

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION DECISION HEARING

LICENSE COMMISSION BOARD MEMBERS:

Michael P. Gardner, Chairman
Christopher Burke, Superintendant
Gerald Reardon, Fire Chief

STAFF: ELIZABETH LINT, EXECUTIVE DIRECTOR

AT: Michael J. Lombardi Building
Basement Conference Room
831 Massachusetts Avenue
Cambridge, Massachusetts 02139

DATE: Thursday, May 2, 2013

TIME: 10:00 a.m. to 11:03 a.m.

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P R O C E E D I N G S

EXECUTIVE DIRECTOR ELIZABETH LINT: Okay.
License Commission Decision Hearing, Thursday,
May 2, 2013. We're in the Michael J. Lombardi
Building, 831 Mass Ave, basement conference room.

Before you are the Commissioners:
Chairman Michael Gardner, Superintendent Chris
Burke and Fire Chief Gerald Reardon.

The first matter is the Beantown
Trattoria. Attorney Hope is requesting that it
be continued because he wanted to have further
discussions with neighbors and abutters.

COMMISSIONER MICHAEL GARDNER: And the
status of the premises themselves, are they open?
They appear to be under renovation.

EXECUTIVE DIRECTOR ELIZABETH LINT: It
was a different establishment, same owners.

CHAIRMAN MICHAEL GARDNER: Right.

EXECUTIVE DIRECTOR ELIZABETH LINT: And they were changing the concept.

COMMISSIONER MICHAEL GARDNER: So do they currently have the CV to operate as a restaurant?

EXECUTIVE DIRECTOR ELIZABETH LINT: They do.

COMMISSIONER MICHAEL GARDNER: So there's no -- I take it there are no issues in the neighborhood regarding or with the business regarding if we delay action on the alcohol license, the owner can stay open as a restaurant if they choose to or not?

EXECUTIVE DIRECTOR ELIZABETH LINT: That's correct.

COMMISSIONER MICHAEL GARDNER: I'm trying to understand if there's any harm to any interest in the delay. I don't particularly see any.

Any other thoughts?

FIRE CHIEF GERALD REARDON: No.

SUPERINTENDENT CHRISTOPHER BURKE: None.

COMMISSIONER MICHAEL GARDNER: So I'll make the motion to defer the matter indefinitely not to be brought forward, except on application of the applicant.

EXECUTIVE DIRECTOR ELIZABETH LINT: He's asking for the next available date that's convenient for the Commission, so it could either be a regular hearing or --

COMMISSIONER MICHAEL GARDNER: The next available date is the 14th, right?

EXECUTIVE DIRECTOR ELIZABETH LINT: That would --

COMMISSIONER MICHAEL GARDNER: I'm not hear the 28th, so...

EXECUTIVE DIRECTOR ELIZABETH LINT: When is our decision hearing?

COMMISSIONER MICHAEL GARDNER: June the 6th.

EXECUTIVE DIRECTOR ELIZABETH LINT: That sounds right. I recommend that we put it over to that date.

FIRE CHIEF GERALD REARDON: I'm not available on June 6th just so you know.

EXECUTIVE DIRECTOR ELIZABETH LINT: Are you available June 6th, Chris?

SUPERINTENDENT CHRISTOPHER BURKE: I do have a hold for an arbitration hearing.

COMMISSIONER MICHAEL GARDNER: Well, I'm prepared to put it on for the 14th. If they can do the work, they can do the work.

EXECUTIVE DIRECTOR ELIZABETH LINT: Fine.

COMMISSIONER MICHAEL GARDNER: So I'll make the motion to defer the matter to June -- to May 14th.

FIRE CHIEF GERALD REARDON: Second.

COMMISSIONER MICHAEL GARDNER: All those in favor, signify by saying "aye."

SUPERINTENDENT CHRISTOPHER BURKE: Aye.

COMMISSIONER MICHAEL GARDNER: Aye.

FIRE CHIEF GERALD REARDON: Aye.

COMMISSIONER MICHAEL GARDNER: None
opposed, so we'll move it to the 14th.

EXECUTIVE DIRECTOR ELIZABETH LINT: Spice
& Noodle.

COMMISSIONER MICHAEL GARDNER: Before we
do Spice & Noodle is Paint here? Are there any
issues with Paint besides the notices?

EXECUTIVE DIRECTOR ELIZABETH LINT: I
received the notices.

COMMISSIONER MICHAEL GARDNER: So the
issue had been there was a concern that the
notices hadn't gone out. The notices went out.

Did the notices indicate that there would
be the meeting today?

EXECUTIVE DIRECTOR ELIZABETH LINT: You
sent the ad?

LESLIE BELKNER: Yes. It referenced the previous meeting.

EXECUTIVE DIRECTOR ELIZABETH LINT:
Right, not for today.

LESLIE BELKNER: Yes.

COMMISSIONER MICHAEL GARDNER: How does that give any concerned citizens the opportunity to be heard?

LESLIE BELKNER: I had sent them out prior to the meeting. They have been sent out, it just that we hadn't received them back.

