to mitigate any negative aesthetic impact that might result from required security measures and restrictions on visibility to the building's interior.

LOUIS BACCI: In this case all they did was cover the door, correct?

CHAIR H. THEODORE COHEN: They haven't changed the door.

LOUIS BACCI: It's okay.

CHAIR H. THEODORE COHEN: That's what I mean. It's existing.

MARY FLYNN: So I haven't looked at the Harvard Square Urban Design Guidelines in quite

a while but why don't we put in a requirement that whatever street frontage is there, conforms to the guidelines and then we have those, as yet another layer, that we can try to interpret.

STEVEN COHEN: Quick question: Is this part of -- subject to other regulatory review in Harvard Square by the Historic Commission?

HUGH RUSSELL: Architectural changes would be something they don't use. They do architecture.

STEVEN COHEN: But it would be if there's an architectural change to the building of any nature, that would have to go --

JEFF ROBERTS: On that point, it is not something I looked at before, but it is an interesting point, but as a general practice, any Special Permit that's coming before the Planning Board would, looking at the Harvard Square

Development Guidelines and Historic Guidelines is fully within the realm of review, and I think that's part of the -- there weren't such guidelines in the Sage MMD-3 district, but it would be part of the review process.

And it is also -- it's established somewhat in the general Special Permit criteria, which I don't think were read, but that's an additional set of opportunities for the Planning Board to question and kind of probe at the different design choices and use choices that have been made.

I would add too, I mentioned this in the special hearing, Special Permit hearing for Sage, but it is a little unusual for the Planning Board to be looking at conditional use, Special Permits, but that's really what this is, and the BZA, I think, usually looks at conditional use,

Special Permits, and it is a little bit different than looking at a building proposal, but there certainly are lots of areas of investigation and certainly lots of places where the BZA said for a particular use that it doesn't meet the standards and shouldn't be approved.

CHAIR H. THEODORE COHEN: Actually, I glossed over the fact that we have to meet this general criteria for Special Permit which goes that we have to determine - -the Board has to determine, that the granting of the permit would be a detriment to the public interest because, again, it talks about traffic or substantial change in established neighborhood character or it's detrimental to the continued operation or development of adjacent uses and would be adversely affected by the nature of the proposed use or nuance or hazard would be created to the

detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the city or for other reasons a proposed use would impair the integrity of the district or adjoining district or otherwise derogate from the intent and purposes of the ordinance.

And the new use or building construction is inconsistent with the urban design objectives in Section 1930.

HUGH RUSSELL: There's a lot of teeth. Probably scaring these people, though.

CHAIR H. THEODORE COHEN: I mean, think there's so much.

STEVEN COHEN: I hear you.

Look, as long as we all understand these things as giving us fairly broad discretion to say "no" if it's something that feels inappropriate.

I appreciate you indulging my concern here. You know, I would prefer doing it otherwise. You know, I hear you, there's a lot of criteria that would give us the wiggle room if we felt it.

In general, I do think we should go slow until we see how it plays out. But I'm with you and you need to indulge me no longer.

CHAIR H. THEODORE COHEN: What do we want to recommend to the City Council?

HUGH RUSSELL: I would say that we recommend adoption or its sole change of changing the siting criteria that their MMD facility must be shielded from public view, at that point it can just be struck because it's already there.

CHAIR H. THEODORE COHEN: I'm sorry, could you say that again?

HUGH RUSSELL: So getting rid of the

setback provision.

CHAIR H. THEODORE COHEN: Okay.

HUGH RUSSELL: And I think at that point that it's appropriately shielded from public view is actually a general criterion that applies to them all.

CHAIR H. THEODORE COHEN: Just eliminate that subsection B completely.

HUGH RUSSELL: Right.

Also I think it is foolish to have a D in there since I think we would be unable to find any place in Harvard Square that doesn't have access to public transit. There's no point having it there.

