

BOARD OF ZONING APPEAL  
FOR THE  
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, SEPTEMBER 28, 2017  
7:00 p.m.

in

Senior Center  
806 Massachusetts Avenue  
First Floor  
Cambridge, Massachusetts 02139

Constantine Alexander, Chair  
Brendan Sullivan, Vice Chair  
Janet Green, Member  
Andrea A. Hickey, Member  
Patrick Tedesco, Member  
Slater W. Anderson, Associate Member

Sean O'Grady, Zoning Specialist

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(7:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. As is our custom, we will start with continued cases. These are cases that started at an earlier night and for one reason or another have been continued until tonight. And then we'll turn to our regular agenda.

Before I start the meeting, I'd like to read a statement:

After notifying the Chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium subject to reasonable requirements that the Chair may impose --

UNIDENTIFIED MEMBER FROM THE AUDIENCE:

Microphone?

CONSTANTINE ALEXANDER: Sorry?

JANET GREEN: Microphone.

UNIDENTIFIED MEMBER FROM THE AUDIENCE:

Microphone.

CONSTANTINE ALEXANDER: I thought I was talking loud enough, but, okay, sure.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: There's a fan.

CONSTANTINE ALEXANDER: Okay, understood. Thank you.

Okay, I can be heard. I'm going to start again, the statement I wish to read.

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

attendees at that meeting that a recording is being made.

And I wish to advise is that there are two recordings being made:

One is by our stenographer. She, to assist her in preparing the transcript of the meeting, she records to help her out. And the other, a citizen of the city has left a tape recorder right there. So there are two recordings being made.

Is there anyone else here regarding this meeting? I assume nobody is making a video since we can't see any.

Okay, with that, beginning -- no, I'm going to start with the continued cases.

\* \* \* \* \*



(7:00 p.m.)

(Sitting Members Case BZA-013691-2017: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: And the Chair is going to call first case 013691, 346 Washington Street.

Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: There's no one here wishing to be heard? Is the petitioner --

SEAN O'GRADY: No.

CONSTANTINE ALEXANDER: She doesn't plan to come?

SEAN O'GRADY: No, no. We viewed this as just a loose end.

CONSTANTINE ALEXANDER: Okay. All right. Let me then explain.

Back in several meetings ago, on July 27th at our

hearing this petitioner sought relief from our Board seeking a Variance for construction of stairs and the like and a Special Permit with regard to putting windows in the setback. At that meeting the Board was favorably disposed to the granting of relief. We in fact voted to grant the Variance and we commented favorably on the Special Permit, but lo and behold we failed to take the actual vote on the Special Permit. So the purpose of tonight is to now take the vote that we didn't take the last time.

I think all five members are here tonight. We were here on, when we -- back in July. So I don't think there's any need unless people feel otherwise need to go into the case, discuss what it's all about.

JANET GREEN: I'm comfortable.

ANDREA HICKEY: Take a vote.

CONSTANTINE ALEXANDER: Okay, so we'll now move to a vote for the Special Permit.

The Chair moves that this Board make the following

findings with regard to the Special Permit being sought:

That the requirements of the Ordinance cannot be met without a Special Permit.

At that traffic generated or patterns of access or egress resulting from the relocation of the windows will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses that's permitted in the Ordinance will not be adversely affected by what is proposed. And in fact, there is a letter from one of the abutters in support of the relief being sought.

That no nuisance or hazard will 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.

And that generally what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this

Ordinance.

So on the basis of these findings the Chair moves we grant the Special Permit requested on the condition that the work proceed in accordance with the plans that we initialled and approved with regard to the Variance.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion granted.

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

\* \* \* \* \*

(7:05 p.m.)

(Sitting Members Case: BZA-013730-2017: Constantine

Alexander, Brendan Sullivan, Janet Green Andrea A. Hickey,  
Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will next call  
case No. 013730, 8 Brattle Street.

Is there anyone here wishing to be heard on this  
matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair,  
members of the Board. For the record, my name is James  
Rafferty. I'm an attorney with offices at 675 Massachusetts  
Avenue. I'm appearing this evening on behalf of the  
applicant &pizza and this is an application for a fast food  
Special Permit to be operated at --

CONSTANTINE ALEXANDER: Some people can't hear.

ATTORNEY JAMES RAFFERTY: Okay.

This is an application for a Special Permit by the  
technical name of the application the applicant is set forth  
in the application, it's IMA Pizza Store 21, LLC, doing  
business as &pizza. The case seeks a fast order Special

Permit at a location at 8 Brattle Street in Harvard Square. As I'm sure most of the Board are familiar with, this case was heard. It was a prior application for a Special Permit by this operator that was heard by the Board and decided at your April 27th meeting. And at that meeting three board members voted in favor of the Special Permit and two board members did not and thus the Special Permit was not granted under the provisions of the repetitive petition requirements of the Ordinance that would limit the ability for an applicant to return within two years once a negative petition, a negative decision was issued on a case. I provided the Board in an earlier filing with a copy of the leading case in this area, which deals directly with the question or the issue of repetitive petitions. It's called the Ranney case. And in that case the Court examined Section 16 of Chapter 40A which is the, at which is identical and is the statutory predecessor or rationale for our provisions in Article 10 regarding the repetitive

petition case.

CONSTANTINE ALEXANDER: Mr. Rafferty, let me interrupt you just for a second. I want to give some comments to the audience so that everyone -- we're all on the same page.

As Mr. Rafferty correctly has stated, petition was denied in -- that was submitted was denied in April. Ordinarily that means you cannot come -- the petitioner cannot come back before our Board with that same proposal or something very similar for two years. However, Section 10.51 of our Ordinance, which is identical provision in the state statute, says that, if we vote, this Board votes that there are specific and material changes in the conditions upon which the previous unfavorable action was based, we make that finding. Then we can hear the case tonight and the petitioner does not have to wait the two years.

So, what's going to happen tonight, and this is really the reason why I wanted to speak a little bit, we're

going to deal first with the Section 10.51. Namely, is what they're proposing tonight contained specific and material changes in the conditions upon which we previously denied relief? That's a narrow issue. And to the extent when we deal with that issue, I'm only going to take comments to people who address that issue. We're not going to get into the merits of the case at this stage. And if anyone does lapse into the merits, I will rule them out of order. We will then take a vote. If we vote that there are specific and material changes being proposed tonight from what we've turned down, then we will go on to the merits of the case. And then comments on whether it's a good idea or a bad idea or whatever, will be fine. It's a broader discussion at that point. But if we don't find that there were specific and material changes in the conditions, then the case will be over for tonight. We'll not get to the second case. We will not get to the merits. And then the petitioner can do what he wishes to do with regard to the balance of the two

years. The one thing we know is that the proposal that's before us tonight cannot be heard tonight or any time within the two years from the April decision.

I just want to be very clear about that so we don't start wandering over into merits when we shouldn't be talking about the merits.

With that, Jim, I'll turn it back to you, I'm sorry, but I want to make it clear to everyone how we're going to run this meeting.

ATTORNEY JAMES RAFFERTY: I couldn't agree more, Mr. Chairman, and I appreciate the clarity. As the Chair is well aware and noted, the provisions around the repetitive petition are operative in this case because of the fact that the petitioner was here two years ago. Less than two years ago, back in April.

So what, what Section 10.51 requires is two determinations as to whether the Board can hear the case. One of those determinations is a requirement that the

Planning Board, that all but one member of the Planning Board consent to the case being heard again. So I'd like to draw the Board's attention to the three communications in the file from the Planning Board, because in fact the Planning Board heard this applicant went before the Planning Board in July of this year to address the issue about allowing the matter to come back to this Board under the provisions of Section 10.51. They held a lengthy hearing, and there is a communication in the file dated July 19th which documents that the Planning Board heard the case. Their vote was that there are sufficient material changes in the application such that they believe that they would consent to the BZA's hearing the case within the two-year period. So that was a jurisdictional prerequisite to bring the matter here. So that issue is -- has been resolved in favor of the applicant. It also happened that the case was then before the Planning Board in August shortly before when this case was scheduled to be heard in the first week of

August or August 10th. At that time the Planning Board was acting in its role as commenting on the BZA cases. They discussed this case extensively at that time and they also -- they spoke to both issues, both the issues around the repetitive petition, and they specifically spoke to their view about the appropriateness of the Special Permit. And we're not yet there in this hearing, I recognize that, but in that vote, once again, the Planning Board opined on the issue of consenting to the case going forward. So I wanted to bring to the Board's attention that there are not one, but two actions by the Planning Board which regard to their role in providing consent to this matter being heard. And in both instances, the Planning Board concluded that there were material changes. In the memorandum of law that I submitted with this application back in August, I provided a list of all of the changes to the exterior of the plan. Now, we have two large boards here and we -- this is our architect.

Louis, you want to introduce yourself? Give your name for the stenographer.

LOUIS CARTER: Louis Carter, McMahon Architects.

CONSTANTINE ALEXANDER: Mr. Rafferty, let me ask you a question as well. When we denied relief in April we cited three reason:

One of them was the physical appearance of signage that you're referencing now.

The second was whether there was a need in the neighborhood for a store or with a product offerings that your client had.

And the third was a matter of too much congestion would be caused by what is being proposed.

Are you proposing tonight to address all three of those or just the design?

ATTORNEY JAMES RAFFERTY: No, no, all three of those.

CONSTANTINE ALEXANDER: Okay. I want to make

sure.