COMMISSIONER MICHAEL GARDNER: Do you see any impediment --

EXECUTIVE DIRECTOR ELIZABETH LINT: I don't. They were sent in in a timely fashion.

COMMISSIONER MICHAEL GARDNER: We just hadn't gotten them -- they hadn't been brought back to us?

EXECUTIVE DIRECTOR ELIZABETH LINT:

Right.

COMMISSIONER MICHAEL GARDNER: I'll make the motion that we approve the application of Paint for the CV and the wine and malt license according to the hours of operation receiving and provisions of the original application as stated on the original agenda.

SUPERINTENDENT CHRISTOPHER BURKE: I'll second that motion.

COMMISSIONER MICHAEL GARDNER: Motion having been made and seconded, all those in favor, signify by saying "aye."

SUPERINTENDENT CHRISTOPHER BURKE: Aye.

FIRE CHIEF GERALD REARDON: Aye.

COMMISSIONER MICHAEL GARDNER: Aye. None opposed. So we approved Paint.

Good luck to you with that.

LESLIE BELKNER: Thank you very much.

EXECUTIVE DIRECTOR ELIZABETH LINT: Now

Spice & Noodle.

ATTORNEY JAMES RAFFERTY: Should we approach?

COMMISSIONER MICHAEL GARDNER: Yes, please. Yes, come forward.

Although we typically don't take additional testimony at a decision hearing, I think the issues here are complicated enough and potentially have been in flux. I understand there's been some additional actions from Inspectional Services since we last met on this that I would appreciate an update from counsel for the applicant.

If you would be so kind as to state and spell your last name for the record.

ATTORNEY JAMES RAFFERTY: Thank you.
Good evening or good morning, Mr. Chairman and members of the Commission.

For the record James Rafferty on behalf

of the applicants.

Seated to my right is Nancy --

NANCY JITJARUEK: Nancy

J-I-T-J-A-R-U-E-K.

ATTORNEY JAMES RAFFERTY: This is Michael Kim, the architect, who appeared at the hearings as well.

To the point raised by the chair, we -- you recall public testimony focused a great deal on the rear door of the premises. And we have communicated with the interested neighbors, a series of conditions -- three conditions, one that restricts the use of the rear door entirely.

It had some precedent for me in the case that I represented a few years ago of Bosphorus, which is now called Puritan on Cambridge Street.

It had a similar situation where the building extended into the residential district. So in that location the rear door is not allowed

to be used, it's a condition of the license.

When we were last before the Commission, the applicant or proposed licensee was hoping to work out some limited use of the rear door.

The neighbors were emphatic that they didn't see any compromise on that issue. So the applicant had to look at her operation and conclude whether or not she could operate with that restriction. She came to the conclusion that she could.

So the first condition that I provided Ms. Lint and the neighborhood leadership is the restriction on the rear door. The second restriction also involved any --

FIRE CHIEF GERALD REARDON: Can you elaborate on "restriction"? You're talking for other than emergency purposes?

ATTORNEY JAMES RAFFERTY: Correct.

CHAIRMAN MICHAEL GARDNER: Can there be a

panic bar?

ATTORNEY JAMES RAFFERTY: Right, and I presume there will be an alarm for that.

I actually don't have a copy. I don't know if the Commissioner members have had a chance to see the three proposed conditions just from emergency egress.

And then the other issue in addition to issues associated with the rear and the loading and making sure all of that happens in the front had to do with the location of the venting or exhaust equipment, and that's why we asked Mr. Kim, the architect, to attend this morning.

We were provided a copy of a proposed location that one of the neighbors had identified, but I communicated with the neighbors that that location, in Mr. Kim's professional judgment, is less than optimal because it would require the moving of air laterally or exhaust

laterally to get it to the front portion of the building which would -- and Mr. Kim could speak to the Commission -- which would require a louder and bigger exhaust unit on the roof.

So he has studied the roof, and believes that the location that he has proposed would be on the second floor. There's a portion of this building that is two stories and a portion that's a single story. And the second story portion has a shaft that can accommodate very nicely a trunk, or what would you call it?

MICHAEL KIM: A shaft.

ATTORNEY JAMES RAFFERTY: A shaft and that's the location. And Mr. Kim could speak about that.

So I did share that with the neighbors. They didn't feel a need to meet. I offered to meet, but they said, "You know, we think we've spelled out our issues in the letter." And I

accepted that.

But we did adopt their recommendation that the sound boards -- it's a term that they used in their correspondence -- and I reviewed it with Mr. Kim. We could install -- they would install, if the Commission were to act favorably, sound boards on this exhaust equipment. So those are the three conditions that we would hope would address the neighbors' concerns.

COMMISSIONER MICHAEL GARDNER: So are you, Mr. Kim, or whoever is involved here that's required to do it, prepared as a condition of the license to certify that the plan, as constructed, will comply with the City's noise ordinance?

ATTORNEY JAMES RAFFERTY: I believe that's a requirement of the building permit that architects need to do that.

I don't know if you've had any experience with that?

MICHAEL KIM: It is usually not required of the building permit, sound testing or projected sound testing. It's not something we've encountered before as a condition of permit.

