

COMMONWEALTH OF MASSACHUSETTS
CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION
DECISION MAKING HEARING

LICENSE COMMISSION BOARD MEMBERS:

Richard V. Scali, Chairman
Christopher J. Burke, Superintendent
Daniel Turner, Deputy Fire Chief

STAFF:

Elizabeth Y. Lint, Executive Officer and
Christopher O'Neil

--held at--

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

Thursday, June 3, 2010
10:00 a.m.

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P R O C E E D I N G S

CHRISTOPHER O'NEIL: Good morning, everyone. We're at the License Commission's Decision-Making hearing. Today is June 3rd. It is ten a.m. Before you are the commissioners: Deputy Chief, Dan Turner; Chairman Richard Scali and sitting in for Robert Haas, Deputy Superintendent Chris Burke.

RICHARD SCALI: Mrs. Lint is detained so Mr. O'Neil is filling in today.

This is our decision-making meeting from the hearings from May 11th. And I think we've already decided everything on May 25th's hearing so we just have the May 11th agenda to decide. And I think there are three items?

CHRISTOPHER O'NEIL: Three items.

RICHARD SCALI: Three items, so let's go to -- let's see who's here. AMC is here, Boss Phosphorous (phonetic) and Rain or

1 Shine. Is Rain or Shine here? Not here yet.
2 Okay.

3 Is he coming today?

4 CHRISTOPHER O'NEIL: I would imagine
5 he is going to show up.

6 RICHARD SCALI: All right. Let's go
7 on to the AMC.

8 Okay. Good morning.

9 CARL LOCHARD: Good morning.

10 RICHARD SCALI: So you are Mr.?

11 CARL LOCHARD: Carl Lochard.

12 RICHARD SCALI: Mr. Lochard, okay.
13 That's right, I have your name right here.

14 This was an investigative report with
15 regards to an incident that happened on April
16 2nd.

17 CARL LOCHARD: Correct.

18 RICHARD SCALI: And we left it that
19 we were looking for an evacuation plan.

20 Issues of numbers of employees. How many you
21 were going to have on at any one time? Who

1 is going to take charge when there's a
2 problem? And then the fire department was
3 going to do a test with you on the evacuation
4 plan, right?

5 DANIEL TURNER: Correct.

6 RICHARD SCALI: So, Deputy.

7 DANIEL TURNER: Right now the report
8 is incomplete. We had the call on Tuesday to
9 schedule the inspection of the fire alarm
10 system which I believe Captain -- I assigned
11 that to Captain Brogan (phonetic) who is
12 going to contact you and make arrangements
13 for that.

14 CARL LOCHARD: Okay.

15 RICHARD SCALI: So you just have the
16 inspection?

17 DANIEL TURNER: I have not seen any
18 of the other documents which I assume --

19 CARL LOCHARD: Right here.

20 RICHARD SCALI: Probably need a
21 little more time than today.

1 Did you have an opportunity to get it
2 to him beforehand?

3 CARL LOCHARD: No, we had it because
4 I wasn't too sure if you wanted me to mail it
5 in to you guys or bring it here today. So,
6 that was the issue.

7 RICHARD SCALI: Yes, it would have
8 been helpful to have a review of it
9 beforehand --

10 CARL LOCHARD: Sorry about that.

11 RICHARD SCALI: -- to make sure that
12 we understand the details.

13 So tell me about the employee issue.
14 How many employees are you going to have on?

15 CARL LOCHARD: Well, pretty much
16 since the incident on the weekend we have two
17 until the last guest leaves. And then on the
18 weekends we have one with the manager
19 closing. Now since our show schedules change
20 week to week, the time that they leave
21 depends on the time the last show drops, or

1 gets out pretty much.

2 RICHARD SCALI: So say that again.

3 On weekends you have two people?

4 CARL LOCHARD: We have two regular
5 employees and a manager scheduled.

6 RICHARD SCALI: Until the very end?

7 CARL LOCHARD: Correct.

8 RICHARD SCALI: And on weekdays you
9 have?

10 CARL LOCHARD: One employee and one
11 manager.

12 RICHARD SCALI: So that means
13 there's two people really.

14 CARL LOCHARD: Correct.

15 RICHARD SCALI: The incident of
16 April 2nd there was only one person, right?

17 CARL LOCHARD: Correct.

18 RICHARD SCALI: So that's a change
19 for you?

20 CARL LOCHARD: Correct. We had to
21 increase that.

1 DANIEL TURNER: Mr. Chair?

2 RICHARD SCALI: Deputy Chief.

3 DANIEL TURNER: Mr. Lochard, just
4 out of curiosity, your hood suppression
5 system --

6 CARL LOCHARD: Correct.

7 DANIEL TURNER: -- was orange tagged
8 by your cleaning company. Are you working
9 with them on resolving that?

10 CARL LOCHARD: Well, I have air duct
11 services. I've already sent in the signed
12 proposal to him. I had new access panels put
13 in through the entire system.

14 DANIEL TURNER: That's in progress?

15 CARL LOCHARD: Yes.

16 RICHARD SCALI: Comments from the
17 Commissioner?

18 CHRISTOPHER BURKE: Well, certainly
19 the police department would be interested in
20 seeing what the findings are with respect to
21 the Cambridge Fire Department's review before

1 making any decision.

2 RICHARD SCALI: Okay. Yes, it would
3 be good to read this to know what's
4 happening.

5 Do you want to continue the matter and
6 have him come back or do you want to --

7 DANIEL TURNER: Would we continue to
8 next decision hearing?

9 RICHARD SCALI: We can do that if
10 you like. What's the next date? Is it July
11 1st?

12 CHRISTOPHER O'NEIL: Yes, July 1st.

13 RICHARD SCALI: Can you work with --
14 is it with you he would be working with?

15 DANIEL TURNER: Captain Brogan.

16 RICHARD SCALI: Captain Brogan. I
17 think you probably take this to Captain
18 Brogan. Go down there and talk with him, go
19 over the plan. It takes no more than, you
20 know, five minutes to do that to make sure
21 that everything is okay.