ATTORNEY JAMES RAFFERTY: And to be clear, and I'm not being technical here, I mean, the use of the word we, because I don't think that was a conclusion of the Board, right? Three members of the Board vote --

CONSTANTINE ALEXANDER: I'm sorry, sir. The Board -- the decision of the, the decision is the decision of the Board whether it was by 5-0 or 3-2 or 2-3, if you want to put it that way. It's still a decisions of the Board. The Board decided --

ATTORNEY JAMES RAFFERTY: No, I recognize that, Mr. Chair. But what I'm specifically drawing the distinction with, is that the Board did not conclude on the issue of whether it satisfied the criteria of need. The record reflects that one board member felt that to be the case and articulated that position. One board member and one board member alone articulated that position. And honestly since three other board members voted for it, I

think it has some relevance as to what is -- what is said to be the finding of the Board in a case where a majority of the Board support an application, whether it be in this case or any other case. So the Board -- the applicant failed to get four affirmative votes. However, it was not a majority finding by the Board that the applicant was deficient.

CONSTANTINE ALEXANDER: I'm sorry, but we're not -- let's not bore the audience with a legal debate. The decision of the Board is the decision of the Board. If you didn't get the four votes, the Board decided not to grant the relief.

ATTORNEY JAMES RAFFERTY: I couldn't agree more. I'm not disagreeing with that.

So the presentation tonight will address all three aspects of the application.

CONSTANTINE ALEXANDER: Fine. That's what I wanted to get out.

ATTORNEY JAMES RAFFERTY: No, no. There's no

question.

So we prepared a -- we prepared a larger image of the storefront because as the Board noted, it was --

CONSTANTINE ALEXANDER: This is what you're proposing now?

ATTORNEY JAMES RAFFERTY: This is what we're proposing.

CONSTANTINE ALEXANDER: Maybe members of the audience --

ATTORNEY JAMES RAFFERTY: That's why we brought two. And I thought if we wanted to circulate one, we could do that.

JOHN HAWKINSON: There's also an easel you could abscond with.

ATTORNEY JAMES RAFFERTY: Oh, that's a good suggestion. Maybe if -- you want to put it on the easel.

CONSTANTINE ALEXANDER: I would prefer an easel set up.

ATTORNEY JAMES RAFFERTY: Louis, we could go grab that easel.

PATRICK TEDESCO: This is no different than the image in the file?

ATTORNEY JAMES RAFFERTY: That's the image in the file. That's correct.

CONSTANTINE ALEXANDER: And this is the image that the Planning Board saw on the 18th of August?

ATTORNEY JAMES RAFFERTY: That is the image the Planning Board saw.

There is one change in that image that I want to draw to your attention because there's correspondence in the file.

CONSTANTINE ALEXANDER: That's why I asked.

ATTORNEY JAMES RAFFERTY: Okay.

If you look at the entry, the front door.

CONSTANTINE ALEXANDER: Which one? Because there's two.

ATTORNEY JAMES RAFFERTY: To the &pizza entry. If you allow me to point to it.

CONSTANTINE ALEXANDER: Right here.

ATTORNEY JAMES RAFFERTY: Yeah.

There was in the iteration that was shown to the Board, some type of -- I don't know how would you describe it, Louis?

LOUIS CARTER: Graphic.

ATTORNEY JAMES RAFFERTY: There was a graphic piece of art here. When we met after the Planning Board hearing, it was the first time it had appeared anywhere. And I want to -- and this is leading into my explaining what's been done to the changes, to the building. And it was acknowledged, oh, that was something that was thought of before. So in this area right here, where you see it as white with nothing --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- the image that the

Planning Board saw had -- I don't even know if we have a copy of it, because it had, it almost looked like some type of -- it had yellow lines in it.

CONSTANTINE ALEXANDER: The letter referred to from the citizen had a picture of what you showed the Planning Board, which showed that. You saw the letter, you should have seen the picture.

ATTORNEY JAMES RAFFERTY: Well, I didn't see the picture but I read the letter. But nonetheless there was something there. But the Planning Board reviewed this and we'll go through it. So it's not there any longer. It was never a point of discussion and it didn't appear there, and I would suggest that if you review the Planning Board comments, as well as the design work that went into this, it's relevant. So you'll see it's immaterial.

If this Board were to conclude that that should be, that this, that this graphic thing should go back on the wall, unusual, but I mean, we're here for a test of

compatibility. But in terms of what's different and what's a material change here, what we're suggesting as set forth in our memorandum, is that there is a physical change, a physical material change, that is specifically responsive to the issue addressed by one board member about the use of black, the color black and its prominence in the prior design. So we have, and I don't know if the Board has it here, but in my memorandum I contrasted the prior, the August image, that's not in that submittal, it's in my August 9th submittal.

CONSTANTINE ALEXANDER: All right.

ATTORNEY JAMES RAFFERTY: It's in the file. It's in the August 9th submittal. It contrasted this proposal with what was before the Board then.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: Now what happens is that the proposal we have now is the substitute for the new.

CONSTANTINE ALEXANDER: And that's the same one

that's attached --

ATTORNEY JAMES RAFFERTY: No, no, that's not the same one.

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY JAMES RAFFERTY: That's not this one is my point.

PATRICK TEDESCO: Right.

CONSTANTINE ALEXANDER: No.

ATTORNEY JAMES RAFFERTY: Okay, right. So this image here, which was present in our filing in August, was the image that the Planning Board reviewed in July.

CONSTANTINE ALEXANDER: You're right.

ATTORNEY JAMES RAFFERTY: At which time the Planning Board recommended that we, the applicant, go through a process --

CONSTANTINE ALEXANDER: Right, yes.

ATTORNEY JAMES RAFFERTY: -- to enlist the advice, guidance, and direction of the City's urban design staff at

Community Development and at the Historical Commission. And as the Board should be aware, in my correspondence to the Board that accompanied our Monday filing, I set forth the participants and the dates under which those meetings occurred. There were two separate meetings. They were attended by -- convened by the CDD staff, attended by Suzannah Bigolin, who is the Director of urban design; by Charles Sullivan, the Executive Director of the Historical Commission; and by Sarah Burks of the Historic Commission. She's a preservation planner. Also present was our architect and Mr. Murphy, Andrew Murphy from &pizza seated behind me, he was present. And in the first meeting we reviewed a number of issues and there was a list of items identified and I identified them in the letter. And then a second meeting was held where a subsequent filing was reviewed and that's the image you have here.

CONSTANTINE ALEXANDER: And that's the image that's attached to your --

ATTORNEY JAMES RAFFERTY: That's the image attached here. That's the image that the Planning Board saw, but for that, that piece of graphic material by the entry, which was never in any of the images that were part of the design review. So I apologize for the confusion that that created.

But at any rate, that's the image the Planning Board saw in its latest review where they not only made a finding that this image is appropriate, they also reaffirmed at my request and their vote, their prior finding regarding consenting to the matter being heard by this Board.

So that, there are two material changes of substance we're proposing in the application that warrant the second, the matter being heard again. The first are the physical changes to the proposal.

The physical changes to the proposal that were cited in the record at the hearing in April specifically was the use of black and the dark impact it had, and the fact

that it did not meet the criteria under paragraph C that the storefront be compatible to its surroundings, including the building in which it's located and other surroundings. We spent an enormous time studying this issue with this design staff at CDD. We looked at the whole facade of the building. And the pictures are in our latest submitting. The building is a long building. Cardullo's has a crimson on it. Black Ink actually has black. Tory Row had a blue awning. And the Crimson Corner corner had its own kind of Crimson awning, which everyone thought was really not well done. It had been there for 15 years, wrapped the corner, didn't expose enough of the marble.

We then looked at what the Board -- we looked at all -- both images. We looked at what the Board saw and rejected in April. We then looked at what we had filed as a revised plan, and then from that revised plan, those proposed changes were made.

CONSTANTINE ALEXANDER: Someone in the audience is

asking for you to talk more into the microphone.

ATTORNEY JAMES RAFFERTY: Okay.

So our position back in April, back in early August was that -- and set forth in the memo, that these changes here were material changes. There are even further material changes, all of which are contrast against the storefront that was proposed here. The biggest or the most significant change in this storefront, in the criticism that the Historical Commission had and others suggested, was that this was a two storefront. This had historically accommodated a restaurant, Tory Row, Greenhouse Cafe, Pewter Pot, depending how long you been around, always had a restaurant in that location. And the newsstand was on the other corner. Because this applicant was going to occupy both spaces, it was going to read as a single storefront. And there was a reason for that. It was a single operation. So in thinking about other material changes, it has an impact both on the material facade and the overall

experience of what's being proposed here.

The applicant engaged with a company that it has a relationship with called Milk Bar. And present this evening is Christina Tosi. Ms. Tosi is the founder, CEO, pastry chef of Milk Bar. It was her -- it is her creation. And she and her colleague here Sujean?

SUJEAN LEE: Lee.

ATTORNEY JAMES RAFFERTY: Lee. I apologize.

Ms. Lee happens to be a graduate of Harvard University and she knew Tory Row. And they're here tonight as well to talk about -- because the second material change is not only does that bring about a physical change to the facade, introducing new colors, separate entrances, and separate identities, and that was a very prominent feature about that.

If you look at the application that we had here on August 10th, the awnings were continuous still. There was no separation between the awnings. The awnings also had

sides to them. They had different colors, the pink and white striping. It continued to show black on the crimson awning. These were all issues that we were asked to move away from. It was Mr. Sullivan at the Historical Commission who challenged the design team and said why don't you think of a color combination that you have no brand connection with. Move outside your standard black color and don't be tied to that. Because the -- even the crimson in the August thing was felt it still had too much of a relationship to the black. That was probably the most well received aspect of the change to this facade. So it's one of the principal changes in terms of a direct response to a view on compatibility that was expressed by a board member who dissented and voted -- did not vote in favor of the earlier petition.