That's why we are supporting this, is because of that.

So it's really just the no cultivation and the size of the facility.

CHAIR H. THEODORE COHEN: And reduce the buffer to 250 feet?

HUGH RUSSELL: Right.

CHAIR H. THEODORE COHEN: With the understanding that Planning Board could reduce it even further.

HUGH RUSSELL: Right.

CHAIR H. THEODORE COHEN: Okay.

HUGH RUSSELL: I think you don't want to -- let's not have it immediately in conflict with the words and the church and school.

CHAIR H. THEODORE COHEN: That's fine.

Do we want to add in the 02 district?

HUGH RUSSELL: I think that's procedurally difficult because it wasn't advertised. Besides I'm sure it is a theatre, you can get all sort of cannabis there. Not the right kind for medical purposes.

CHAIR H. THEODORE COHEN: Hugh, is that a motion?

HUGH RUSSELL: It is a motion.

CHAIR H. THEODORE COHEN: We recommend the adoption as presented but delete subsections B and D.

HUGH RUSSELL: Because they are not required.

CHAIR H. THEODORE COHEN: They are not required from the proposed 20.705.2.

Do I have a second?

MARY FLYNN: Second.

CHAIR H. THEODORE COHEN: All in favor?

(Unanimous vote.)

CHAIR H. THEODORE COHEN: Steve, do you want the recommendation to note your concerns? Or are you comfortable with things?

STEVEN COHEN: I will just muddy the

waters. It is not necessary.

CHAIR H. THEODORE COHEN: Okay. Great.

Jeff, you are clear on what we're doing?

JEFF ROBERTS: I'm clear on the recommendation. I don't know if -- there were some comments.

I don't know if the Planning Board wanted to suggest any future direction of investigation or leave that for the next discussion.

CHAIR H. THEODORE COHEN: I have no problem with suggesting that CDD investigate a citywide view of it. But from what I read in the paper I think City Council is already talking about that.

HUGH RUSSELL: We could say that it seems to us incongruous that if we think Harvard Square is a good place, why wouldn't we think the Business D District in Porter Square and Business

D District in Central Square were equally as appropriate.

STEVEN COHEN: The only reason is we seem to be reacting here to specific proposals rather than being proactive.

CHAIR H. THEODORE COHEN: Do we want to say anything or just leave it?

HUGH RUSSELL: I guess I would ask Jeff if you think that would be helpful for the Council to hear that, or no?

JEFF ROBERTS: I think if the Board wanted to communicate, I think it would be helpful for the City Council to hear.

You are right, Ted, that the City Council is actively thinking about this and what I was saying is that this, maybe, this is an opportunity for the Board to weigh in if they wanted to on any of this.

CHAIR H. THEODORE COHEN: I would be happy to weigh in. Perhaps there's a citywide solution rather than a piecemeal district by district.

Do people agree with that?

Then everyone is in support of that.

LOUIS BACCI: Sure.

CHAIR H. THEODORE COHEN: Okay.

Thank you very much.

Good luck.

ATTY VALERIO ROMANO: Thank you, Members of the Board.

CHAIR H. THEODORE COHEN: We do have another -- a couple of ZBA matters to deal with.

(Short Recess Taken).

GENERAL BUSINESS

10 FAWCETT STREET - T MOBILE

12221 CAMBRIDGE STREET - T MOBILE

SUZANNAH BIGOLIN: We have three SBA cases to talk about.

CHAIR H. THEODORE COHEN: The stenographer has just told me she's not feeling all that well. I would like to see if we could be expeditious about that.

There are two cell tower matters before the ZBA and Suzannah has provided us with a memo with regard to them.

Is there someone here to make a quick presentation?

ATTY DANIEL GLISSMAN: Good evening. Dan Glissman. D-A-N-I-E-L G-L-I-S-S-M-A-N with Prince Lobel Tye.

I have two sites before the Board this

evening.