COMMISSIONER MICHAEL GARDNER: I guess the concern I've got with respect to the sorta of dueling diagrams here is that, in general, I would think our interest is in making sure that the noise ordinance is complied with with respect to this.

And that, of course, all the other codes, NFPA and other things are in compliance, but in terms of dictating construction methods to an applicant, I'm a little less sanguine about whether I got the authority or not, my judgment make that choice, and obviously I would defer to those on the Commission more experienced in such matters.

But it does seem to me sort've that the applicant should be on notice here, that whatever choices are made, it's got to comply with the noise ordinance when it's done, and if it doesn't, then there's complicated retrofitting or rerouting or something that may have to happen.

And I think, you know, it's -- this being particularly sort of a kind've border establishment between a lively commercial zone and an active residential zone and being as crowded as it is and with the history, unfortunately, that the applicant is not responsible for, but a history of some relatively difficult relationships, among other closely proximitous neighbors, the Commission, I think, would need to be -- would look at this very closely in terms of once it's up and running in the middle of the summer or whatever potentially the worse times are, to be prepared to take noise

readings. And it's -- essentially it seems to me it's got to be at the risk of the applicant with respect to the construction choices that are made.

ATTORNEY JAMES RAFFERTY: I agree. I think it is a point well taken. The engineering ahead of time needs to anticipate that.

But I would only note, though, that the -- that the district is not as unique as, I think, some have suggested.

I mean, for the length of Massachusetts Avenue, we have a business district that runs 100 feet in from Mass Ave that's largely abutted by residential districts.

Nearly any use there, whether it's residential or commercial, will have some sort of rooftop mechanical equipment, whether it's associated with heating or cooling the building, something associated with production activities.

I'm not at all diminishing the fact that it's a relevant issue, but I think in the context of application for beer and wines license and the CV license, of course, they are on notice that they have, I think, a very vigilant neighborhood and they have a number of uses on their very block.

So I couldn't concur more they would need to -- and I think that's why we involved Mr. Kim early in this process. I don't typically bring architects and engineers to hearings like this, but the neighbors have done us a favor by highlighting this issue. It's very prominent in this thinking in much the same way the delivery and rear door issue is.

And I think Mr. Kim's charge is going to be to come up with a system. He feels strongly that the location he's proposing and the type of equipment that will be installed would be

preferable. That seems to have a benefit for a single building was his assessment.

I don't mean to put words in his mouth. He thinks the macro benefits where he's placing it is better in that location.

COMMISSIONER MICHAEL GARDNER: Is it your judgment that the -- by the vertical venting requires a smaller fan, and hence, in and of itself would generate less noise?

MICHAEL KIM: That's correct.

COMMISSIONER MICHAEL GARDNER: Any other questions?

FIRE CHIEF GERALD REARDON: Mr. Kim, I guess -- what is the existing shaft that exists in this apartment?

MICHAEL KIM: That's a mechanical room directly above where we would like to vent the -- where we would like to vent the new hood. We would then build through shaft wall an assembly

that's rated from the restaurant up to the roof.

FIRE CHIEF GERALD REARDON: So the vertical rise is not actually in the apartment but it's in a mechanical room that's on the second floor?

MICHAEL KIM: The mechanical room is part of the existing apartment.

FIRE CHIEF GERALD REARDON: Is it a large mechanical -- typically they're pretty small, I mean...

MICHAEL KIM: It's much bigger than it needs to be. I would say it's -- as I recall, it was about 8 by ten.

FIRE CHIEF GERALD REARDON: And you have to fire rate this?

MICHAEL KIM: Of course. Normal building permits.

FIRE CHIEF GERALD REARDON: Right. And normal, but you've got the NFPA 96 standard on

cooking hoods that is above and above your standard?

MICHAEL KIM: And then we need a cleaning access door.

FIRE CHIEF GERALD REARDON: Where would the fans be located in this particular room? Would you have one at the hood top and then one at the rooftop?

MICHAEL KIM: Usually the fans are located on the rooftop, and there's a make-up air unit running the other way.

FIRE CHIEF GERALD REARDON: And you're proposing that the clean-out would be in the mechanical room on the second floor?

MICHAEL KIM: There would need to be a clean-out on every floor. So that would be the only place we could put it on the second floor.

FIRE CHIEF GERALD REARDON: Okay. That's probably not -- have you thought about trying to

run this outside of the building?

MICHAEL KIM: Outside the building, the landlord does not own any area outside of the building.

ATTORNEY JAMES RAFFERTY: It's a zero lot line, so the building has common walls with the abutting structures.

MICHAEL KIM: We did consider that. We did explore.

FIRE CHIEF GERALD REARDON: It can't meet code, but, generally speaking, I'm not a big fan of it running up through structural locations.

MICHAEL KIM: The obvious location would be up the side of the building. Unfortunately, we don't own the air space on the side of the building.

FIRE CHIEF GERALD REARDON: All right. And you're saying that on the horizontal you would -- would you need an inline fan if you went

horizontal?

MICHAEL KIM: Either an inline fan, several fans or a very -- or a much larger one.