1 CARL LOCHARD: Okay.

2 RICHARD SCALI: And then come back
3 on July 1st. We have our next
4 decision-making meeting on July 1st.

5 CARL LOCHARD: Okay. And that's
6 Captain Brogan you said?

7 DANIEL TURNER: Correct.

8 RICHARD SCALI: Any comments from
9 the public on AMC?

10 Motion then to continue, is that okay,
11 to July 1st for further review?

12 CHRISTOPHER BURKE: Second the
13 motion.

14 RICHARD SCALI: Moved and seconded.
15 All in favor?

16 (Aye.)

17 RICHARD SCALI: All right. So
18 continued to July 1st. Contact Captain
19 Brogan on the plan.

20 And, Mr. O'Neil, if you can just remind
21 Mrs. Lint then to put this -- I'll put this

1 on the docket for the July 1st agenda.

2 CHRISTOPHER O'NEIL: Sure. I can
3 keep it separated.

4 * * * * *

5 RICHARD SCALI: People up in the
6 front are here for?

7 MICHELLE GENOVA: I'm part of the
8 neighbors that were concerned about
9 Phosphorus.

10 RICHARD SCALI: I didn't recognize
11 your face. I wasn't sure if you were a
12 resident or applicant.

13 All right. Let's go then to the
14 Phosphorus application. Mr. Rafferty. It's
15 the item on top of page two for a new
16 restaurant license.

17 ATTORNEY JAMES RAFFERTY: Good
18 morning. James Rafferty for the record.

19 Just briefly, the Commission you recall
20 asked that at the conclusion of the hearing
21 for the applicant to examine its application,

1 particularly its floor plan, to see if it may
2 be scaled back a little. There had been
3 concern expressed by at least one neighbor
4 about the size of the bar, whether it was
5 appropriate for beer and wine. So Mr. Patel,
6 the architect has reduced the size of the bar
7 and the number of seats and reduced them by
8 seven.

9 MR. PATEL: 23 to 16.

10 ATTORNEY JAMES RAFFERTY: 23 to 16.

11 We also, in response to desire about
12 support have some signatures on a petition
13 indicating support. And there's also a very
14 thoughtful e-mail that was sent to Ms. Lint
15 by Ms. Buzacam (phonetic). I don't know if
16 it's found its way to the file.

17 RICHARD SCALI: We do have it here.

18 ATTORNEY JAMES RAFFERTY: But she
19 has visited the site. She is active in her
20 neighborhood association, and suggests that
21 given the amount of effort that the property

1 owner, the landlord has put into the building
2 and the attempts to make this a success, that
3 in her view, she's expressing strong support.

4 RICHARD SCALI: So the big issue for
5 me really is -- I mean, I think that, you
6 know, the quality of the applicant and the
7 food and the -- especially we don't have any
8 Turkish restaurants in Cambridge.

9 ATTORNEY JAMES RAFFERTY: No.

10 RICHARD SCALI: So it's a new kind
11 of menu that we would have in the city. And
12 I think it's probably about as low key as you
13 could get for that particular neighborhood.
14 The problem for me is the overwhelming
15 neighborhood support, because you didn't have
16 any support last time. And I see you've
17 submitted Minka's (phonetic) e-mail. And
18 then in the petition I see here, a lot of
19 them don't have addresses on them.

20 ATTORNEY JAMES RAFFERTY: Many of
21 them do. Some -- Mr. Patel was involved in

1 the collection. Maybe he can tell you where
2 they're from.

3 MR. PATEL: Yeah, there's seven
4 businesses -- there's nine businesses listed,
5 but only seven wrote out their name and
6 address on it. Others are noted as people we
7 just met with.

8 ATTORNEY JAMES RAFFERTY: Some are
9 residential and some are commercial. I think
10 the commercial ones might not have the --

11 MR. PATEL: Right. Some of the
12 commercial ones don't have signatures because
13 we just met with them. They didn't want to
14 sign anything. But the residents are very
15 specific in the sense that most of them are
16 on Tremont Street or they're in the two
17 apartment buildings that are two doors down
18 from the restaurant. So they're not just in
19 the Inman Square neighborhood, they're
20 literally very close -- they're as close as
21 you can get to the restaurant and be a

1 resident that you can be.

2 RICHARD SCALI: So I see 1210
3 Cambridge Street.

4 MR. PATEL: Yep.

5 RICHARD SCALI: 79 Tremont, 77
6 Tremont, 474 Cambridge, 1218 Cambridge, 1220
7 Cambridge.

8 ATTORNEY JAMES RAFFERTY: Mr.
9 Chairman, I would offer for the Board's and
10 Commissioner's consideration, and I don't
11 attempt to speak for the opponents for sure,
12 those with concern, but the concerns were,
13 from the testimony at the hearing, were
14 related to the operation of a restaurant. I
15 heard little, if any, commentary about what
16 the addition of beer and wine would have to
17 the operation. And that really -- I would go
18 so far as to say if this was a straight CV
19 application, I imagine the Commission would
20 have little difficulty in the location that
21 had a CV in a 500 plus capacity for decades

1 would have little difficulty in granting the
2 CV. And the issues around noise and odors
3 and controlling food and trash and employees,
4 all very relevant, would be dealt with. And
5 those are the type of concerns we heard at
6 the hearing, all legitimate. But there is
7 nothing, I would respectfully suggest, about
8 the introduction of beer and wine that really
9 aggravates any of those issues. By contrast,
10 the applicant has made it clear, he simply
11 cannot fund and commit the capital necessary
12 to build out this concept without having the
13 opportunity to provide beer and wine. So,
14 strategically we are vulnerable. We made it
15 very clear that if we don't get the beer and
16 wine, this will not be coming. So one of the
17 ways to prevent this restaurant from being
18 here would be to oppose the beer and wine
19 because then you won't get this restaurant.
20 Because there just isn't a scenario where
21 this operation can work without the beer and

1 wine.