So in this case Milk Bar brings us to the second aspect or the second material change in the application. It's also depicted in our application materials, the floor

plan that shows what the presence of Milk Bar is. And Ms. Tosi was going to speak for a moment or two to talk about what's happening here. These aren't just two businesses that are happening to be occupying the same space. There's an experience going on here by the introduction of Milk Bar. And the Milk Bar Bakery experience, in one other location they have done this, combined with a restaurant, and Ms. Tosi was going to speak to that. Because what really is significant here, and the reason why they considered, went looking for a modification, is this very much is a restaurant. This has 45 seats inside, it has 14 seats outside. However, it does, because of the volume of takeout business frankly, it does fall under the fast food criteria. But it is very different from places that don't have seating. And while that's not a material change, the presence of Milk Bar and a bakery does change what was before the Board the last time in terms of the product offering and the dining experience.

CONSTANTINE ALEXANDER: Well, at the April hearing we were told about Milk Bar and there was going to be a bakery offering -- yes, we are.

ATTORNEY JAMES RAFFERTY: Well, you were told about it, but it was not -- I'd like Ms. Tosi to explain. Because what you were told, with all due respect, what you were told and what the intention was then, is that a product; a cookie and a drink that was offered, that was going to be prepared by Milk Bar, was going to be sold on the premises.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: This is different. And Ms. Tosi wants to talk about that. This is a bakery. This is a separate business. Milk Bar employees will be staffing this bakery. This will be selling cakes, this will be selling the full line of Milk Bar products. That is not what the commission heard the last time. I have seen the criticism suggesting the word Milk Bar was mentioned in

April. Yes, it was. And Ms. Tosi will speak to it. It was mentioned in the context of a single product, a single baked product, something called a cereal cookie, which we're happy to detail, and also a type of drink that they made. That was going to be sold at the counter by employees of &pizza. This operation, and Ms. Tosi if she may have a minute, will describe this bakery that she is placing in these premises that will offer the full range of bakery products that she does in other locations that was never in the proposal, never part of it, and if she may have a minute or two.

CONSTANTINE ALEXANDER: She does. Just one quick question. Do you have a binding legal agreement with between &pizza and Milk Bar?

CHRISTINA TOSI: If we -- we have a licensing agreement for the cornflake cream soda cookie that he's referring to, and the cream soda that he's referring to, that we were originally going to produce and license to &pizza for this location.

CONSTANTINE ALEXANDER: Right.

CHRISTINA TOSI: If we get the approval tonight, then we would proceed into the formal agreement for this location. But without the approval, we haven't drawn anything UP beyond those two products.

CONSTANTINE ALEXANDER: The reason I ask is to -- we're getting sort of getting into the merits here, but I'm trying to avoid that. To the extent that we find that what Milk Bar is going to offer constitutes a specific and material change from what was presented to us the last time. We need to know, we need some certainty as to what it is -- we can't after tonight you're changing your mind as to what you want to offer or how the --

CHRISTINA TOSI: We have like a term sheet but nothing formal.

ATTORNEY JAMES RAFFERTY: Mr. Chair, can you speak to that?

CONSTANTINE ALEXANDER: Who wants to speak on your

side?

ATTORNEY JAMES RAFFERTY: Well, in terms of material before the Board. The floor plan that you see here has a designated area for Milk Bar. It is called out on the plan. As the Chair and the Board well know, the plans will be subject to the approval -- any approval here will be subject to the floor plan. That floor plan depicts and lays out a Milk Bar operation. That elevation will be part of any approval here and contingent upon. So it's not nearly a representation that we hope to do it, and if all the I's and T's aren't dotted tonight, who knows, this could be a bait and switch and we'd never get Milk Bar. This Special Permit and the characteristics of this applicant will mean that it will include in the same way I would suggest that these -- the unique nature of these fast food Special Permits are tied to specific operators. This is an operator that has a Milk Bar bakery located in it. It's part of the food product offering offered by this.

CONSTANTINE ALEXANDER: And if the Milk Bar bakery ceases to operate on these premises, your special -- should we grant the Special Permit, would be revoked.

ATTORNEY JAMES RAFFERTY: I would think that they would not be in compliance with the requirements of their Special Permit.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: So they would need to return --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- and deal with that.

I fully understand the concern and want to emphasize that it is an integral component of the operation. And Ms. Tosi was going to describe it --

CONSTANTINE ALEXANDER: I'm going to give her a chance. Just a couple more questions so I can understand

the framework.

You said all the employees are going to be  
&pizza is not going to have any employees?

ATTORNEY JAMES RAFFERTY: No, I said just the  
opposite.

CONSTANTINE ALEXANDER: I'm sorry, go ahead.

ATTORNEY JAMES RAFFERTY: I said in the prior  
application, what's material different in this application,  
Milk Bar employees as Ms. Tosi is dying to tell you, will  
operate Milk Bar. Their cash register, their staff, their  
products. That is an operation owned and operated by Milk  
Bar and their employees. That was never the case in the  
prior application.

The balance of the space will be Milk Bar space.  
But the dining tables, you'll hear from Ms. Tosi, will  
accommodate patrons from both places.

CONSTANTINE ALEXANDER: Who will maintain the  
cleanliness of the premises, the dining table, the

restrooms, and the like?

ATTORNEY JAMES RAFFERTY: That would be the principal obligation of the restaurant of &pizza.

CONSTANTINE ALEXANDER: &pizza. So &pizza will be taking care of all of that. And you will be offering -- you are selling through &pizza or in part on the premises your bakery products?

CHRISTINA TOSI: Yeah.

CONSTANTINE ALEXANDER: Okay. Now --

CHRISTINA TOSI: Oh, but not through &pizza.

ATTORNEY JAMES RAFFERTY: Not through &pizza.

CHRISTINA TOSI: Not directly.

ATTORNEY JAMES RAFFERTY: They're going to have their bakery. And what Ms. Tosi wants to tell you, if you're familiar with Milk Bar, if you'd had an opportunity -- and by the way, a bakery is an as-of-right use here. She doesn't need a fast food Special Permit to operate her bakery. But the Milk Bar bakery is going to be

an independent operated bakery by Ms. Tosi's company located, as she has in one other location, in a premises -- and I'd like her to tell you why that's appealing to her. Because I asked her to address the fact, well, if you want to open a bakery in Harvard Square, why not just go open a bakery? You're going to have a lot of critics come forward and say oh, look it, we love Milk Bar but we're not crazy about fast food in Harvard Square. But it's the relationship between &pizza and why it is that this location, as part of the Milk Bar, as part of the &pizza experience appeals to Ms. Tosi. So maybe it's time we allow Ms. Tosi to tell you a little about herself, her concept, and what it is she's going to bring to this experience with &pizza.

CHRISTINA TOSI: Thank you. Thanks for hearing -- inviting and hearing us tonight.

JANET GREEN: Keep that close to you.

CHRISTINA TOSI: Yeah, okay, there you go. I feel

like I have bad posture, hunched over.

So my name is Christina Tosi. I founded Milk Bar and opened the doors almost nine years ago in New York City in the East Village, and have over the last nine years built a pretty fun exciting sort of quirky American-style bakery. We serve cookies. We serve layer cakes. We serve little bites of cake called cake truffles. Soft serve ice cream. The most popular one is cereal milk, which tastes like what's left in your bowl after you eat all the cereal out of it. You know, items that sort of bring you joy and delight. What I found very quickly nine years ago was that running a bakery is certainly my passion. It's a very difficult thing to do. I -- my tag phrase when talking to any other food entrepreneurs, you have to sell a lot of cookies to pay the rent, and that is an uphill battle of any bustling market. And over the past nine years have grown Milk Bar in thoughtful, meaningful ways that are really special and unique to me and to my team.

The opportunity to come to Harvard Square is one that has definitely always been in my sites, but given my resources at Milk Bar not something that I would really be able to accomplish on my own even with a great teammate. Because of all the intricacies, the nuances, the financial barriers, and aside from that, the fact that we really only need 250 square feet is kind of our sweet spot, no pun intended, to build our business in a new market and that's a challenge in and of itself to find a space like that. But on top of that really the robust operations to run a bakery that's far from where our other nearest bakery is, which would be New York City comparatively, is really what's appealing to us. And what the &pizza team brought to us not too long ago in asking that instead of just licensing and selling a cookie that we make for them and the soft drink that I spoke about earlier, if I would be open to sort of dreaming up and sort of getting a piggyback ride to Harvard and opening up a Milk Bar in partnership with them in this

property and the sort of the power and magic that we think it can bring to Harvard Square.

CONSTANTINE ALEXANDER: Approximately how many product offerings do you expect to have?

CHRISTINA TOSI: So our current menus have about 25 items, give or take, like not small, medium, large cold brew or something to that extent but it's a product mix of 25 different skews.

CONSTANTINE ALEXANDER: 25?

CHRISTINA TOSI: Yeah.

CONSTANTINE ALEXANDER: Okay.

CHRISTINA TOSI: And ranging in a few different categories, baked goods and then beverages, hot beverages, cold beverages.

CONSTANTINE ALEXANDER: You will have hot beverages there, too?

CHRISTINA TOSI: Yeah.

CONSTANTINE ALEXANDER: Okay.

CHRISTINA TOSI: Whether it's espresso and drip coffees in our stores depending on the space.

CONSTANTINE ALEXANDER: Assuming there's not going to be coffee of some sort?

CHRISTINA TOSI: Yeah, definitely hot cocoa.

CONSTANTINE ALEXANDER: Or hot tea.