FIRE CHIEF GERALD REARDON: Rooftop. And the rooftop fan unit, obviously, there's a myriad of types of rooftop fans, and obviously, you want to get one that has the lowest sound?

MICHAEL KIM: Right. That would be much easier if we just took the normal flow of smoke to go up.

FIRE CHIEF GERALD REARDON: Correct.

MICHAEL KIM: I'm assuming we're probably going with a mushroom-type fan.

COMMISSIONER MICHAEL GARDNER: Did you say a mushroom-type fan?

MICHAEL KIM: Yes.

ANDREA BOYER: Which actually has -- I'm sorry.

CHAIRMAN MICHAEL GARDNER: No, please,

Ms. Boyer.

ANDREA BOYER: Andrea Boyer, License Commission. One of the problems we had in the past even with residential fans that come all the way from the basement up many, many levels, there's the air that hits that, gives a tin sound which can also equate to have a violation. So I don't always -- those can make me a little bit nervous, too, in the aspect of are you building it and then, all of a sudden, it has to be replaced.

And I think that what I want to express is any of the assertions I have been trying to put on you is preventative, because once it's built, you don't have to rebuild it.

And that happens a lot in some of the establishments in Cambridge. Hence, why the blocking of the second floor is ideal.

Which the next question I have is, you

mentioned the HVAC system, are you changing what is already there? Because I know what's there now, and you saw this earlier, gentlemen, there's an HVAC system here for this building.

Is there going to be more here added or is it going to stay the same?

MICHAEL KIM: We have not determined the new load that this unit is forecasted to continue to serve the main space.

We may need to supplement with probably a small split system.

ANDREA BOYER: Would it stay in the same area or are you going to put that over here also or you don't know yet?

MICHAEL KIM: I don't know that. A split system is just a small amount of piping so we could basically put it anywhere.

ANDREA BOYER: Can you try to put it up front?

MICHAEL KIM: That one is not difficult, no. So, yes, we could probably do that.

ANDREA BOYER: And the other thing is I think I'm under the impression that there wasn't going to be any sort of fan on the roof. There was just going to be the airflow, and I thought that was going to be kind of a minimal problem.

Now that we have a fan that's also going to be on the roof, it's a concern.

Do you know what sort of wall or baffling that you'll put around it? That will have to be approved by Inspectional Services for the roof load and all of that.

MICHAEL KIM: All the roof flow would be minimal. The equipment, I would imagine would --

ANDREA BOYER: The wall that you say you may put the sound barrier?

MICHAEL KIM: Right. Right. I think the equipment was in part at least as large a load as

the walls in this case, so structurally, I'm not too concerned about it. It's a bad way of putting it, but structurally the roof should have ample support.

ANDREA BOYER: Depending on how high the pipe actually goes and then you have to put the barrier around it. You know, the concern of Inspectional Services -- and they just ripped down all 7/11s, as we may know about is because of the wind load also.

So I just want you to keep all that in mind when you're doing your structural part of it.

MICHAEL KIM: Of course.

FIRE CHIEF GERALD REARDON: If you put sound barriers up, because you're using a mushroom, you're going to have to turn around and keep a setback.

MICHAEL KIM: Right.

FIRE CHIEF GERALD REARDON: And when you go to that setback, does the barrier have the same effect because you obviously have to have ventilation for the hood?

MICHAEL KIM: The effect of a sound barrier in this case is mostly to deflect rather than block, so the sound goes up versus out.

I don't believe the sound shadow, since we're just trying to get it up and clearing the angle needs to be that much greater when you're much further out. But we'll explore the air flows of various configurations.

It could be we end up with a U shape or something like that for that reason. But at this point, it's not fully engineered.

COMMISSIONER MICHAEL GARDNER: So are there additional plan review steps that might be helpful to the applicant in the neighborhood? When you say "it's not fully engineered yet," I'm

just wondering whether Ms. Boyer or there's anyone independent to sort've review and check this again to do whatever makes the most sense to try to help make sure you're keeping the sound as minimal as it can be?

MICHAEL KIM: Well, if I may, the people upstairs at Inspectional Services -- and we do work all over the eastern half of the Commonwealth -- are stringent in their enforcement compared to other towns. I hope I phrased that correctly.

COMMISSIONER MICHAEL GARDNER: That's nice to hear.

ATTORNEY JAMES RAFFERTY: That's a compliment.

MICHAEL KIM: I'm not always so complimentary when I state that.

So the mechanisms that are already in place to get a permit, to get our inspections, to

get certificate of occupancy are, I would believe, more than adequate.

There's an existing noise ordinance, normal enforcements should kick in particularly if known, it's quite --

ATTORNEY JAMES RAFFERTY: But I would say, Mr. Chairman, on behalf of the applicant, we would be perfectly willing to accept a condition, if the Commission were to act favorably, that the plan, when it's engineered, be reviewed by Ms. Boyer prior to pulling the building permit.

I think it could only benefit the situation we're all trying to avoid, which is being back here in the future with a problem.

FIRE CHIEF GERALD REARDON: You can review all you want, but the tangibility of the whole thing is the airflow and the noise itself, which is, you know, something that only happens when you put the switch on.