2 As you've noted, there has been a
3 considerable effort -- the landlord learned
4 quite a bit from the last exercise, that the
5 prior applicant was a much more ambitious
6 application, full liquor, lots of
7 entertainment, bigger space. This is scaled
8 back.

9 The building has been empty for several
10 years and it is a big, deep commercial
11 building in a struggling economy. Along
12 comes an owner base, unique restaurant, able
13 to contribute to the eclectic mix in the
14 neighborhood, and he's very committed to
15 working with the neighbors. But it is
16 necessary for him to get the beer and wine.
17 So while I recognize the issue around
18 support, I do think it could be noted that
19 the concerns -- I can't think of one concern
20 that suggested that the restaurant would be
21 fine, we just don't want the beer and wine.

1 I think there are some generic concerns about
2 restaurants, which we all understand. But I
3 think it would be regrettable if those
4 concerns overshadowed the beer and wine
5 aspect of this.

6 RICHARD SCALI: So let me get all
7 the details down here. So reducing the bar
8 from 23 to 16 seats.

9 ATTORNEY JAMES RAFFERTY: Right.

10 RICHARD SCALI: Food at all times at
11 the bar, right?

12 ATTORNEY JAMES RAFFERTY: Correct.

13 RICHARD SCALI: So it's not just an
14 alcohol --

15 MR. PATEL: Bar menu.

16 ATTORNEY JAMES RAFFERTY: Right.

17 RICHARD SCALI: No use of the back
18 door at all, right?

19 ATTORNEY JAMES RAFFERTY: Correct.

20 RICHARD SCALI: Except for emergency
21 purposes.

1 ATTORNEY JAMES RAFFERTY: That's
2 limited by Zoning, correct. And that can
3 certainly be a condition of the license as
4 well, but it's very clear that that -- I
5 provided the Commission with a copy of the
6 Zoning decision which has very specific
7 language, and I would suggest it might make
8 sense for a condition to track that language
9 and make reference to that Variance, which
10 that's the Variance that allows for the
11 entire building to be used commercially, but
12 it has very strict limitations on the use of
13 the rear door. Which I might note is an
14 added protection that other abutters to
15 commercial restaurants all along Mass. Ave,
16 Cambridge Street, they don't have that added
17 insulation if you will. It's a rather unique
18 condition. The other restaurants along the
19 commercial corridors, and we do have -- we
20 all know the layout of the city, our
21 commercial's fine, whether it's Mass. Ave,

1 Hampshire Street and these other places, you
2 have a business district that goes 100 feet
3 on either side of the center of the street
4 and then you have residences. So in often
5 cases those first couple of houses in have a
6 nexus to a commercial use and it gets dealt
7 with. This, by virtue of the Variance, has
8 an added protection that says that that door
9 cannot be used. So that means there aren't
10 going to be deliveries going through there.
11 There isn't going to be no trash pickup.
12 There aren't going to be employees coming and
13 going through that entrance.

14 RICHARD SCALI: So deliveries and
15 trash going through the front door, right?

16 ATTORNEY JAMES RAFFERTY: By
17 necessity, yes, sir.

18 RICHARD SCALI: Employees smoking
19 have to be -- go out the front door to the
20 side?

21 ATTORNEY JAMES RAFFERTY: Front

1 door. No. The door can only be --

2 RICHARD SCALI: No one's in the back
3 alley?

4 ATTORNEY JAMES RAFFERTY: The door
5 can only be used for -- and I'm paraphrasing,
6 secondary emergency egress. But that's the
7 concept. And the language is probably
8 slightly more precise in the Zoning decision.

9 RICHARD SCALI: 144 -- I'm sorry, so
10 it would be seven less than 144.

11 ATTORNEY JAMES RAFFERTY: Seven
12 less.

13 RICHARD SCALI: So it would 137; is
14 that right?

15 ATTORNEY JAMES RAFFERTY: Right.

16 RICHARD SCALI: So 137 which would
17 be 112 seats, 16 bar and nine standing still.

18 ATTORNEY JAMES RAFFERTY: That's
19 correct.

20 RICHARD SCALI: The fire escape
21 issue. The neighbor mentioned the fire

1 escape coming down onto that building.

2 ATTORNEY JAMES RAFFERTY: I don't
3 think he meant to imply fire escape. We're
4 familiar with the building, the landlord is
5 as well. The neighbor suggests that he would
6 exit a window of his building and come across
7 the roof of that building out of necessity.
8 There isn't a structure, a fire escape per
9 se. There's no --

10 RICHARD SCALI: There isn't a
11 mechanism. I couldn't understand why the
12 fire escape would go on someone else's
13 building.

14 ATTORNEY JAMES RAFFERTY: Just for
15 the record, this is Mr. Ehrezaie. He is the
16 landlord. We discussed this, there is no
17 fire escape. It was my understanding that
18 that gentleman was a tenant, a residential
19 tenant of the building next-door. And he
20 made some reference if his fire egress is
21 across the roof of that building.