And what about -- where are the products going to be made? Are you going to bake them on the premises?

CHRISTINA TOSI: So we will do some items will be made on premise. Some items will be made in our New York City kitchen. Some items will be made -- we have a kitchen just, I guess technically the mailing address is in Boston, it's sort of southeast Boston, that we make some items with. It's a great family-run business. And the hopes for me is that this partnership works so well that it gives us the resource to build a really great kitchen in Boston as well.

CONSTANTINE ALEXANDER: A kitchen, a commissary type kitchen that will supply the --

CHRISTINA TOSI: Something where we can make layer cakes so that you can see us making them and maybe take a class on how to make them and so on and so forth. But for me really none of that is all that feasible or possible without, without some operational support which the &pizza team has very graciously offered. And we have a good relationship with them that we've been in partnership with in different instances over the years.

CONSTANTINE ALEXANDER: And the question that Mr. Rafferty -- the Milk Bar products will be sold during the same hours that the --

CHRISTINA TOSI: Well, so Milk Bar -- the Milk Bars that we have currently are open from is seven a.m. to nine a.m. depending on the neighborhood --

ATTORNEY JAMES RAFFERTY: Excuse me nine p.m. I think?

CHRISTINA TOSI: No, no, seven -- we open between seven a.m. or nine a.m. --

ATTORNEY JAMES RAFFERTY: Oh, you're saying opening.

CHRISTINA TOSI: -- like opening hours. And then we close anywhere from ten p.m. to two a.m. You'd be amazed how many people on a study break even in New York City come by for a cookie late at night and it's like a nice sweet spot to be. But it will feel -- when &pizza's not open, you'll still be able to, you know, enter into the building, you'll be able to sit in the dining area inside and outside, but the Milk Bar counter will be branded, it will feel like you're walking into one of our stores.

CONSTANTINE ALEXANDER: But it was represented to us at the last meeting, maybe it changed, that the &pizza operation is going to be open from seven a.m. to two p.m. Seven a.m. to two a.m.

ATTORNEY JAMES RAFFERTY: Yeah, but you will hear a change to that. As a result of the introduction -- so the breakfast business operations have changed, and Mr. Murphy

can go through those. But one of the other material changes is with the introduction of the bakery, Milk Bar, that the morning business will -- there had been a request to explore a breakfast pizza to be open in the morning. Now they're going to allow the offerings of Milk Bar to serve as the breakfast opening. So they'll be opening for morn breakfast. So in that case you will walk in the door of Milk Bar, you can get your drink, you can get your pastry, and you can sit at a table in the &pizza space but &pizza will not be operating. You cannot -- there won't be pizza served in the morning. This was one of the other material changes, because &pizza frankly, what Mr. Murphy would tell you, they don't do much in the way of breakfast. They perhaps in one other location they did it in a hotel setting because the landlord requested it of them. In this case, they were prepared to do so in response to a request made. They met repeatedly with neighborhood groups. They were asked to sell the Wall Street Journal and the New York

Times. They agreed to that. They were asked to sell morning pizza. They agreed to that, too. It didn't allow them to achieve their objective. So bringing in Ms. Tosi's operation will allow for the breakfast operation to occur not in &pizza, which admittedly is not its sweet spot of operation, but the breakfast operation will be operating as Milk Bar.

CONSTANTINE ALEXANDER: Let me just recast that.

So seven o'clock in the morning doors will open.

All you can buy will be Milk Bar products?

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: Okay. And at what point -- and that will continue until two a.m. The premises, that was represented to us the last time, because you're going to get into the pizza. When will the pizza offerings start?

ATTORNEY JAMES RAFFERTY: I think Milk Bar would anticipate around eleven or eleven-thirty. Mr. Murphy?

ANDREW MURPHY: Correct.

ATTORNEY JAMES RAFFERTY: A typical restaurant lunch operation.

CONSTANTINE ALEXANDER: And then you're going to continue into the evening hours. Until two a.m. We're talking about the pizza operation. Will Milk Bar be open all that time as well?

ATTORNEY JAMES RAFFERTY: I think Ms. Tosi just referred to the students that look for desserts --

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: Yeah. So this will be modelled after the bakery she just described in New York City. So there will be, there will be a significant portion of the day when both businesses will be operational. The only time it would appear where it will be an exclusive, if you will, use of the premises would be prior to the commencement of lunch where it will be exclusively the operation of Milk Bar.

CONSTANTINE ALEXANDER: There was something slightly different in the memo from the Harvard Square Advisory Committee which said that Milk Bar would not be offering its product beyond one o'clock or something -- one a.m. or something to that effect. It's not what you just described.

ATTORNEY JAMES RAFFERTY: I'm not familiar with the memo.

CONSTANTINE ALEXANDER: I have to go back and dig it out.

ATTORNEY JAMES RAFFERTY: Because there was no presentation to the Harvard Square Advisory Committee.

CONSTANTINE ALEXANDER: Must be --

ATTORNEY JAMES RAFFERTY: I mean -- there was the prior, it was the prior proposal. Now, I do know --

CONSTANTINE ALEXANDER: No, no, this is not the prior proposal. Anyway, the point is that you've answered the question. Seven a.m. the doors open. Two a.m. the

doors close. From seven a.m. until the lunch hour it's just bakery. And thereafter it's both bakery and pizza.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Okay. Okay. I got it.

ATTORNEY JAMES RAFFERTY: So, those represent in the applicant's view the material changes that are occurring here. And so they are the physical changes to the space. And in the Ranney case which is the controlling case on what it takes to have a change, the court acknowledged that these changes need not be on their face all that significant. And there's particular language in the Ranney case where the court says something that might seem somewhat minor actually can meet the change, because they -- I'm quoting from the court now. The specific and material changes which Section 16 requires must be something less than the differences so radical that they obviate scrutiny under the statute altogether.

CONSTANTINE ALEXANDER: I don't think you're

giving a fair description of the case, but I don't want to bore the audience. Basically what the court said, if we're going to defer to the Zoning Board as to whether it's specific and general changes. It was a more general approach than what you're describing. The court didn't say -- the message of the case is that in cases -- in repetitive petition cases, it's the Board, the local Board which has the facts before it will decide the decision whether it's specific and adverse changes. Let's not debate it. I think you're overstating.

ATTORNEY JAMES RAFFERTY: I appreciate because I'd rather -- in fairness you've stated an assertion about the case. I'm reading directly from the language of the case. I don't disagree with the fact that the court concluded -- what the court spoke to, as it does in every case, it doesn't substitute its judgment for that of the Board. But what the court said is that the Board may give weight to differences which in an absolute sense are

relatively minor.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And they cited a string of cases that did that. And that's the proposition I'm making here today.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: But as the Board is considering this and someone were to say well, these are relatively minor, well that could be sufficient to be a material change.

CONSTANTINE ALEXANDER: Or not, or not. Or the Board can decide those minor changes are not sufficient.

ATTORNEY JAMES RAFFERTY: But the court didn't need to say that. The court needed to answer the question. Don't forget, it was an appeal from a determination by an abutter that that said the Board shouldn't have heard the case, right? That it violated the repetitive petition. And in this case the Board -- the court identified the changes

in the case.

CONSTANTINE ALEXANDER: Four changes.

ATTORNEY JAMES RAFFERTY: The four changes. And the court said each of these modifications was responsive to a ground of refusal mentioned by a Board in the rejection of the first application.

CONSTANTINE ALEXANDER: That's right.

ATTORNEY JAMES RAFFERTY: And while each of the changes taken in isolation has a cosmetic quality taken together they result in a less intrusive building.

So what the Court was being asked to address is whether a Board, such as yourself had acted improperly in making a finding on what the plaintiffs in this case claim didn't meet the test of material change.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And I don't think we should have a disagreement about what the Court held in that case. They held that those changes can be seemingly minor

if the Board found that to be the case. And that's what the case sounds, it's the controlling case.

I want to point out the fact that on at least two occasions now the Planning Board has addressed this issue. And filled with the same information that you have here. And in both cases they didn't merely consent to this Board hearing the case, they, they made an -- in their motion, they made a determination that there were sufficiently material changes to allow the case to go forward. So in our case we paid close attention to the commentary at the hearing, both from the public and by the Board, and the -- we obviously focussed on the testimony and the commentary of the two members that didn't vote in favor of the case. And because they, they identified a couple of areas -- frankly Mr. Sullivan brought up the compatibility with the color.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: So that is a material

change. So if we were to isolate the changes to the facade, the -- we provided in the memo and in the bullet points, all the changes in the facade. And I direct the Board's attention to the facade that was present in April and the facade that's present now. We would maintain that under the guidance contained in the Ranney case, those are changes that are material. They have to do with the test. Don't forget, the test here isn't, you know, whether you like this. It's not that subjective. The test here is compatibility. Compatibility with surroundings. So this design, thanks to the continuance allowed by this Board and the direction of the Planning Board, this design has had a level of consultation that I can't think of any other storefront or any other fast food. So a determination that this wasn't appropriate before, one could say that there are sufficient material changes here, and they are set forth in my cover letter, identified the things -- and the particular thing that Mr. Sullivan emphasized, get away from the black,

introduce a new color was a part of it. So on the facade we maintain that's a material change.

And the second issue is &pizza. The Board -- now some members are not as -- perhaps at a disadvantage, they didn't sit on the first case. So --

CONSTANTINE ALEXANDER: Two of the members didn't sit on the first case of the five of us here tonight.

ATTORNEY JAMES RAFFERTY: Two?

CONSTANTINE ALEXANDER: Yeah, Andrea and Patrick did not sit. Janet sat.