ATTORNEY JAMES RAFFERTY: It's also the issue of ambient, correct? We've got a number of units around us. The hours of this place are actually with the closure of 10:00 or 10:30 is actually a few hours shorter than many of the surrounding places. So the late night noise shouldn't be that prominent because the restaurant, I believe, during Sunday to Thursday closes at 10:00. And there's some 1:00 a.m. and 2:00 a.m. licenses that abut this place.

FIRE CHIEF GERALD REARDON: It would be exhaust hood and all that area does come under the fire department jurisdiction.

And just for the record, either one of these could be implemented as long it meets the standard.

So if there's no definite "no" to either one of these plans provided that when it's installed, you know, that it meets the standard.

Obviously we're just trying to --

ATTORNEY JAMES RAFFERTY: My assumption is, though, that in terms of the hierarchy of concerns, the public safety standard may not be as focused on, it seems to me, on the noise issue that the challenge for the architect is to balance the --

FIRE CHIEF GERALD REARDON: And they don't necessarily deal with noise at all. So safety, construction and administration and cleaning, cleaning cycle, et cetera, et cetera...

ATTORNEY JAMES RAFFERTY: Understood.

ANDREA BOYER: I understand that you're an engineer? Not to take away from that --

MICHAEL KIM: Architect.

ANDREA BOYER: Architect. Oh, I apologize.

EXECUTIVE DIRECTOR ELIZABETH LINT: You said engineer.

ATTORNEY JAMES RAFFERTY: I misspoke. I didn't realize that. He quickly corrected me.

COMMISSIONER MICHAEL GARDNER: I knew you were a architect Mr. Kim.

ANDREA BOYER: I did, too. Excellent. I think that one -- I love Inspectional Services, I deal with the noise control in the city, so -- they do approve a lot of projects, and then, after the fact, I get a phone call from the residents stating that this is too loud.

So, I think that -- are you possibly going to consult with an acoustical engineer to help you with your system and what would be work for that area? Because that's what they do also.

MICHAEL KIM: The normal process, the hood gets its own engineer who's generally a mechanical engineer. And that issue is the performance of the hood, and that's necessary, I believe --

FIRE CHIEF GERALD REARDON: That's required.

MICHAEL KIM: -- to get a certificate of occupancy. An acoustical engineer would, frankly, double the sign cost for this project.

ANDREA BOYER: It would probably be more costly to have to change it down the road than hire someone to begin with to give you the appropriate -- what you need.

MICHAEL KIM: That's true. And if it was found not to be in compliance with the ordinance, obviously, that would be what we need to change.

ANDREA BOYER: You need to weigh what would be more costly down the road.

ATTORNEY JAMES RAFFERTY: But it would have the effect, though, of imposing a standard upon this use that is different from other applicants.

ANDREA BOYER: We had acoustical -- after

the fact, we had to tell people to hire an acoustical engineer.

ATTORNEY JAMES RAFFERTY: No, I know, but at that point you're dealing with violations. I think it's well acknowledged here that the applicant needs to comply with the noise ordinance and the consequences of not doing so are more costly after the fact if they're not engineered.

I'm just suggesting that in the opinion of a professional architect, that a mechanical engineer and the architect after consultation with yourself and ISD feels they can arrive at a system that complies, imposing a requirement on the applicant to then retain an acoustical engineer feels excessive.

ANDREA BOYER: I love the faith that everybody has in me, but I'm not an acoustical engineer.

I mean, I would love to look at a design and say in my experience other ones that have been in compliance in other areas, it would be, as you know, or as the Board may be aware, any sort of equity pattern can take -- add to noise or take away from it, the background levels that have already existed, can add or take away from it.

It can't be stated by the Board to have an acoustical engineer, but it may be something you would want to think about as an option to make sure that whenever you put it into compliance there certain things that have to be signed at ISD that say that you will be in compliance with the noise ordinance.

MICHAEL KIM: Sure.

ANDREA BOYER: Not everybody is at the end.

COMMISSIONER MICHAEL GARDNER: Are there

any other questions or supplemental information anyone wants to provide?

So I will make the motion to approve the CV and the wine and malt license for this application for the number of spaces and hours of operation as provided in the application with the further conditions that the rear door will be used for emergency egress only, that deliveries -- appropriately alarmed, that deliveries and trash pickup will be through that door are expressly prohibited, and that door will not be used by employees to enter, exit or congregate.

The further condition that all trash pickup and deliveries occur out through the Mass Avenue entrance to the premises.

The further requirement that the rooftop mechanical equipment be enclosed within sound boards, and that prior to opening, certify to their best professional opinion that level of

operation of the equipment and the establishment's business will not violate the noise ordinance.

FIRE CHIEF GERALD REARDON: I need to ask a final question before I vote. I pretty much know the answer. The separation between these two buildings, there's no firewall, permanent fire rating between the first floor and second floor?

MICHAEL KIM: I have not observed one. There's a hard ceiling, a hard sheetrock ceiling on the first floor.

FIRE CHIEF GERALD REARDON: I highly doubt there is one, but there's another preclusion --

MICHAEL KIM: Actually, there is a hard ceiling underneath the second floor.