1 MR. EHREZAIE: There is --

2 ATTORNEY JAMES RAFFERTY: Do you
3 want to hear from him?

4 RICHARD SCALI: I just want to make
5 sure that's the case.

6 MR. EHREZAIE: There is no fire
7 escape unless he wants to jump from --

8 RICHARD SCALI: So someone could if
9 they had to jump, but there's nothing that
10 attaches the building together.

11 ATTORNEY JAMES RAFFERTY: There's
12 nothing from the serving of beer or wine here
13 to prevent him from jumping. Whatever the
14 condition is that he thinks he has.

15 RICHARD SCALI: It's a safety issue,
16 that's what we're talking about.

17 ATTORNEY JAMES RAFFERTY: But I
18 don't get its relevance to the application.
19 If he's capable of jumping, good luck to him.
20 But I'm not sure it has any action here by
21 the Commission one way or the other that

1 would inhibit his ability to jump out of the
2 window.

3 MR. PATEL: The mechanical equipment
4 will be ten feet away from that building, so
5 if there's obstruction or if somebody wants
6 to get out of the four windows that do exist
7 on the side facade, I mean it's a huge
8 liability for me to locate equipment anywhere
9 near a window like that anyway. There's ten
10 feet away --

11 RICHARD SCALI: I don't want to make
12 it bigger than it is. I just want to make
13 sure there's nothing attached.

14 MR. PATEL: There's one internal
15 stair -- I checked with ISD. There was a
16 permit pulled for emergency egress line that
17 was done there. There seems to be one
18 apartment that doesn't seem to have two means
19 of egress as far as getting to one of the
20 staircases. Maybe that's the apartment that
21 he's in --

1 ATTORNEY JAMES RAFFERTY: With all
2 due respect, this has nothing to do with our
3 application and nothing -- he's now talking
4 about another building and I don't want to
5 confuse the record.

6 Why don't you let me do the talking,
7 okay?

8 RICHARD SCALI: It's just a public
9 safety issue. I want to make sure that we
10 discussed it and it's clear that's all.

11 All right. So the hours of operation
12 were?

13 ATTORNEY JAMES RAFFERTY: As
14 proposed. We had asked for a one a.m. but I
15 think we had proposed at the hearing that we
16 would consider a limitation earlier in the
17 week subject to what the Commission saw as
18 appropriate.

19 RICHARD SCALI: So no one there
20 before eight a.m.?

21 ATTORNEY JAMES RAFFERTY: That's

1 correct. He does wish to serve breakfast,
2 and I was doing my best to kick him under the
3 table and say I think you want seven, because
4 you're going to need the people in there to
5 prepare for the breakfast. But I was told
6 eight was fine, so it must be a leisurely
7 breakfast crowd as opposed to --

8 RICHARD SCALI: Late brunch.

9 ATTORNEY JAMES RAFFERTY: -- the
10 working. But you tell me, you anticipate
11 breakfast on the weekends? Not during the
12 week, on Saturdays and Sundays.

13 RICHARD SCALI: And closing hour you
14 were looking for one a.m.?

15 ATTORNEY JAMES RAFFERTY: That's
16 right.

17 RICHARD SCALI: But I think we
18 suggested something like midnight or
19 something. Weekends?

20 ATTORNEY JAMES RAFFERTY: Yes, we
21 would like the one a.m. on the Thursday,

1 Friday and Saturday. And he could do
2 midnight on the rest of it. And that's just
3 as we know to allow people to finish up. I
4 mean, I think the expectation is the kitchen
5 wouldn't continue to serve after eleven. But
6 if someone was eating, they wouldn't have to
7 -- you know, closing means leaving and all
8 that. So a midnight, a midnight closing
9 during the week would mean kitchen closes at
10 eleven. On the weekend he would like the
11 opportunity to have the one a.m. and keep the
12 kitchen open.

13 RICHARD SCALI: All right.

14 Any other questions? I want to make
15 sure we have everything in terms of what we
16 are considering.

17 CHRISTOPHER BURKE: Well, as I
18 understand it, there was no overwhelming
19 support for the application. And I question
20 whether the nine residents and seven
21 businesses who've signed a petition would

1 constitute that support. As I understand,
2 there is someone from the public present this
3 morning --

4 RICHARD SCALI: Right.

5 CHRISTOPHER BURKE: -- to speak on
6 the issue.

7 RICHARD SCALI: Right. I wanted to
8 get the two people up here to speak if they'd
9 like to. Do you want to hear from them?

10 CHRISTOPHER BURKE: I think so, yes.

11 RICHARD SCALI: The people who are
12 in the audience do you want to come forward
13 to speak. Were you here at the last meeting?

14 MICHELLE GENOVA: I was. Michelle
15 Genova, an abutter, G-e-n-o-v-a.

16 RICHARD SCALI: And what's your
17 address again?

18 MICHELLE GENOVA: 84 Tremont, Unit
19 1.

20 RICHARD SCALI: 84 Tremont.
21 So, have you heard all the facts we

1 talked about, all the different -- the
2 changes that we talked about?