ATTORNEY JAMES RAFFERTY: Janet sat on the case, right.

CONSTANTINE ALEXANDER: Janet.

ANDREA HICKEY: Janet sat. I did not.

ATTORNEY JAMES RAFFERTY: And I presume that board members are familiar with it. But the difference, and that's why Ms. Tosi's testimony is critical. The second material change goes to the operation of the business.

PATRICK TEDESCO: People are asking for the mic.

ATTORNEY JAMES RAFFERTY: So the second material change goes to the operation of the business and the suggestion that the food product here is a food product that's available in any other location or many other locations around Harvard Square. An analysis that would suggest that a Domino's Pizza in this operation are indistinguishable in the eyes of the Zoning Ordinance because they both serve a food product. And we know what the, we know what the language of the Ordinance says. It talks about satisfies a need. Now, the material change here now is we are expanding the restaurant offering of this business to promote sit down use and to distinguish this and to provide a unique dining experience. It is more unique in its current iteration than it was when it was here before. It was more similar perhaps to some other restaurants. We think it was very different then. So they thought, and as you heard Ms. Tosi testify, she was approached by Milk Bar

to say okay, why don't you come in. They're not ready to operate. You can't get, frankly, a 250 square foot space in Harvard Square. She's enthusiastic about being here. So this represents a really material change because now this is a different experience. When you walk in that storefront at 8:30 in the morning, you're going to have a different experience because Milk Bar is there then you would have had if it was simply the operation of &pizza. So that represents in the applicant's application, the second and very significant material change. And it's based on those two changes that we would respectfully suggest that the applicant has met the bar of material change. And we urge the Board to be guided by the language of the Ranney case where the Court concluded that those changes are subject to analysis by the Board.

And I also think that the Board should show some deference to its companion board, the Planning Board, which has great familiarity with the Ordinance as well which sees

a lot of cases and would suggest that the material changes are present.

CONSTANTINE ALEXANDER: You said you were going to address the third reason that we cited when we denied relief in April; namely, the congestion that this operation now as you described it tonight, would cause in that area of the city.

ATTORNEY JAMES RAFFERTY: Well, on the question of the change, we don't think the congestion is there. And when we were to present the case, we're happy to address the congestion. But we're not changing traffic patterns in Harvard Square. That isn't one of our proposed changes. We're not changing anything. So to the extent -- I mean that comment was made at -- it's a criteria we know under the Special Permit.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: There's no -- so the material change, you know, we simply don't agree with the

conclusion. We find ourselves in agreement with the three other board members that voted in favor of the application, but that condition isn't present. But we're happy, and we would want to address congestion, because the physical layout of the space doesn't lend itself. Mr. Murphy's here to talk about it. We don't have a material change.

CONSTANTINE ALEXANDER: Let's address that should we get to the merits of the case.

ATTORNEY JAMES RAFFERTY: Right.

So on the question of what has -- does this applicant -- does this application contain material changes to congestion? This application -- the changes have to be contained in what's being proposed. So what's being proposed is a use in a particular location in a facade. We have made material changes in the storefront directly responsive to a finding or a comment that it wasn't compatible. And we have made direct changes to the operation of the business to address the notion that it

wasn't sufficiently unique and it was just another place selling pizza in Harvard Square.

CONSTANTINE ALEXANDER: Mr. Rafferty, I raise that because I asked you earlier, there were three reasons we turned it down last time. Are you going to address all three reasons, and you said yes. You say now I'm not going to address it now, I'm going to address it later on, that's fine. But that's the reason for the question.

ATTORNEY JAMES RAFFERTY: No, I understand. I apologize if I didn't get the question right. Are we asserting a change -- no, we don't believe that this use causes congestion and --

CONSTANTINE ALEXANDER: You're getting into the merits.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: That's not appropriate at this point. Do you have anything more?

ATTORNEY JAMES RAFFERTY: No. I think we've made

our point. We're relying upon the information submitted and the fact that we think these changes, these changes are the type of material changes that warrant at least allowing the case to be heard again.

CONSTANTINE ALEXANDER: Questions from members of the Board?

ANDREA HICKEY: The number of seats changed at all in the restaurant from the first proposal?

ATTORNEY JAMES RAFFERTY: No, I don't believe so. They haven't.

CONSTANTINE ALEXANDER: You sure? I believe I read something in the materials that you reduced the number of seats as a result of the --

LOUIS CARTER: As a result of the Milk Bar.

ATTORNEY JAMES RAFFERTY: Oh, okay. Thank you. What is the change, Drew, do you know?

CONSTANTINE ALEXANDER: Fewer seats.

LOUIS CARTER: Fewer seats. I don't have the

exact count.

CONSTANTINE ALEXANDER: It's somewhere in the materials. I read somewhere where you in response to dealing with the Planning Board, you were going to reduce the number of seats from what we saw the last time.

CHRISTINA TOSI: Well, maybe you had more seats before you --

ATTORNEY JAMES RAFFERTY: Okay. I haven't, I haven't seen that change. So I guess, I guess there is a reduction.

Drew, do you know what the seat count is?

ANDREW MURPHY: No, I refer to those.

CONSTANTINE ALEXANDER: I don't have the transcript with me. I think there were 48 when you came before us.

ATTORNEY JAMES RAFFERTY: That's right.

PATRICK TEDESCO: Transcript from the previous hearing?

CONSTANTINE ALEXANDER: Yes. Read it now? Okay.

So something less than 48 now.

LOUIS CARTER: Yes, on the inside. Yes.

ANDREA HICKEY: What's the number now proposed?

LOUIS CARTER: The number now is 38 on the interior and 54 total.

CONSTANTINE ALEXANDER: The 16 --

ATTORNEY JAMES RAFFERTY: 38 interior and what's the exterior?

LOUIS CARTER: And 16 on the exterior.

CONSTANTINE ALEXANDER: Is that all in the front of the store or the 16 including in the patio? I think there was reference.

ATTORNEY JAMES RAFFERTY: Yeah, no exterior.

LOUIS CARTER: Sidewalk. Exterior seating is 16 and interior seating is 38.

CONSTANTINE ALEXANDER: Okay. But, I didn't know there was a patio there.

PATRICK TEDESCO: Sidewalk.

JANET GREEN: No, it's a sidewalk.

ATTORNEY JAMES RAFFERTY: It's the sidewalk.

Sidewalk. And it's the same configuration that Tory Row has. They have the sidewalk seating in that location, same number of seats, same footprint. And I think it's identical if you look at the imagery of the photographs of existing -- it is the sidewalk seating that Tory Row had.

CONSTANTINE ALEXANDER: People are having trouble hearing. It would be easier if you put it in your hand. This way you won't forget to use it.

ATTORNEY JAMES RAFFERTY: This is a new problem here.

JANET GREEN: We're really strong about this now.

ATTORNEY JAMES RAFFERTY: No, but I'm saying I felt the microphones used to work better. I don't know.

JANET GREEN: They used to work worse.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: May we see

the diagram?

CONSTANTINE ALEXANDER: By all means, yes. The diagram you want to see is the seating or do you want to see the exterior or both?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Both, please.

CONSTANTINE ALEXANDER: Okay. Yes, by all means if anybody wants to see --

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I think if we could see all the diagrams that are referred to as they're being referred to or just after they're referred to --

CONSTANTINE ALEXANDER: It would be useful if we had the before and after that Mr. Rafferty has shown to our Board. Maybe you can show that to the people in the audience.

UNIDENTIFIED MEMBERS FROM THE AUDIENCE:  
(Inaudible).

CONSTANTINE ALEXANDER: I'm sorry, I couldn't hear. What's that?

UNIDENTIFIED MEMBERS FROM THE AUDIENCE: The question is are there 16 seats outside?

LOUIS CARTER: 16 seats outside.

CONSTANTINE ALEXANDER: 16 seats outside.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: And how many in the previous proposal outside?

LOUIS CARTER: There was a 16, it was a misprint. Like 14.

UNIDENTIFIED MEMBER FROM THE AUDIENCE:  
(Inaudible).

THE STENOGRAPHER: I'm sorry, you have to speak up.

CONSTANTINE ALEXANDER: Yeah, and sir, actually you have to give your name and address.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: We couldn't quite hear the continuation. My name is Tim

Mudarri from 112 Fayerweather Street. M-U-D-A-R-R-I.

Great.

And so we couldn't tell the difference. It sounds to me like it was 16 outside before and it is 16 outside now?

CONSTANTINE ALEXANDER: That's my understanding. Maybe you should confirm it.

TIM MUDARRI: It was what inside before and is what inside now? It's just hard to hear in the back.

Thank you very much.

CONSTANTINE ALEXANDER: Okay. Am I correct that before was 16 outside seats and still 16 outside seats?

LOUIS CARTER: Yes.

CONSTANTINE ALEXANDER: Before it was --

LOUIS CARTER: We don't have that --

CONSTANTINE ALEXANDER: How many inside seats?

LOUIS CARTER: We don't have a number right now for the inside seats, but there are 38 currently on the

inside.

CONSTANTINE ALEXANDER: I had 48 in the back of my mind.

ATTORNEY JAMES RAFFERTY: In terms of the previous application?

JANET GREEN: Yes.

ATTORNEY JAMES RAFFERTY: I have the previous floor plan. So I'm sure we can count them. I do have and maybe -- we brought 20 copies of the application.

LOUIS CARTER: 10.

ATTORNEY JAMES RAFFERTY: 10.

LOUIS CARTER: 10 copies.

ATTORNEY JAMES RAFFERTY: Okay. Maybe you could pass -- I ask that we can share them with the audience knowing that there might be a high level of public interest in this.