I will pass out both photo simulations quickly.

Members of the Board, Daniel Glissman with Prince Lobel Tye. Here on behalf of the applicant T Mobile.

The first site before the Board is 10 Fawcett Street. At this location we are co-locating three additional T Mobile L700 antennas as part of their system-wide upgrade to their network for the City of Cambridge.

We'll also be replacing three antennas at 10 -- three of the existing antennas at 10 Fawcett Street with similar but upgraded antennas, exactly same dimensions.

This is a very straightforward installation. They will be on the penthouse, setback from the roof at least ten feet. And at

approximately 98 feet in height.

We have done our best to comply with the design objectives set forth by this Board and through comments with the Planning Board staff. I have also reviewed the comments by the Planning Board staff, and we have had a chance to review them with our clients and will be working with Suzannah to make sure we can comply with those requirements to the best of our ability.

Procedurally would it be best for me to wait for the next one to be called.

CHAIR H. THEODORE COHEN: Let's call them one at a time.

Suzannah, your comments about that? There's two additional antennas being added?

SUZANNAH BIGOLIN: Three.

CHAIR H. THEODORE COHEN: So there were two and then there's three.

Basically to neaten them up and move them down so as not to appear to break the cornice line.

SUZANNAH BIGOLIN: Tidy up the cabling if possible. And brackets.

CHAIR H. THEODORE COHEN: Anybody have any concerns or questions?

ATTY DANIEL GLISSMAN: Daniel Glissman with Prince Lobel Tye and attorney for the applicant T Mobile.

The next site before the Board is 1221 Cambridge Street.

We are also co-locating three additional antennas as part of T Mobile system-wide upgrade. These are the L700 antennas.

Again, we've been working with Suzannah and reviewed their comments and we'll do our best to comply with the requests from the Planning

Board.

LOUIS BACCI: They look great when they are in the shade.

CHAIR H. THEODORE COHEN: I can't tell in location 2, is there something added?

SUZANNAH BIGOLIN: The middle one --

MARY FLYNN: The center one looks like it is there.

SUZANNAH BIGOLIN: That's the proposed.

CHAIR H. THEODORE COHEN: It shows a third one there, too.

ATTY DANIEL GLISSMAN: It is a typo. That middle antenna is not existing.

CHAIR H. THEODORE COHEN: So where it says --

ATTY DANIEL GLISSMAN: Photo location two existing --

STEVEN COHEN: The middle one is the new

one?

CHAIR H. THEODORE COHEN: Just the two that the arrows are pointing to currently exist?

STEVEN COHEN: Has Suzannah blessed these?

SUZANNAH BIGOLIN: We have some suggest the design changes because we were concerned about location 3 and a bit of clutter up there.

MARY FLYNN: It is horrible.

SUZANNAH BIGOLIN: Looking at a possible screening element and neatening up the antennas, trying to align them better with architectural features, looking at the cabling again that runs over the parapet is an issue, and the length of the antennas as well is something that we want reviewed.

CHAIR H. THEODORE COHEN: They sound like

recommendations.

MARY FLYNN: Right.

LOUIS BACCI: This is also a great way to deal with this so your memo of recommendations can be passed onto the ZBA as well.

SUZANNAH BIGOLIN: You suggested it, Steve.

STEVEN COHEN: I did. It seemed like a good idea then and it still does.

CHAIR H. THEODORE COHEN: Does anyone have any additional comments?

HUGH RUSSELL: No.

CHAIR H. THEODORE COHEN: We support Suzannah's comments.

SUZANNAH BIGOLIN: Thank you.

CHAIR H. THEODORE COHEN: Okay.

307 FRESH POND PARKWAY

CHAIR H. THEODORE COHEN: Now a third matter has to deal with the request for a Special Permit at 307 Fresh Pond Parkway to park 18 cars at that location as accessory parking for the adjoining gas station, repair garage.