3 MICHELLE GENOVA: I have not been
4 contacted by the group at all. Neither has
5 my contingent of neighbors as far as I know,
6 because we're pretty good at letting each
7 other know. So this is news to me. I guess
8 the hours are a problem with beer and wine
9 still for us. The nine businesses and
10 neighbors -- I didn't catch everything, but I
11 know at 79 Tremont that that guy's a chef.
12 We already talked to him, and he said he
13 couldn't, you know, he understood our
14 concerns but he couldn't go against the chef
15 community. And I have a feeling that, you
16 know, the businesses are looking for business
17 there. I think that's a great idea. We need
18 business there. But I would question the
19 addition of their names as overwhelming
20 support. Because again we go back to the
21 cap. And Mr. Rafferty said that this is a

1 unique situation with the back door
2 restriction, and it really is a unique
3 situation from the neighbor perspective in
4 that that building is just surrounded by us.
5 And we've never had to deal with a restaurant
6 there before. We've had to deal with a
7 benevolent society that proved to be not so
8 neighborly. And we can't hold that against
9 anyone coming in. We just -- we feel that
10 that space is not suited for beer and wine
11 nor a restaurant. We feel that, you know,
12 there's plenty of businesses around. There's
13 a new used clothing store that just popped up
14 on Columbia and Hampshire. There's a
15 clothing -- in a really big space. The
16 clothing and furniture store, very modern in
17 Union Square. There are businesses that
18 exist. There's a used bookstore that's doing
19 great in Inman. There are businesses that
20 don't pull in crowds of 137 people for
21 breakfast, lunch and three seatings at dinner

1 at least. I mean, if they're going to do
2 Tapis (phonetic) at five, have seatings,
3 seven, nine, eleven, that's a lot of people
4 coming through our neighborhood. And the
5 issue of trash, that goes with people that
6 have been drinking. The issue of noise, that
7 goes with people who have been drinking. And
8 just that many bodies in general in that tiny
9 little space surrounded by people that have
10 lived there for a long time and just want to
11 live there in peace with their families.

12 RICHARD SCALI: Well, we definitely
13 -- when Santo Christo was there, that was a
14 huge problem.

15 MICHELLE GENOVA: Even then they
16 were only allowed to operate on the back
17 function room on weekends. So Friday and
18 Saturday. They weren't allowed on Sundays.
19 And they had to shut down at eleven as I
20 recall. And they were loud until eleven.
21 But at least we didn't have to deal with it

1 all week and nobody went out that back door.
2 They didn't use the back door. I've lived
3 there for nine years.

4 ATTORNEY JAMES RAFFERTY: I've been
5 familiar with it for a lot longer than that.
6 Here's the CI with 495 people. It had a full
7 operating kitchen and a full alcohol license.
8 The notion that the space can't accommodate
9 beer and wine is just factually inaccurate.
10 The CI -- I represented the club in
11 disciplinary hearings regarding that back
12 door.

13 RICHARD SCALI: No, I was here for
14 all those.

15 ATTORNEY JAMES RAFFERTY: The notion
16 that they weren't using the back door is
17 fiction.

18 RICHARD SCALI: There was a number
19 -- I'm not saying that some days it was quiet
20 there. It wasn't open seven days a week, but
21 when they did have some events, it was noisy

1 and there were problems.

2 MICHELLE GENOVA: I think before we
3 bought it -- we bought in 2001 --

4 RICHARD SCALI: Yes, and maybe you
5 were at the end of it.

6 MICHELLE GENOVA: -- and we
7 basically face that back door.

8 RICHARD SCALI: You probably --
9 you're used to it being very quiet there for
10 sure now because nothing's been there for a
11 while.

12 MICHELLE GENOVA: Sure. We're not
13 saying that we don't want anything there. We
14 definitely want something there. We think
15 other types of businesses could work there.
16 But anything that involves beer and wine just
17 spells trouble for us as neighbors. And so,
18 you know, my main point is that the people
19 that surround that building who actually own
20 and live there are against this application.

21 RICHARD SCALI: Thank you very much.

1 MICHELLE GENOVA: You're welcome.

2 RICHARD SCALI: Sir, did you want to
3 speak?

4 UNIDENTIFIED MALE: No.

5 ATTORNEY JAMES RAFFERTY: Mr. Chair,
6 just briefly to the extent it's relevant, I
7 mean, the property owner's here. He has
8 participated in the city's facade improvement
9 program. He has redone it, and has been
10 attempting for years to find a tenant. It's
11 a very deep and large space. It's got a
12 prominent position. It's in a business
13 district. The issue about the back portion
14 was addressed by the Variance. So I have yet
15 to be able to ascertain why a restaurant -- I
16 mean, in fairness to the speaker, she was
17 candid, they don't think a restaurant is
18 compatible and they prefer not to see a
19 restaurant. Well, I'm not sure what it is
20 about the beer and wine that changes the
21 dynamic about of the issues of concerns.

1 RICHARD SCALI: I mean, usually the
2 concern we have when we're considering beer
3 and wine, usually beer and wine is an
4 accessory to the food and that usually is a
5 lot more low key then if you have a full
6 alcohol license with a bar and that kind of
7 thing. People tend to drink more and hang
8 out more when there's a full alcohol license.

9 ATTORNEY JAMES RAFFERTY: Correct.

10 RICHARD SCALI: So we have made it
11 our policy that if it is a restaurant where
12 they have wine or beer as an accessory to the
13 food, where food is the main purpose of the
14 use, that we're a little bit more lenient
15 with doing that. But we have said in the
16 past that, you know, we encourage you to be
17 operating there first and be known and kind
18 of get your feet wet before you apply for a
19 beer and wine license. And although that has
20 changed over the years with our policies.

21 ATTORNEY JAMES RAFFERTY: There was

1 testimony at the hearing, you recall.

2 RICHARD SCALI: Yes.

3 ATTORNEY JAMES RAFFERTY: The
4 applicant did seek other opportunities. We
5 know the cap issue is present because of the
6 new license. So I can't imagine that if he
7 found a full alcohol license and was seeking
8 to transfer it, that the testimony would be
9 any different than what we've just heard.