CONSTANTINE ALEXANDER: Wait.

Yes, sir.

JOSHUA FAYE: Joshua Faye, Sacramento Street. Did you mean this as the current after, as the current proposal?

CONSTANTINE ALEXANDER: Yes. The bottom is the after.

ATTORNEY JAMES RAFFERTY: No, no. That is not. No, no, no, that was the mistake in -- that is not the current proposal.

CONSTANTINE ALEXANDER: You're right.

ATTORNEY JAMES RAFFERTY: Yeah. So perhaps I could get that back because it's, it's not correct. I mean, in the sense that this was the submittal --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: -- prior to the exercise we went through. So the prior image which is here --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- and I did this because the Board -- and I don't know if the Board has the prior case, but the prior image, the April image is in the

April case. I don't know if the April case is with us?

BRENDAN SULLIVAN: It's right there.

PATRICK TEDESCO: Yeah.

ATTORNEY JAMES RAFFERTY: So if you just open up that image -- the rendering there, I think it's right in the front, Mr. Tedesco.

JOHN HAWKINSON: Pick up the mic.

CONSTANTINE ALEXANDER: I thought it was in the interior plans. It's going to be here.

PATRICK TEDESCO: This is a PowerPoint that doesn't have any exterior.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: Those plans and that package right there.

PATRICK TEDESCO: Is this it?

ATTORNEY JAMES RAFFERTY: That package right there in the prior case shows the prior elevation, the prior storefront, and the prior floor plan.

PATRICK TEDESCO: Right. The black version, the floor plan.

BRENDAN SULLIVAN: Do you have an extra copy of the court case?

JAMES WILLIAMSON: Mr. Chairman, while you're looking may I ask a follow-up question on this topic which is -- and my name is James Williamson, 1000 Jackson Place.

Is it known what the previous number of outdoor seating was for Tory Row and is this going the same as what Tory Row had?

CONSTANTINE ALEXANDER: We've been advised that it's going to be the same as before. Same as Tory Row; 16 then, 16 back in April and 16 now.

PATRICK TEDESCO: 44 seats in the April application inside.

ATTORNEY JAMES RAFFERTY: So there's a reduction in six seats.

CONSTANTINE ALEXANDER: 16, that's what it sounds

like.

ATTORNEY JAMES RAFFERTY: Thank you. I didn't represent the prior applicant. So there were 44 seats.

ANDREA HICKEY: Pick up the microphone.

ATTORNEY JAMES RAFFERTY: Oh, I'm sorry. As noted by Mr. Tedesco, the prior plan in the April file shows interior seating of 44. And this plan proposes interior seating of 38. So presumably in the area which is now going to be used by the bakery, there must be, there must be seating in the prior plan.

CONSTANTINE ALEXANDER: Is there any demarcation inside on the seating? Is there anything that separates the area?

CHRISTINA TOSI: The separation like the visual separation of the area once you come in, you'll be able to see where like we'll have, like, we'll use our normal design for like a white --

CONSTANTINE ALEXANDER: No, no, I understand that.

CHRISTINA TOSI: But for seating itself?

CONSTANTINE ALEXANDER: Yes.

CHRISTINA TOSI: We haven't talked about like the design of what the seating is, if it's like a white seat then a pink seat or what it looks like so that it feels like the communal seating and the collaboration that is --

CONSTANTINE ALEXANDER: The representation I thought we made I believe by the &pizza folks are all tables will be open to all people who --

CHRISTINA TOSI: That is correct.

CONSTANTINE ALEXANDER: Sort of like, this may be very appropriate, suburban food court where you have your vendors around the edge who sell the product and then you go in the middle and where the seats are and everybody grabs whatever seat's available.

CHRISTINA TOSI: Yeah. So if you --

CONSTANTINE ALEXANDER: Now will be two products.

CHRISTINA TOSI: Ice cream. Exactly.

ATTORNEY JAMES RAFFERTY: The food court concept is a less than perfect analogy I would say, and it's fraught with concerns particularly in a place like Harvard Square. But there is I would say an example in the garage building on JFK Street where a variety of operators share communal tables. This is a little different.

CONSTANTINE ALEXANDER: Yes, it is.

ATTORNEY JAMES RAFFERTY: This is a restaurant and a bakery sharing space. But that's -- you know, I mean it's different.

CONSTANTINE ALEXANDER: Not really but go ahead.

ATTORNEY JAMES RAFFERTY: Well....

CONSTANTINE ALEXANDER: You don't want to concede that this is a -- we're getting a food court type of operation?

ATTORNEY JAMES RAFFERTY: No, but what's important is that there are seats -- there is, none of the restaurants or maybe not none of them, but I don't know of any of the

restaurants in the food court scenario where the individual restaurant, I mean &pizza is going to have seats in its restaurant.

CONSTANTINE ALEXANDER: But they're not going to be exclusively for &pizza?

ATTORNEY JAMES RAFFERTY: That's true.

CONSTANTINE ALEXANDER: That's how it works in a food court in a shopping center. You buy your products in a bunch of places and you walk and find a table. Here you're going to have two kinds of products to buy and you walk and find a table. I don't know why you're fighting this. That's how it's going to work.

ATTORNEY JAMES RAFFERTY: I claimed it to be an imperfect analogy. We're going to have a restaurant with seating and a bakery is going to share the seating. I agree.

JAMES WILLIAMSON: (Inaudible).

CHRISTINA TOSI: (Inaudible).

ATTORNEY JAMES RAFFERTY: I go to get a sandwich at Subway and I go into a collective area to sit down. There's no seating in Subway. Here there's going to be seating. The point I'm making is &pizza is going to have seating. If you go to Otto to get pizza --

CONSTANTINE ALEXANDER: Enough.

ATTORNEY JAMES RAFFERTY: -- there's no seats.

CONSTANTINE ALEXANDER: Andrea, anything else?

ANDREA HICKEY: No, it's fine. Thank you.

CONSTANTINE ALEXANDER: Anybody else have any question before I open it to public testimony?

(No Response.)

CONSTANTINE ALEXANDER: I guess not.

Okay. I'm going to open the matter up to public testimony. So I can manage this best I can, can I see a show of hands of who wants to speak?

(Show of hands.)

CONSTANTINE ALEXANDER: All right, a good number.

JAMES WILLIAMSON: And one behind you.

CONSTANTINE ALEXANDER: I know Mr. Brandon wants to speak.

JANET GREEN: About the first case.

ATTORNEY JAMES RAFFERTY: We're speaking on one issue, right?

CONSTANTINE ALEXANDER: Only on one issue. Whether what's being proposed tonight constitutes specific and material changes in the conditions upon which we've previously denied the Special Permit. So that's what you're going to speak to. And I'm going to do is I'm going to ask those who wants to speak in favor of granting the relief that's being sought tonight, i.e. that what is being done does constitute specific and material changes. Let me take your comments first.

So anyone who wants to speak to that. Sir? I see one hand up. You want to speak to it? Okay, come forward and give your name and address, please.

NEAL DEPAUL: So hi. My name is Neal DePaul  
D-E-P-A-U-L, 89 Winter Street in East Cambridge. And the  
reason I'm here today is I wanted to see about &pizza and  
Milk Bar, and as I sat here and listened for our family --

CONSTANTINE ALEXANDER: No, no, don't get into the  
merits.

NEAL DEPAUL: It does constitute a material  
change. And I'll give you a little history just from my  
family from a consumer standpoint, not a legal standpoint or  
anything else, just people that want to go out to dinner.  
Three generations of our family are spread out throughout  
the country and we come here because the kids are here and  
the most recent was a graduation from high school. The  
point is, is that we would love a place to go and  
have -- because the food we can all agree on across  
generations is pizza. You can make a light pizza, you can  
make a heavy pizza like the kids like. But most of us want  
dessert when we're done. You know, we're not like the kids,

we don't stuff ourselves until we explode. And now we can have a complete dining experience and go to Harvard Square, which is where we belong in the first place as Cambridge residents. So to us this absolutely operates as a complete change from what was there and being proposed before, and it's significant because some of the participants from my family, we're talking pacemakers, oxygen, disability issues. They can't go to another location in the square or Harvard Square, they want to go to one place. And now this combination offers it. So hopefully you'll find in favor and that's it.

CONSTANTINE ALEXANDER: Thank you. Thank you for taking the time to come down.

Anyone else wishes to speak? Sir.

EDWARD HOFF: Thank you. My name is Edward Hoff. I live at 17 Hillside Avenue up near Porter Square, and I'm here because I have always thought that this location was special. And when I was hearing what might be going into

it, I was concerned. I was concerned about things like whether a bank was gonna go in. Yet another bank. And so, as we're looking at what is being proposed here, it's at least my judgment that having the equivalent of hot beverages and desserts and those matters is significantly different than what had been just a pizzeria. And I think this becomes much more inviting for a place to sit down. My wife and I, we have kids living in Cambridge. We go into Harvard Square all the time. This would be a very inviting combination. And also some of the changes that I see here, this is the first hearing I've been at, but they look quite different to me than what had been proposed and also then what I had been concerned about. And so I like this. But on the question that you're suggesting, Mr. Chairman, I think it represents the significant change.

CONSTANTINE ALEXANDER: That's the issue before us. That's a vote we're going to have to take.

Anyone else wishes to speak in favor?

Ms. Jillson.