For people that don't know, this is the site of the former Peking on Fresh Pond restaurant and this matter did come before this Board -- well, it was going before ZBA I guess last fall, and this Board -- well, then it was a request to change the use to expand the automotive repair facility with parking and this Board recommended against a Special Permit and my understanding is the ZBA ultimately denied it. And I guess the proposal is to just use it for parking.

ATTY STEPHEN TOBIN: Mr. Chairman,

Attorney Tobin representing the petitioner Mr. Lakus (phonetic).

CHAIR H. THEODORE COHEN: If you want to make a brief presentation to us, that would be fine.

ATTY STEPHEN TOBIN: Mr. Chairman and Members of the Board, good evening.

It's been a pleasure for me actually to watch the deliberations of the Board since I arrived and I see that you take very seriously the quality of the neighborhood issues and so forth.

I'm here tonight to be a resource to you if you have questions.

If I might briefly state having heard the opening comments of Mr. Cohen, that that's accurate to the degree that there was a prior plan and that it came before the Board and you

may be familiar with that and it did get to the ZBA, but it wasn't denied, but at the point in which it was apparent it would have been denied, prior counsel and the petitioner withdrew the application, and they were withdrawn and of course that has its own consequences.

Since then, Mr. Lakus and I -- this is Mr. Lakus, the property owner, many of you know him. He's been the operator and the owner of the premises next to 307 running a repair shop that many people frequent.

He and I met with the City's Inspectional Services. We sat with Ranjit, who was very kind to have us into his office and explained that in the interim, until you want to bring back another proposal, you can't just use the property for parking even though he owns it because there's no occupancy certificate.

So the language in there may have led you to believe there was again rejuvenating the occupancy permit application.

That's not the case.

I apologize for any confusion.

We are looking for permission to allow him to let his employees use the premises.

As you know, it is a repair shop. But none of the automobiles that would be brought in and have overnight repairs or no other vehicles would be stored in this parking lot other than employees.

In other words, there won't be wrecks or cars needing repair. There won't be that kind of blight or eyesore.

This would be an improvement to the operation and the safety of the public in general because that area on Fresh Pond Parkway has not

just a repair shop but an adjacent gas station.

It is a heavily traveled road and there's ingress and egress and people are coming in to drop off vehicles.

The employees would have no place to go but into that congested area and that would not be a good place for them. Where this place already exists, and all we are looking to do is maintain the current use of a parking lot, which is to allow cars to be parked there, it would only be a maximum 18 feet.

The employees come in shifts.

There are a couple of fellas that do their work and they arrive at 6 in the morning. There's another shift of a few more of the employees who arrive. Mr. Lakus comes in at 7:00.

There isn't a flood of people pulling in

there and therefore egressing at the same time.

It would be an unnoticed kind of a function.

But as I indicated, we needed to get permission to be able to get that, and so I think I was informed of an opportunity to be here tonight to answer any questions if there was confusion.

Otherwise, thank you for allowing me to speak and your attention, I am at your service.

CHAIR H. THEODORE COHEN: I do have a question.

Your application to the ZBA references the Special Permit. It seems to imply it was going to be a temporary use until there was some further use of the property.

Is there any plans for the property that are pending?

ATTY STEPHEN TOBIN: No, sir.

And that's the confusion I am apologizing for.

I think I borrowed the language from Inspectional Services who was explaining to Mr. Lakus in a letter stating he needs to address this, where that's the statement to him was, unless you have the occupancy permit, and so I borrowed from that.

CHAIR H. THEODORE COHEN: If he were to get the Special Permit, he would be using it for the foreseeable future for the parking?

ATTY STEPHEN TOBIN: That's correct. That's all we seek to do at this time.

STEVEN COHEN: Could I ask a question?

I'm sorry, I'm a little unclear about this. This is already an existing paved parking lot?

ATTY STEPHEN TOBIN: This is not paved.