10 RICHARD SCALI: Right.

11 ATTORNEY JAMES RAFFERTY: In this
12 case because there isn't a beer and wine
13 license available, he's asking that the
14 public need exists under the statute and that
15 he's demonstrated support. And if this were
16 a transfer application, I don't imagine -- I
17 mean, the Commission would have to respond to
18 all those issues, but it could be a lot more
19 active use if the next applicant were able to
20 locate an all alcohol license and do a
21 business deal, you could see a lot more

1 active restaurant use here. Certain spaces,
2 given their volume and size, lend themselves
3 to a certain type of business model, and this
4 space, given its size, sure if it was a
5 strong retailer or any retailer willing to
6 come and lease the space, the landlord
7 wouldn't be struggling with a vacant building
8 for the past two and a half, three years.

9 RICHARD SCALI: Questions?

10 DANIEL TURNER: No questions.

11 RICHARD SCALI: No questions?

12 CHRISTOPHER BURKE: No questions.

13 RICHARD SCALI: How crucial is the
14 one a.m.?

15 ATTORNEY JAMES RAFFERTY: Not --

16 RICHARD SCALI: Can we do eleven
17 during the weekdays and twelve on the
18 weekends?

19 ATTORNEY JAMES RAFFERTY: Yes.

20 RICHARD SCALI: All right. Pleasure
21 of the Commissioners?

1 CHRISTOPHER BURKE: Well, I think
2 that certainly the police department would
3 have some concerns about the support of the
4 neighborhood. It is a tightly congested
5 area. There are a lot of licensed
6 establishments in the area, and I would have
7 certainly have liked to see more support from
8 the residents. I know that typically, you
9 know, there is the "Not in my backyard"
10 thinking that goes along with some of these
11 projects, but I get to go home at the end of
12 the day. And I do have some genuine concerns
13 with the feelings of the residents.

14 RICHARD SCALI: Okay.

15 DANIEL TURNER: Mr. Chair, I concur.
16 Again, typical situation that we're
17 confronted with. Certainly the neighborhood,
18 the residents bring up valid points, but this
19 is -- again, this is Cambridge. It's a
20 densely populated community. Certainly any
21 establishment opening up is going to bring

1 parking, people, noise. I don't feel there's
2 enough to warrant not approving this based on
3 that.

4 I believe there are conditions that
5 this applicant has taken on to appease some
6 of the serious concerns from the
7 neighborhood. But I think to -- first of
8 all, one thing I've been struggling with is
9 the overwhelming neighborhood support. Well,
10 how do you get overwhelming neighborhood
11 support from a neighborhood that's made it
12 clear they don't want a restaurant, period.
13 So I think this restaurant, the applicant has
14 done his homework with regards to the
15 neighborhood concerns on his back alley.
16 He's limiting everything to the front of the
17 restaurant, Cambridge Street. We have a
18 vacant property that's been an eyesore for a
19 number of years. I don't think I can go as
20 far as to deny the application just because
21 it's another restaurant. I think that might

1 be going a little too far as far as the
2 License Commission is concerned.

3 As far as the neighborhood support, I
4 think in, you know, again many of the
5 concerns of the neighbors can be addressed.
6 If this thing moves forward and there's
7 issues that the neighbors are bringing up
8 with traffic, noise, parking, drinking,
9 loitering, smoking, what have you, certainly
10 there's an avenue that they can file
11 complaint and we can have the restaurant in
12 for disciplinary hearings. So I'm going to
13 make a motion or I am going to vote on a
14 motion to approve the application based on
15 the conditions set forth.

16 RICHARD SCALI: Yes, I think I would
17 agree with the Deputy Chief. Although I had
18 the same concerns that you had with regards
19 to overwhelming support. But I think this is
20 probably about as low key as you can get if
21 you're going to have any kind of a restaurant

1 there at all. I feel that somehow the
2 landlord would be then very prohibitive from
3 doing any kind of use in that location, and
4 we really want to make sure that something is
5 there in that storefront.

6 So I guess I'm going to propose that
7 there be -- if we do vote, that there be a
8 number of conditions if I could just lay them
9 out and then we can vote as is to that.

10 No. 1, that this is a new menu in the
11 city. That we do not have, you know, any
12 kind of Turkish restaurants and that's a need
13 in the city for a new and innovative menu.

14 That the back door adhere to the BZA
15 decision, which that it only be for emergency
16 use only.

17 That all deliveries and trash be done
18 to the front door as required.

19 That making sure that all employees
20 exit through the front door, and there's no
21 one hanging out in that back alley smoking or

1 anywhere other than where they should be out
2 on the front, side of the building.

3 That the capacity be 137; 112 seats, 16
4 at the bar, nine standing.

5 That the hours be eight a.m. to eleven
6 p.m. on the weekends. And on Thursday,
7 Friday and Saturday, eight a.m. to midnight.

8 ATTORNEY JAMES RAFFERTY: I think
9 you meant the weekdays.

10 RICHARD SCALI: I'm sorry, weekdays.
11 Eight a.m. to eleven on the weekdays.

12 ATTORNEY JAMES RAFFERTY: Meaning
13 Sunday through Thursday?

14 RICHARD SCALI: Sunday through
15 Thursday, yes.

16 ATTORNEY JAMES RAFFERTY: Thank you.

17 RICHARD SCALI: And that there be a
18 six-month review once you're up and
19 operating.

20 ATTORNEY JAMES RAFFERTY: I'm sorry,
21 I shouldn't have said -- it's Sunday through

1 Wednesday. And Thursday, Friday and Saturday
2 until midnight.

3 RICHARD SCALI: Sunday through
4 Wednesday.

5 ATTORNEY JAMES RAFFERTY: Sunday
6 through Wednesday, thank you.

7 RICHARD SCALI: Thursday, Friday and
8 Saturday until midnight.

9 CHRISTOPHER O'NEIL: The night
10 before a legal holiday?

11 RICHARD SCALI: No. That's only on
12 two a.m.'s.

13 DANIEL TURNER: Mr. Chair?

14 RICHARD SCALI: Deputy Chief.

15 DANIEL TURNER: Can we also add that
16 the restaurant either designate somebody or
17 as a whole reach out to the neighbors? Can
18 we get --

19 RICHARD SCALI: It's always
20 helpful if you have a --

21 DANIEL TURNER: -- to address any

1 concerns that they may have. Let's not shut
2 the neighbors out if you will.