DENISE JILLSON: Good evening, thank you. Denise Jillson, Executive Director for the Harvard Square Business Association. And I think the material change for me is that, that's quite selfish, before there would be soliciting one member, & pizza. Now I'm going to be soliciting two. I'm after you. So I think that's pretty significant because it's definitely going to be two memberships to the HSBA. But I will say this also, that this is not unprecedented in Harvard Square. If you think about Cabot Candy and Zinnia, they go in one door, and when you go in the one door, to the left is Zinnia Jewelry and to the right is Cabot Candy. Totally, you know, kind of interesting because jewelry and taffy and fudge are so quite different, but anyway, it works there. And it also works at Leavitt and Peirce. So when you go into the front door at Leavitt and Peirce, it's the Leavitt and Peirce that we've known since 1884. When you go back to the very -- back to the store, it's thread

and -- you know, there's a thread and shape for eyebrows which is also incongruous when you think about it. But both work. So not unprecedented at all. And so I think that those are -- but the material change for me is two memberships. And I think that when we're looking at it, it's definitely two different businesses.

Thank you.

CONSTANTINE ALEXANDER: Thank you. Thank you for taking the time to come down.

Anyone else wishes to speak in favor? You want to speak in favor, sir?

JOHN MAZELLA: Yes. Sorry.

My name is John Mazella, M-A-Z-E-L-L-A. I live at 24 Norris Street. Yeah. It's concerning whether this is a significant substantive change. I would like to say that personally there's a big difference between a pizzeria and a pizzeria/bakery cafe. It becomes the kind of place where, you know, you got to commit to, you know, eating a full meal

or a place that will, you know, a whole bunch of people can go to get some pizza. Some people can get, you know, hot chocolate or a cupcake or something. Or, you know, and it becomes even a place that you can go like after dinner kind of place, you know, and that's kind of a like different, it's a different -- it becomes a different destination that kind of serves more rolls in the community and surrounding area with the restaurants and everything else. And so that's why I think it is a good and substantive.

Thank you.

CONSTANTINE ALEXANDER: Thank you. Thank you for taking the time to come down.

Anyone else wishes to be speak in favor?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. Now I'll ask for people who want to speak against granting relief.

Please raise your hand and I'll try to work the room. Many more.

Ma'am in the blue blouse.

MERILEE MEYER: Hi. Merilee Meyer, M-E-Y-E-R, 10 Dana Street. And while I do want to commend the -- some of the changes being done. Right up to the, the last minute of the advisory committee on Tuesday there were changes being made on the design. And there's also -- and in -- that case was not even listed on the agenda for people to attend.

CONSTANTINE ALEXANDER: Right.

MERILEE MEYER: So that is was an amazing turn of events considering I've been to all 10 or 11 meetings of this, of this situation.

The Planning Board to me was not necessarily that effectual because they were, they weren't very convincing in their deliberation, and they tended to kick it down the road to make it your responsibility to come up with the points. One, one member does not like the white awning. A lot of people in the audience do not like the white awning, but he shrugged his shoulders and moved it on.

And the design presented now is indeed different than the design, the latest design that was presented before which did have the pink and white graphics on the right-hand side. And I question that, oh, no, that's not the window or on the front, that is the back wall of the space. So my question to the Board, I brought up lighting, and they, they did not allow me to speak or talk about lighting. Take it to the BZA, ask them about the lighting on the interior. So if this is, this plan now is fuzzed out, the windows are frosted. What is going to be the design on the back wall of that and how is it going to be lit after dark? Are we going to be looking at something that is similar to, you know, Victoria Secret's whatever, you know, pink and white. Pink and white. Pink and white? In Harvard Square is not appropriate and it's very strong branding. So being Joe Public I was not allowed to talk about our -- or ask about the lighting on the inside and having all of that glass, what is it gonna look like from the --

ATTORNEY JAMES RAFFERTY: Excuse me, Mr. Chair,  
we're doing the material changes, right?

CONSTANTINE ALEXANDER: Yes, we are.

MERILEE MEYER: Well, this goes to material  
changes because the changes keep on changing. We have  
had -- we have had the goal post moved -- the public has had  
the goal post moved several times and we've never, we've  
never gotten, you know, a complete, solid understanding of  
what the project is. And even from the latest minutes that  
were just put out about it on the previous minutes, it  
stated the entry should be redesigned to be a stronger  
presence with more color, more modification of the facade.  
Well, does that go back to the public? Do these designs  
that --

CONSTANTINE ALEXANDER: Let me stop right here.  
I'm going to try to answer your questions.

MERILEE MEYER: Yes.

CONSTANTINE ALEXANDER: They went before the

Planning Board and got approval for -- first of all, the issue before us for granting a Special Permit for a fast food -- fast order food establishment, is that the physical design, including use and color of materials of the establishment shall be compatible with and sensitive to the visual and physical characteristics of other buildings, public spaces, and uses in the particular location.

MERILEE MEYER: Exactly.

CONSTANTINE ALEXANDER: How it's going to be, the color in the interior are not relevant to our determination. It's not the thing that from a zoning point of view we get involved with.

MERILEE MEYER: I understand that. The same way the CHC, but if you have a plate glass front window with lighting after dark, that changes the whole tenure of the square with what gets designed, how it's designed inside. There's very little you can do about plate glass, glass is glass. But it's how it's presented and what the, what the

context is, that is the important thing. And also to the point of not necessarily repetition of the presentation but of the -- I mean to make a comparison between Domino's Pizza and &pizza is a little bit of a stretch on either extent. You have Otto's and you have Engine 1 or whatever and those are --

CONSTANTINE ALEXANDER: Ma'am, you're getting into -- I'm trying, I'm trying to let people talk because this is -- part of these sessions is to carefully --

MERILEE MEYER: But he brought it up. He opened it.

CONSTANTINE ALEXANDER: Okay. Let's, let's conclude our remarks, please.

MERILEE MEYER: Okay. Well, to conclude on remarks, the idea of having this space be a bank or an &pizza.

CONSTANTINE ALEXANDER: That's not relevant. I'm sorry.

MERILEE MEYER: It's erroneous. Okay.

CONSTANTINE ALEXANDER: That's not relevant.

MERILEE MEYER: Okay.

CONSTANTINE ALEXANDER: You've got to talk to -- whether what they're proposing tonight contains specific and material changes in what was presented to us when we turned it down in April. That's the -- right now that's the issue. You can get into the, what you want to talk about, should we grant, should we find that there's specific and material changes. So you'll have an opportunity to presumably to make your comments, not now.

MERILEE MEYER: Okay, fine.

Well, then I like the burgundy color of the awning. Okay?

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY JAMES RAFFERTY: Mr. Chair, maybe to help frame the discussion, I want to make clear, we're proposing -- we're suggesting that the application contains

material changes in two areas:

One is the physical storefront.

The second is the operation of the restaurant.

And I believe we are now at the hearing where the Board is taking testimony as to whether members of the audience mean -- feel that the proposed changes either in the proposed storefront or the use on the operation meet that test.

CONSTANTINE ALEXANDER: Mr. Rafferty, you know this, running these meetings is not easy. The fact --

ATTORNEY JAMES RAFFERTY: I know. That's the first thing you said tonight that I am in complete agreement unequivocally.

CONSTANTINE ALEXANDER: I'm giving some liberty to people to wander off the reservation.

ATTORNEY JAMES RAFFERTY: I understand.

CONSTANTINE ALEXANDER: The fact of the matter is the only way we're going to get --

ATTORNEY JAMES RAFFERTY: I agree. I was trying to be helpful, I would say it's really storefront and use.

CONSTANTINE ALEXANDER: And you made that point over and over again. And I get it. And I think members of the audience get it. But let's move on rather than --

ATTORNEY JAMES RAFFERTY: Understood.

CONSTANTINE ALEXANDER: Who else wishes to speak in opposition? I'm going to work from the left to the right if you don't mind.

So, sir.

TIM MUDARRI: Tim Mudarri, 112 Fayerweather Street.

So one thing that Mr. Rafferty said a little earlier, that I agreed with is when he tried to convince this he Board that the changes in this proposal may be very minor, if you still consider them, and I think that gets to the point of how the feel of this presentation has changed. The proposal rather has changed. I think they're fairly

minor changes in what we're talking about here. We, in the last hearing talked about congestion. It's not been addressed by the applicant.

CONSTANTINE ALEXANDER: We're going to address it later should we vote favorably.

TIM MUDARRI: I understand. But it's not -- there's no change in proposal on the congestion. And there was another in the meeting minutes at the end of the meeting in April regarding how it might change the character of the square. And that's also something that hasn't been addressed. It's not something that you mentioned, but it was certainly brought up by the end of the last meeting by a member of the Board.

CONSTANTINE ALEXANDER: Well, I guess the point is --

TIM MUDARRI: It hasn't changed. There's no change there, that's my point.

CONSTANTINE ALEXANDER: Your view that the

redesign of the exterior --

TIM MUDARRI: Also in the applicant's view, they did not address it as anything has changed.

CONSTANTINE ALEXANDER: Okay.

TIM MUDARRI: Specifically how this affects the character of the square. And as far as whether or not the -- it addresses a new need or whether or not the physical appearance has changed, to me, I think that it feels very much like an &pizza store. It feels very much still like a store that belong in Silver Spring, Maryland, or the airport right next to Sbarro or what have you. It's got that feel. It still has that same presentation. And I think at the last meeting while they would like to forget they mentioned Milk Bar might be part of it, you know, McDonald's would come around and say yeah, we have milk shakes on the menu, because you know what's on the menu. They might have a, what was it, a breakfast cereal ice cream, they might not. They brought it up because they were

exploring the possibility of including this additional feature to provide some additional need to the square. And now they've defined it more, but it was certainly brought up as a point.

CONSTANTINE ALEXANDER: Okay.