We have not drilled through, so we don't know the thickness of it. But underneath the --

FIRE CHIEF GERALD REARDON: A firewall for the purpose of this gets -- is prohibited in certain areas depending on what the causes are. I don't think it probably constitutes its rating as a firewall.

MICHAEL KIM: As a firewall or fire --

FIRE CHIEF GERALD REARDON: Fire separation.

MICHAEL KIM: Fire separation. I cannot confirm or verify that.

FIRE CHIEF GERALD REARDON: Obviously, in order for you to get this signed off, you will need that, so I'm just asking.

Thank you.

COMMISSIONER MICHAEL GARDNER: The motion has been made. Does it have a second?

FIRE CHIEF GERALD REARDON: Second. I'm sorry.

COMMISSIONER MICHAEL GARDNER: Motion

made and seconded, any discussion?

SUPERINTENDENT CHRISTOPHER BURKE: None.

COMMISSIONER MICHAEL GARDNER: Any concerns, Mr. Rafferty, on behalf of your client with respect to these conditions?

ATTORNEY JAMES RAFFERTY: Not with respect to conditions, no.

COMMISSIONER MICHAEL GARDNER: All those in favor, signify by saying "aye."

FIRE CHIEF GERALD REARDON: Aye.

SUPERINTENDENT CHRISTOPHER BURKE: Aye.

COMMISSIONER MICHAEL GARDNER: Aye.

None opposed.

So it's been a long road and it's not finished, but good luck to you with this operation.

Do we have any other business before us?

EXECUTIVE DIRECTOR ELIZABETH LINT: Do not.

COMMISSIONER MICHAEL GARDNER: I guess in reviewing the transcript of the hearing for this, which I guess is probably April 9, I was struck by the frustration of a number of the residents talking about actually enforcement issues regarding pickup and deliveries, trucks and trash by other establishments in the area.

It sounds like Ms. Boyer's been involved in some of that. I just wanted to raise with the Commission if we have concerns that perhaps some of the license holders are not holding their vendors to the behavioral standards which we would expect regarding where trucks are at, whether there's a role for the Commission in doing a review of the operations of those license holders, including determining whether or not we should put similar conditions on the continuation of the permits for them.

And I just wanted to have a general

conversation among the three commissioners and staff about the idea of what additional things we could possibly do to ensure that, in fact, the laws around parking and other issues can be complied with in a more efficient manner than calling Kitty Cramer and asking her to send a PCO down.

ANDREA BOYER: Right. Well, let me --

CHAIRMAN MICHAEL GARDNER: Ms. Boyer.

ANDREA BOYER: Thank you, sir.

I think, again, there's been noise issues in the back of some of the establishments for many years. And over the course of these years, certain residents called that there's venting that's in the back, maybe West Side Lounge or before it was Guilia's, it was Forest Cafe -- actually, what was it was before Guilia's?

EXECUTIVE DIRECTOR ELIZABETH LINT:

Rafiki Bistro.

ANDREA BOYER: Rafiki. And then before that it was Forest Cafe.

Over the years readings have been performed at a specific tenant's home. I think it's Lynn Myer Gay, and the readings were taken and if there was a violation, I would followup, and on two occasions, she had stated, you know, "I want to speak with the owner myself since we're neighbors. I want to be a good neighbor policy."

So I would stop the investigation. And then just recently when Guilia was changing over, a lot of issues came up, as you know, at the hearing were a lawyer came and spoke for the residents. At that time it was, July -- was it last year? July of 2011? Is that when Guilia took over? Or 2010?

EXECUTIVE DIRECTOR ELIZABETH LINT: No. 2012.

ANDREA BOYER: And many problems came up. The six steps or the six questions people said about using the door, and deliveries being made in the back. Since then, I had a meeting just about three weeks ago with the residents, once again, and we discussed all the problems, three or four weeks ago, the deliveries taking place in the back, the noise, the vent system.

There's actually a -- not an establishment for liquor or common victualer, but a design shop that just installed a new air conditioning unit which readings are going to take place in a couple weeks when it's at full force.

That was one of the issues that were brought up recently, I think, at the hearing. So we're going to take care of that problem.

What we found is, through Inspectional Services, Elizabeth and I is that there's an old

document from 1988 that states in this back area -- let me show you where exactly it is -- this is going into Bowdoin Street, right in this area here, where three vehicles are allowed to be, noncommercial vehicles.

It also states that there can be no loading or unloading in that space, which is extremely problematic off of Bowdoin Street because that's where the West Side Lounge dumpsters are, that's where Guilia's dumpsters are and since probably Forest Cafe deliveries have been made. And the 1988 ruling is now just being enforced by Inspectional Services in January of 2013 because of the case that came up with Guilia.

So we just had a meeting yesterday with the Guilia owner and informed him that we can only enforce what has been given to us, and that is, you can have three noncommercial vehicles in

the back and you can't even accept deliveries back there. Of course, he's renting that space from the owner that was Rafiki, he's paying for that space to be able to use it, although he can't use it for deliveries.