3 RICHARD SCALI: It might be helpful
4 to go around to the immediate abutters and
5 invite them in and have a discussion and call
6 them if there's a problem. We certainly hear
7 about it the next day anyway.

8 CHRISTOPHER BURKE: I agree with
9 that. That would be a good idea if there was
10 a point person --

11 ATTORNEY JAMES RAFFERTY: Establish
12 a contact.

13 CHRISTOPHER BURKE: -- to go out in
14 the neighborhood and --

15 RICHARD SCALI: And to call them?

16 CHRISTOPHER BURKE: Right.

17 RICHARD SCALI: Okay. So we'll add
18 that on as a condition, that there be a point
19 person established that residents can call on
20 a regular basis if there's a problem.

21 Further discussion? So that's a motion

1 with the conditions as stated. Moved.

2 DANIEL TURNER: Second.

3 RICHARD SCALI: Seconded.

4 All in favor.

5 (Aye.)

6 ATTORNEY JAMES RAFFERTY: Thank you
7 very much.

8 RICHARD SCALI: Thank you and good
9 luck. I hope it all works out and that the
10 neighbors are not disturbed by this. You'll
11 be back here very soon if you do.

12 * * * * *

13 RICHARD SCALI: Sir, I'm sorry,
14 you're here for?

15 HASSAN GHAZI: For decision hearing.

16 RICHARD SCALI: For?

17 HASSAN GHAZI: Khadoug.

18 K-h-a-d-o-u-g.

19 RICHARD SCALI: What am I missing,
20 Mr. O'Neil?

21 Which one are you here for?

1 HASSAN GHAZI: It's 1154 Mass. Ave.

2 RICHARD SCALI: Oh. Didn't we vote
3 on that? We already voted on that.

4 HASSAN GHAZI: Oh, because I have
5 the decision today.

6 RICHARD SCALI: We voted on the
7 25th. We approved it. You didn't know that?
8 What's your name?

9 HASSAN GHAZI: Hassan Ghazi.

10 RICHARD SCALI: Oh. Yes, you were
11 here. Then we approved it.

12 CHRISTOPHER O'NEIL: If they approve
13 it at the hearing, you don't have to come to
14 the decision hearing. I actually have your
15 approval letter upstairs.

16 HASSAN GHAZI: Okay. I don't know
17 that. Okay. Thank you so much. Thank you
18 so much.

19 RICHARD SCALI: You're all set.
20 You'll have to get your sign-offs and you'll
21 be okay.

1 HASSAN GHAZI: Oh, okay. Thank you.

2 RICHARD SCALI: Sorry you had to
3 wait.

4 CHRISTOPHER O'NEIL: Your approval
5 letter went out in the mail today.

6 * * * * *

7 RICHARD SCALI: The only other item
8 we have is Rain or Shine Catering which is a
9 peddler's license. Mr. Frazier.

10 CHRISTOPHER O'NEIL: I know he spoke
11 to Elizabeth a few times.

12 RICHARD SCALI: I know he came in
13 yesterday. I saw him here. The problem that
14 we're having is I believe, am I right,
15 Mr. O'Neil, that he has still continued to
16 operate since --

17 CHRISTOPHER O'NEIL: According to
18 Mary Chevers (phonetic) he's been out there,
19 you know, quite a few times. I believe
20 Elizabeth got a complaint that he was on
21 someone else's route the other day.

1 DANIEL TURNER: Is this a citable
2 offense?

3 RICHARD SCALI: Well, we do have the
4 power to fine under the Ordinance. I think
5 it's \$50 for the violation. But I mean he's
6 been operating, from what I understand, for a
7 couple of years without a license, right?
8 And we had to force him to come in and apply;
9 is that right?

10 CHRISTOPHER O'NEIL: That's my
11 understanding, that he's been operating for
12 quite sometime unlicensed.

13 RICHARD SCALI: Oh, hello. You're
14 right on cue, Mrs. Lint. Mr. Frazier, Rain
15 or Shine has been operating --

16 ELIZABETH LINT: He's been operating
17 for years apparently. Mary Chevers has been
18 after him to cease operating. Andrea -- and
19 he keeps being out there. Then I spoke with
20 him before the hearing, told him he couldn't
21 be out there. You all told him at the

1 hearing he couldn't be out there. And Monday
2 I got a call from -- where's my notes? Sam's
3 Catering.

4 RICHARD SCALI: Yes. Sam's
5 Catering.

6 ELIZABETH LINT: That Rain or Shine
7 had two of his stops.

8 RICHARD SCALI: And what's his
9 excuse?

10 ELIZABETH LINT: His father died.
11 He's going bankrupt. He's had some tough
12 times. He's trying to do the right thing. I
13 said, you're not doing the right thing
14 because you were told not to operate and
15 you're operating.

16 RICHARD SCALI: Do you know why he's
17 not here today?

18 ELIZABETH LINT: He's probably out
19 selling on his route.

20 Well, so I did get a call from one
21 of the stops. Mabardy? Mr. Mabardy and he

1 said he canceled the service until he has all
2 his ducks in order.

3 Apparently Mabardy had called the union
4 and the union sent this guy to him. I don't
5 know how it works.

6 RICHARD SCALI: Well, I think I
7 wouldn't have had a problem if he just had
8 listened at our last hearing and not operated
9 until now. All he had to do was wait a
10 couple weeks and he would have been all set.
11 He can't obey the rules, you know, how is he
12 going to obey the rules even with a license?