The restaurant was there, Japanese cuisine restaurant, and the sign's gone, so you might not recognize it without that big sign on the roof.

But when the seller of the restaurant -- there was an interim owner and during that time there were heavy vehicles parking in there, contractors before Mr. Lakus owned the property and apparently all of that is gone.

I have done a site inspection. I can't recall seeing pavement in the area.

So to some degree it has been removed by a prior owner.

STEVEN COHEN: But this was there, an area that was used for parking in connection with the restaurant?

ATTY STEPHEN TOBIN: Yes.

STEVEN COHEN: Was it then a legal use or was it non-conforming use.

ATTY STEPHEN TOBIN: Be perfectly legal. For the use of the premises and the patrons visiting.

Actually, this is less of a use of the parking lot than the parking lot with people who would be coming during all hours of the evening as patrons of the evening.

STEVEN COHEN: So the problem from a zoning perspective is there isn't a primary use.

ATTY STEPHEN TOBIN: At this point the building itself is vacant.

Mr. Lakus purchased it with the hope of improving upon the size of his current repair business because it is absolutely adjacent. There are abutting property bounds.

STEVEN COHEN: So the request is to

permit parking in an existing parking area in the absence of a primary use on the site. It's actually associated with a use on an adjacent lot in essence?

ATTY STEPHEN TOBIN: Yes.

CHAIR H. THEODORE COHEN: That's how I understand it. The lots are separate lots. It is not an accessory use to the use on the same lot.

Which it was before when it was a restaurant, there was accessory parking for the restaurant.

STEVEN COHEN: Are they under current ownership, the two lots?

ATTY STEPHEN TOBIN: Yes.

STEVEN COHEN: So take care of the zoning issue.

ATTY STEPHEN TOBIN: That would be

ultimately part of what Mr. Lakus needs time to be able to do.

The last proposal may not have been according to the overarching design plans or use plan that the Board and other members or abutters may have had in mind.

I think we need time to be able to come back with something with the cooperation and with the Board's intents and desires.

In the meantime, it would be a great value to him since he owns the lot and property and to allow his employees to park there until we can get a bigger picture use there.

JEFF ROBERTS: I'm not sure.

I want to make sure I'm clarifying the zoning because through the conversation I'm not sure it was clear.

An auto repair use in this zoning

district is a conditional use. It requires a Special Permit from the BZA.

That was -- in the past, the applicant had applied for a Special Permit to expand -- an expansion, just like establishing a new use would require a Special Permit. It was not granted. The issue here is that even just -- just to provide accessory parking for an auto body use on the adjacent lot, from a use regulation perspective, that's equivalent to expanding that use.

So really the reason for the Special Permit is, it's the same reason as the one that was applied for previously. The proposal is slightly different because it is just parking and not the facility itself. But it is -- the same Special Permit is required for expanding or enlarging that conditional auto repair use onto

the adjacent lot.

HUGH RUSSELL: So is this lot fully conforming with the parking regulations, the setback, screening, the Fresh Pond Overlay District? I think not.

I think we have a case where we have a non-conforming lot that's an eyesore for generations. And that it would be irresponsible for us to support a use that did not bring it into conformance with what we want to see there, which is landscaping, screening, fencing. The whole nine yards.

I also want to comment that my history with this applicant goes back to my time on the Zoning Board and conditions that were -- that are imposed by public bodies on a property sometimes get complied with, and then when the business is exchanged, those conditions stop being complied

with.

And I think we have to be extremely hard, hardball with this particular person because of his history of not -- constantly being someone that the City has to undertake enforcement.

His use of an auto repair garage is basically not very appropriate for the location.

He keeps pushing the envelope out, and, you know, this is another example of formalizing something which is not what we really want to see there.

I mean, I think the gas station now looks pretty good. I think the auto repair building next door looks pretty good and there was a lot of effort put into that.