So the problem is, they actually would have something in the city that says they can't use that space, but they have been using it for a very long time. There's the dumpsters back there, there's the Totes and we were at least trying to say, "If you store your trash there, it has to be brought out to Bowdoin Street to be dumped.

COMMISSIONER MICHAEL GARDNER: To Bowdoin?

ANDREA BOYER: Yes. So that the truck doesn't back up there, which is ruining the curbs and the street and all that. But I don't know if he's going to do that.

And that was one of the things that when you say do we have to come in front of Board to discuss some of these problems, it may have to come to that point because there's conflict --

FIRE CHIEF GERALD REARDON: What would they do with the dumpsters then?

ANDREA BOYER: Well, they're Totes. I mean, we're trying to say -- he has two big dumpsters, two tons. And we're trying to say that West Side does use the Totes, so it's possible, and --

FIRE CHIEF GERALD REARDON: What's possible is where their output is.

ANDREA BOYER: True. And they both are kind've similar restaurants size-wise. He's looking into if he could use the Totes.

Once again, though, they're not supposed to back up their load and unload. So there's a huge conflict of things they have been doing for

the last 20 years, or 15 years and what they're not supposed to have been doing for the last 20 years.

COMMISSIONER MICHAEL GARDNER: What are the traffic flow or any other issues involved with having them take the Totes out to the street and do the transfer at the curb?

EXECUTIVE DIRECTOR ELIZABETH LINT: It can be done.

ANDREA BOYER: It can be done. I mean --

FIRE CHIEF GERALD REARDON: That's a lot of Totes.

EXECUTIVE DIRECTOR ELIZABETH LINT: Yeah.

ANDREA BOYER: It is. But, I mean, I can't say go ahead and keep the Totes back there and when I have a document from Inspectional Services saying they're not supposed to do it.

The thing we're at least trying to do is if you're storing your stuff back there, to bring

it to Bowdoin Street, you know, so this way the truck can come down and dump it there, but I don't know.

EXECUTIVE DIRECTOR ELIZABETH LINT:

That's the other issue. The trucks can be on Bowdoin Street because this side is commercial and that side is residential.

COMMISSIONER MICHAEL GARDNER: And the Spice & Noodle operation, we've said, you do all your business through Mass Ave --

ANDREA BOYER: Yes.

CHAIRMAN MICHAEL GARDNER: -- but that's not a good solution for these other establishments?

ANDREA BOYER: Nobody likes change.

EXECUTIVE DIRECTOR ELIZABETH LINT: I think there's still going to be an issue. The way that Guilia was designed and built, their delivery ramp is in the back, their storage is

downstairs through the back. So it just -- of course, it can be done, but it just brings it up to another level.

FIRE CHIEF GERALD REARDON: You would still have to bring them through the restaurant out to the back in the area you're not supposed to use to get to the ramps and to get everything in the basement.

COMMISSIONER MICHAEL GARDNER: You mean Mass Ave or Bowdoin or just at Mass Ave?

FIRE CHIEF GERALD REARDON: If you were restricted to Mass Ave, they still have to bring them out into that area that they're not supposed to use to get them into the ramps and everything else, so it's a shell game.

ANDREA BOYER: I think I may have mentioned to you, Michael, that, you know, years ago when some of the restaurants were getting one delivery from Cisco, you know, the residents were

just like, whatever, it's one delivery, now all of a sudden, it's a lot of specialty recipes, they're getting multiple deliveries from the meat guy, from the mushroom guy, a lot of specialty foods and it's just more and more now.

This is why it has come to a head. It's not just one anymore. And they're -- when I was at the meeting at one of the resident's home, the garbage truck, one of the deliveries did come up on to the city sidewalk to back up into that, so it's not necessarily the best space that they have to back up in. That was just a van, it wasn't even a disposal truck.

So, I don't know what the solution is. We're supposed to follow the guidelines of Inspectional Services. We did say to the gentleman yesterday that that's where he needs to start. He needs to start with Inspectional Services and say "I need a variance to be able to

use this space back here," because right now on record is three noncommercial vehicles, no -- cannot be used for unloading or loading, and disposal is loading and unloading along with the food.

COMMISSIONER MICHAEL GARDNER: So what about the issues of illegal parking that we heard before? What's -- this is a different issue or are these delivery trucks that are pulling up on to the city sidewalk?

Just remind us what that issues there are because that sounds different from the new problem of Inspectional Services 1988 ruling.

ANDREA BOYER: They're following that ruling and stating that the commercial vehicles shouldn't be in that space at all loading and unloading. I think that's the parking issue. A lot of -- if they're doing any sort of mechanical work there, that they're parking in that space

sitting there, which seems -- if I rented that space, I would think I can use that space for my loading and unloading. If I'm renting from someone that did it previously, I would think I can do that also. I can see the frustration from both sides.

FIRE CHIEF GERALD REARDON: The other conundrum is if we push all these things out to the front parking spaces, then deliveries can't be made.

ANDREA BOYER: There are loading zones at least.