13 ELIZABETH LINT: I know he's been
14 servicing DPW at lunchtime.

15 CHRISTOPHER O'NEIL: If it's denied,
16 he continues to operate, what repercussions
17 does he have?

18 RICHARD SCALI: Arrestable offense.

19 CHRISTOPHER BURKE: Is it?

20 RICHARD SCALI: I can look it up.

21 ELIZABETH LINT: I believe it is.

1 RICHARD SCALI: Plus, I think we're
2 able to fine him under the Ordinance, too.

3 CHRISTOPHER BURKE: I don't know if
4 that would be our course of action.

5 RICHARD SCALI: Pleasure of the
6 Commissioners?

7 CHRISTOPHER BURKE: Well, I think
8 that the police department had some ideas,
9 but they were only if he showed up today I
10 guess.

11 ELIZABETH LINT: I didn't -- well,
12 generally for the decision-making hearing we
13 tell people they don't necessarily have to
14 show up.

15 RICHARD SCALI: But you would think
16 that all the problems you had with him the
17 last couple of days, you would think he would
18 have shown to make his case today. I would
19 have thought.

20 ELIZABETH LINT: Well, I don't know.
21 He was crying on the phone. It was really

1 sad.

2 CHRISTOPHER BURKE: The police
3 department would tell him not to conduct his
4 business for a one-month period until he
5 abides with the conditions. And apparently I
6 don't think that's going to happen either
7 given some of the excuses that he's given you
8 about tough times.

9 DANIEL TURNER: How does this routes
10 thing work? When a peddler license is
11 issued, do they apply for specific routes?
12 So when an accusation is made by another
13 vendor that he's taking his route --

14 ELIZABETH LINT: Oh, let me add
15 something to that, now that you say that.

16 DANIEL TURNER: That obviously -- if
17 he were granted the license, it would be a
18 violation or disciplinary on his license that
19 we could call him in on.

20 ELIZABETH LINT: At the original
21 hearing he said that he was taking over Sam's

1 Catering stop because Sam had retired. Sam
2 didn't retire, he had shoulder surgery.

3 CHRISTOPHER O'NEIL: He only had
4 three stops listed in his application, didn't
5 he?

6 RICHARD SCALI: All right. It just
7 gets worse.

8 CHRISTOPHER BURKE: I changed my
9 mind, let's lock him up.

10 RICHARD SCALI: I guess I'll make a
11 motion, then, to deny until he can come back
12 and prove to us that he can abide by the
13 regulations and cease operating until
14 approved.

15 ELIZABETH LINT: Mr. Chair.

16 RICHARD SCALI: Yes.

17 ELIZABETH LINT: The two stops that
18 he's taken over that were Sam's, they're not
19 even listed on his application.

20 RICHARD SCALI: Oh.

21 ELIZABETH LINT: It just gets better

1 and better.

2 RICHARD SCALI: All right.

3 DANIEL TURNER: Mr. Chair, as a
4 predecessor once stated, a license is a
5 privilege and not a right. And certainly I
6 think this applicant is not taking advantage
7 of the privilege.

8 RICHARD SCALI: I guess he sealed
9 his own fate. If he just waited a couple of
10 weeks, he would have been all set.

11 All right. So that's my motion then,
12 to deny until he can come back and abide by
13 the regulations and cease operating until
14 approved. Moved.

15 (Second.)

16 RICHARD SCALI: All in favor?

17 CHRISTOPHER BURKE: Aye.

18 DANIEL TURNER: Aye.

19 RICHARD SCALI: Anything else,
20 Mr. O'Neil?

21 CHRISTOPHER O'NEIL: In the decision

1 letter what can I add for repercussions if he
2 continues to operate in the city and he's
3 caught?

4 ELIZABETH LINT: I'll look at the
5 statute and see what it covers.

6 RICHARD SCALI: There's also an
7 Ordinance.

8 ELIZABETH LINT: Yes, I'll look at
9 both.

10 RICHARD SCALI: Mrs. Lint can fill
11 in the violations.

12 ELIZABETH LINT: I'll look at both.

13 RICHARD SCALI: It's also appealable
14 to the Superior Court, but that's another
15 issue, too.

16 ELIZABETH LINT: Right.

17 RICHARD SCALI: All right. I think
18 that's it, right?

19 ELIZABETH LINT: Would you like me
20 to have Officer Arcose to check DPW around
21 lunchtime?

1 RICHARD SCALI: That would be
2 helpful. But he already knows he shouldn't
3 be operating.

4 ELIZABETH LINT: Just for that.

5 CHRISTOPHER BURKE: What were the
6 three stops, DPW?

7 ELIZABETH LINT: He put on the
8 application DPW, a construction site at
9 Raymond Street and AZ Auto Body, A to Z Auto
10 Body. But he was -- is that Mabardy, A to Z?

11 RICHARD SCALI: I don't know.

12 ELIZABETH LINT: I don't know. But
13 there was another stop up there as well.

14 RICHARD SCALI: Up at Smith Place?

15 ELIZABETH LINT: In that general
16 area.

17

18 RICHARD SCALI: That's it for today.
19 motion to adjourn. Moved.

20 DANIEL TURNER: Seconded.

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RICHARD SCALI: All in favor?

(Aye.)

(Whereupon, at 10:55 a.m., the
meeting was adjourned.)

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the undersigned
Notary Public, certify that:

I am not related to any of the parties
in this matter by blood or marriage and that
I am in no way interested in the outcome of
this matter.

I further certify that the testimony
hereinbefore set forth is a true and accurate
transcription of my stenographic notes to the
best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set
my hand this 15th day of June 2010.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

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