I don't know how much has been put in, but it is very discouraging to work with someone that who flouts the City's policy and intentions

and regulations and conditions.

I hate to say that, but this is really sort of a singular situation with the city.

MARY FLYNN: I do recall the last time this came before the Board, I remember Kathryn was in attendance at the time, and she felt very much as you do here that there was just no consistent effort to comply with the previous conditions on an ongoing basis, and it was the sense of constant and repeated violations and in general, the eyesore.

I agree. I think a gas station and repair shop now look pretty but certainly the corner doesn't.

I don't think we want to expand a use of really not what we want to see on the parkway.

ATTY STEPHEN TOBIN: Could I address that, Mr. Cohen? That's MDC property.

CHAIR H. THEODORE COHEN: What is MDC property?

ATTY STEPHEN TOBIN: The property right in front of the restaurant, on the corner, that's not open. MDC property goes right up to the front door.

HUGH RUSSELL: In fact, there should be an additional 25 feet of open space from the MDC property line.

ATTY STEPHEN TOBIN: Or have Mr. Lakus maintain the property, which he has done, as you well know, since you have the history with him, you know he has maintained the MDC property vis-à-vis the sidewalk running along the property all the way down to the gas station, he's maintained -- you know that because -- I don't mean to repeat myself.

CHAIR H. THEODORE COHEN: That's fine.

What I wanted to say is that I was opposed to it last time because it was an expansion of a non-conforming use and I see this as a similar thing. You know, yes, there's the gas station and the car repair and there's an auto dealership there but the City has been striving for a long period of time for the parkway to be a parkway.

And I don't see having another Special Permit for basically a parking area for employees on this major point as being a benefit to the city and to the use of the parkway.

That's my comments.

Anyone else?

I would suggest we recommend to the BZA that they not grant the Special Permit.

Someone make a motion?

MARY FLYNN: I'm happy to make a

recommendation.

HUGH RUSSELL: Seconded.

CHAIR H. THEODORE COHEN: Seconded.

All in favor?

(Unanimous vote.)

CHAIR H. THEODORE COHEN: Opposed?

Abstained?

ATTY STEPHEN TOBIN: Would it be possible, Mr. Chairman, that that vote be accompanied by some sort of recommendation to the proprietor or owner as to what you would like to see there?

HUGH RUSSELL: Sure. He should redevelop the property in accordance with the ordinance.

CHAIR H. THEODORE COHEN: He can do whatever he wants that's in compliance with the ordinance. Or he could seek something under the ordinance by Special Permit or he could seek a

variance.

So he's got lots of options, but this one particular use, this Board is saying we don't make that recommendation. We're just making a recommendation to the BZA. It is their decision to grant it or not. And so you have another opportunity to try to convince them that this is something that should be granted.

STEVEN COHEN: What are the permitted uses? Was it a restaurant?

CHAIR H. THEODORE COHEN: Jeff is nodding his head "yes."

JEFF ROBERTS: It is a Business A district.

I can't list all the uses off the top of my head but general store, retail store, restaurants are generally allowed.

Some other types of commercial uses.

Auto repair shops are a conditional use requiring Special Permit.

CHAIR H. THEODORE COHEN: Is it the same district as further down where the seafood store used to be, which was redeveloped. It now has the Sherwin Williams.

JEFF ROBERTS: I believe that's Business A.