EXECUTIVE DIRECTOR ELIZABETH LINT: Although I did speak to Sue Clipping about it and she would just assume have some of it back on Bowdoin because it's so much of a burden on Mass Ave. It's a conundrum.

FIRE CHIEF GERALD REARDON: And in the morning, I have seen them and because they're

filled, and a lot come at the same times because the noise restriction they get, they double park, they're taking up a lane of traffic. It's not really good safety-wise. It's obviously not good business for the city to have traffic blockages like that that tie everything up and it causes, you know -- so it's a balancing act.

EXECUTIVE DIRECTOR ELIZABETH LINT: And when Andrea and I spoke with Mike Pagliarini yesterday, who owns Guilia, we very much could sense his frustration in terms he said, you know, "When I signed my lease, it was discussed I could use that." So the prior person who owns the building who also owned the restaurant before, didn't necessarily disclose everything he knew. So there's so many layers here.

ANDREA BOYER: And one of the things that we were trying to emphasize yesterday is try to meet us somewhere. What can you do to make some

of the -- I read the transcript this morning from
when -- I read his application which was
whenever --

COMMISSIONER MICHAEL GARDNER: This is
Guilia's?

ANDREA BOYER: Yes.

-- and when the lawyer was present for
the residents to speak about some of the issues,
and, you know, he said he wants to work with the
residents.

When we were sitting yesterday saying
what about blue Totes, can you at least look into
that, and finally at the end he did, but it was
difficult. It didn't seem like he was coming to
the table with anything because we're trying to
mediate this, not have more restriction. Make
them a little bit happy. You know, there's a
vent on the back that was a little bit of a thing
yesterday where there was louvers just there, and

at the hearing previously, I think it was for Rafiki and there was just louvers, no vent, he said he wouldn't add anything on. There's a new vent that is added onto that, and he said, "Well, no, I didn't add that on, the vent that was there previously with the louvers didn't work, so what I did was I replaced that."

I said, "I think we're going to agree to disagree. I think that's an add-on where you said you weren't going to change anything."

So that was the landlord. So I think that could possibly be an easy fix that they kind've want to look into more maybe to change or not change. They're not sure yet. So I feel as if --

FIRE CHIEF GERALD REARDON: From my purposes, I want to know if -- I know they're not to supposed to change it. But if it actually made it better, we don't have to tell --

ANDREA BOYER: It didn't. It's a noise violation now. That's what I said to the gentleman yesterday. I said, "Well, regardless of whether you changed or didn't change or add on or didn't add on, it's a noise violation. You need to do something to it. It's a noise violation after 6:00 p.m.

COMMISSIONER MICHAEL GARDNER: Is it helpful for the Board to schedule a hearing June 11th, or sometime thereafter, for the purpose of generally reviewing the licenses, compliance with the licenses, the compliance with the noise ordinance and dealing with issues of enforcement to give all of the residents and the businesses in the area that seem to be affected by this the opportunity to come before us and discuss their concerns with the general idea that having such a hearing might help focus some action in advance?

FIRE CHIEF GERALD REARDON: I would suggest that maybe we let them continue to work with everyone, and if they can get solutions and if they come back and say that we need some sort've heavier hand to deal with this --

EXECUTIVE DIRECTOR ELIZABETH LINT: That would be the ordinary course in any event.

So right now we're in the process of mediating and there's one other business there that is not a restaurant --

ANDREA BOYER: Design Shop.

EXECUTIVE DIRECTOR ELIZABETH LINT: -- the Design Shop that has not been investigated yet, but we know that's contributing to the problem. So should it not work and should people not be willing to do anything, then they will be here. Because that's how we would operate. We would be bringing them in on a violation.

COMMISSIONER MICHAEL GARDNER: So I'll

make the motion that we get a report from the staff at the June 11th hearing on the progress that's been made.

FIRE CHIEF GERALD REARDON: Seconded.

ANDREA BOYER: That's a great idea.

Thank you very much. I appreciate it.

COMMISSIONER MICHAEL GARDNER: Motion having been made and seconded, all those in favor, signify by saying "aye."

SUPERINTENDENT CHRISTOPHER BURKE: Aye.

FIRE CHIEF GERALD REARDON: Aye.

COMMISSIONER MICHAEL GARDNER: Aye.

Any further business before us?

MS. LINT: No.

FIRE CHIEF GERALD REARDON: Motion to adjourn.

COMMISSIONER MICHAEL GARDNER: Seconded.

All those in favor, signify by saying "aye."

SUPERINTENDENT CHRISTOPHER BURKE: Aye.

FIRE CHIEF GERALD REARDON: Aye.

COMMISSIONER MICHAEL GARDNER: Aye.

We'll adjourn at approximately

11:03 a.m.

ERRATA SHEET

INSTRUCTIONS: After reading the transcript of this hearing, note any change or correction to and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this errata sheet (before a Notary Public, if required).

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I have read the foregoing transcript of the hearing, and except for any corrections or changes noted above, I hereby subscribe the transcript as an accurate record by me.

CERTIFICATE

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 13th day of May 2013.

Jill Kourafas
Certified Shorthand Reporter
License No. 14903
Notary Public
My Commission expires:
February 2, 2017

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