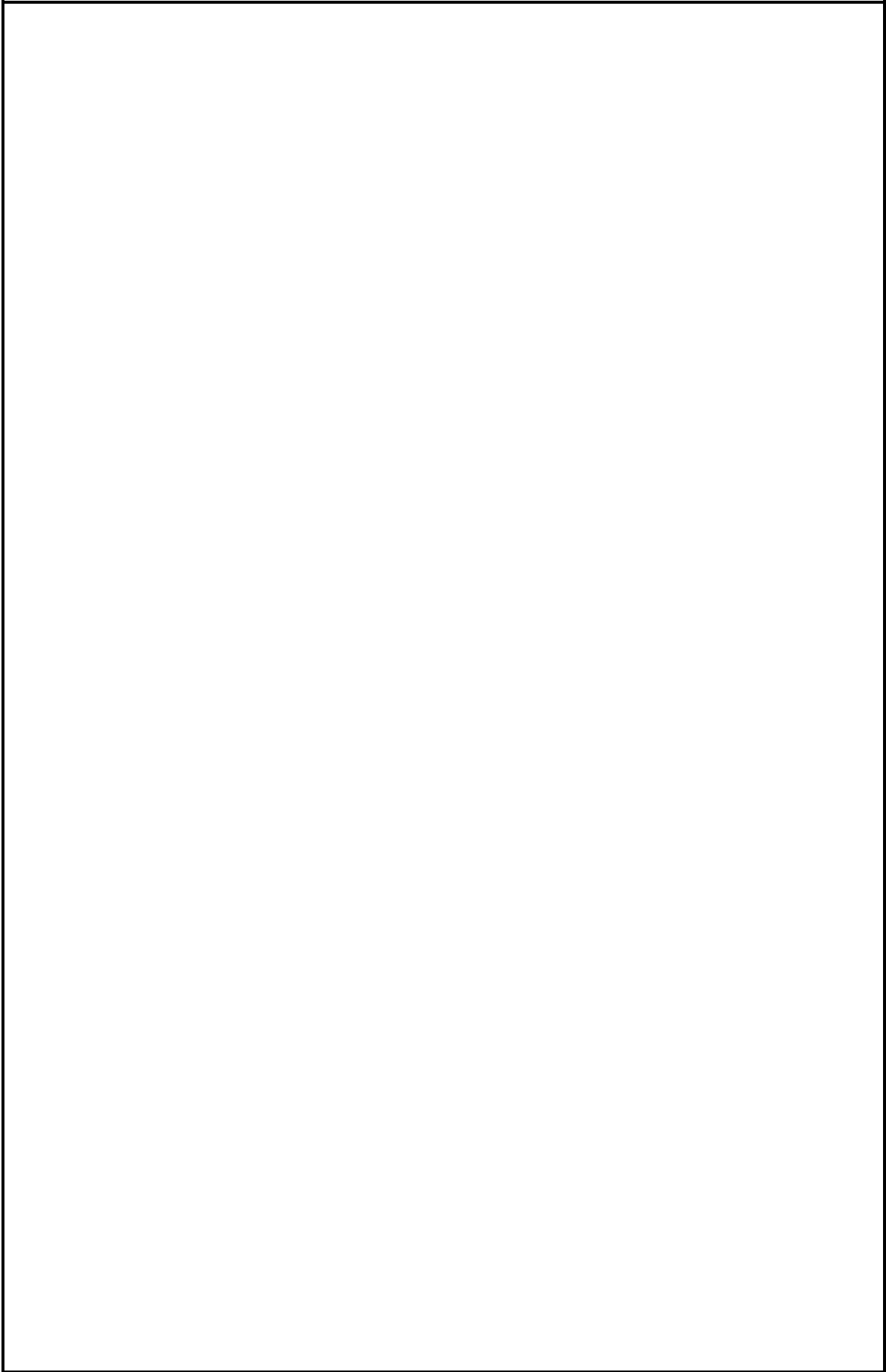
CHAIR H. THEODORE COHEN: So they got a permit four or five years ago, so they use it for some similar --

ATTY STEPHEN TOBIN: Members of the Board, thank you.

CHAIR H. THEODORE COHEN: Thank you very much.

Unless there's anything else we are adjourned.

(Meeting adjourned.)



ERRATA SHEET

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Commonwealth of Massachusetts

Norfolk, ss.

I, Jill Kourafas, a Notary Public in and for the Commonwealth of Massachusetts, do hereby 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 9th day of September, 2016.

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