TIM MUDARRI: And I think that it's still a part of this proposal now. And another thing that supports it is it's not a substantive change for the &pizza corporation to come into this important corner of the square and do pizza business in this corner of the square. That's still what this proposal is for.

CONSTANTINE ALEXANDER: Thank you.

TIM MUDARRI: Thank you very much.

CONSTANTINE ALEXANDER: Well thought out comments by the way. Thank you for taking the time.

Anyone else wishes to be heard in opposition?

Sir, with the glasses. Yeah, you.

MARCUS MELLO: Hello, everyone. My name is Marcus

Mello.

JANET GREEN: You can tell when you got it close.

MARCUS MELLO: I can hear you. I live in Thayer Hall in Harvard Yard. I'm a gradual student at the Graduate School of Design. I want to talk about how &pizza will affect the sort of feeling and ethical nature of Harvard Square.

CONSTANTINE ALEXANDER: Again, don't get into -- you may make those comments later on if we get to them. We're talking about what their proposing just constitutes specific and material changes in from what they presented to us last time.

MARCUS MELLO: Okay, yeah. And my question is about sort of their business practices and if they have addressed changes that were presented there. &pizza is a company that engages in branding of its employees. They encourage their employees --

CONSTANTINE ALEXANDER: Sir, sir, again, you're

getting into --

MARCUS MELLO: -- to get tattoos on their arms --

CONSTANTINE ALEXANDER: Save, save -- excuse me.

Save your comments to later in the evening should we get to later in the evening by voting, making -- voting that there are specific and material changes. Okay? It's not relevant right now.

JAMES WILLIAMSON: Gus, if I may?

CONSTANTINE ALEXANDER: James.

JANET GREEN: There are two cases.

JAMES WILLIAMSON: I think it might help if you said this is about whether it is a repetitive petition.

CONSTANTINE ALEXANDER: I said that at the beginning. You weren't here. You left the room.

JAMES WILLIAMSON: I was told you weren't going to start for 45 minutes.

CONSTANTINE ALEXANDER: Well, I don't know who told you that, but I didn't.

MARCUS MELLO: You said if we get there. So I don't know if I will actually be able to speak.

CONSTANTINE ALEXANDER: Let me explain again. I did do this before but maybe I wasn't clear. The issue right now is a narrow one. Whether there's specific and material -- I want to get the right words. Specific and material changes what they're proposing now from what they proposed before that we turned down.

MARCUS MELLO: Okay.

CONSTANTINE ALEXANDER: If we find there are specific and material changes, and that's the only issue, then we will go to the merits. Then we'll say should we grant the Special Permit for them to operate the business they just described to us. At that point the comments you're about to make will be entirely appropriate and so that of the require speaker. So you'll have an opportunity but not now.

MARCUS MELLO: Okay.

CONSTANTINE ALEXANDER: And if we should turn down, you never have to make your comments.

MARCUS MELLO: I apologize. This is my first meeting.

CONSTANTINE ALEXANDER: No, no, no problem.

MARCUS MELLO: I wasn't sure if it had been addressed earlier.

Thank you.

CONSTANTINE ALEXANDER: Thank you. Don't go away, though. We want to hear your comments.

Now, in opposition. Sir.

TIM SHAW: My name is Tim Shaw, S-H-A-W. I live at 147 Mount Auburn Street. I also have a number of comments opposing the use for --

CONSTANTINE ALEXANDER: Hold it closer so people can hear.

TIM SHAW: Is that better?

CONSTANTINE ALEXANDER: Not really.

TIM SHAW: Now?

JANET GREEN: Yes.

CONSTANTINE ALEXANDER: That's better.

TIM SHAW: Okay, good.

I have a number of comments opposing the use which I hope I won't have to make so I'll wait and see. But I have to say that from listening to the proposal or the presentation tonight, what I could understand of it, it doesn't seem to me that there are material changes here. There are minor changes in the color of the awnings and the architectural details. There are minor changes to some of the seating, and there is what seems to me to be a minor change in the function of the Milk Bar prepackaged or made on-site bakery components. So I don't see just to the narrow issue of is there substantive changes, I didn't see any.

CONSTANTINE ALEXANDER: Okay, thank you.

Anyone else again in opposition? I'm going to

stay on this side of the room for now. Anyone else to my left want to speak in opposition?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. Now we'll go to the right. James.

JAMES WILLIAMSON: May I stand?

CONSTANTINE ALEXANDER: You can stand.

JAMES WILLIAMSON: Thank you, appreciate it.

CONSTANTINE ALEXANDER: Make sure it's on.

JAMES WILLIAMSON: Is this working?

CONSTANTINE ALEXANDER: It is.

JAMES WILLIAMSON: Okay.

So on the question that I understand is before us, before you. First of all, someone handed me a note which I would like to share that says the more things change the more they remain the same. I thought that was rather clever and sort of sums up what's going on here.

On the question of design or the appearance of the

building, I don't think it really has changed. The awnings were there. One version, one earlier version did have a separation of the awnings. The awnings at the corner were changed. So much of almost all of what is there now was there in previous versions of this.

CONSTANTINE ALEXANDER: One thing -- I don't mean to interrupt you, James. The one thing that has changed is color.

JAMES WILLIAMSON: The one thing that has changed is the color, and we can -- I wouldn't, I would I guess agree with the previous speaker, I wouldn't consider that a specific and material change.

CONSTANTINE ALEXANDER: Okay.

JAMES WILLIAMSON: Unless, I guess the substance of what I'm saying on this topic is that it is cosmetic at best and I wouldn't interpret cosmetic as significant as specific and material in the sense I think we're meant to understand that. And I'm sure there may be disagreement

about that. So to introduce a slightly different look is not significant enough to me.

The other thing is is this in fact a new use proposal? Which is I think the essence of what the argument that's being made here by the proponent is tonight. And I think one of the previous speakers alluded to this but didn't have the reference and I do have the reference. This is not meant to argue with the fact that there is this partnership, the point is the partnership was already presented to you --

CONSTANTINE ALEXANDER: That's right.

JAMES WILLIAMSON: -- and before you when you made your decision.

ATTORNEY JAMES RAFFERTY: No, it wasn't.

CONSTANTINE ALEXANDER: It was.

JAMES WILLIAMSON: And I will read from the relevant sentence from the transcript of the hearing.

So this is from page 28 I believe. Drew Murphy,

and skipping to the relevant --

CONSTANTINE ALEXANDER: Page 39 by the way.

JAMES WILLIAMSON: Page 29.

CONSTANTINE ALEXANDER: 39.

JOHN HAWKINSON: There's two different paginations depending on where you got the transcript.

CONSTANTINE ALEXANDER: Oh, really? On mine it's 39.

JAMES WILLIAMSON: Here is the relevant portion of this portion of the testimony. (Reading) But one of the requests is we would like to see additional offerings at this location. We're partnering with a group that many people may have heard of, David Chang, Momofuko, has a group called Milk Bar. It's a dessert orientation. We are now partnering with them to have a dessert program. We have been asked to serve breakfast pizzas here. Not aware of anyone else doing breakfast pizzas. There's actually a menu in your slide showing the breakfast pizzas and the names of

them and the ingredients.

So I would contend that the partnership that has been perhaps a little more fully elaborated, if you will, in the presentation tonight was already a very substantial part of what was presented to you already. This is not new. It was already a partnership. It was already gonna be a dessert orientation. They say we are now partnering with them to have a dessert program. So I would suggest that this is really not a specific and material change in that very important regard. And in that regard it's a repetitive petition. It's essentially the same. It's not the same as just a pizza place. It's the same as what was presented to you at the hearing.

So thank you.

ANDREA HICKEY: Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wish to speak in opposition?

Mr. Brandon, you want to speak?

MICHAEL BRANDON: Yeah, I thought there were others.

CONSTANTINE ALEXANDER: I don't see anybody else wishing to speak.

MICHAEL BRANDON: I was going to read a statement. I need to fire this up.

Hi. I'm Michael Brandon, 27 Seven Pines Avenue. Thanks for the chance to address you. I'm sorry for the delay.

CONSTANTINE ALEXANDER: Take your time. Getting close?

MICHAEL BRANDON: Yeah. I'm really sorry. I could just wing it as you usually do.

CONSTANTINE ALEXANDER: Why not. We've got a long evening ahead of us.

MICHAEL BRANDON: All right. I thought this would be quicker with the technology stuff.

JOHN HAWKINSON: Mr. Chair, is there anyone else

in the audience who wanted to speak?

CONSTANTINE ALEXANDER: There was no one else  
that's why I called Mr. Brandon.

JOHN HAWKINSON: They might have changed their  
mind in light --

CONSTANTINE ALEXANDER: That's possible.

Is there anyone else who wishes to speak in  
opposition while Mr. Brandon is fumbling about?

(No Response.)

CONSTANTINE ALEXANDER: I guess not.

Come on, Mr. Brandon, you're going to have to wing  
it. We have a long evening ahead of us.

MICHAEL BRANDON: All right, well, this is a  
repetitive petition.

JOHN HAWKINSON: Louder, please.

MICHAEL BRANDON: I said, I believe this is a  
repetitive petition.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Would it

be helpful for the Chair to recite the points which will determine your finding? There are only three or four so far as I know and that would keep us on track.

CONSTANTINE ALEXANDER: Okay. When we denied relief the last time we cited three reasons why.

One was there was not a need for the type of operation that the petitioner was then proposing.

Two, the design. The physical characteristics of the design were not appropriate.

And three, is that if we did allow the operation to proceed, it would cause congestion -- unnecessary or undesirable I guess is best, congestion in the area. Those were the three reasons.

Tonight on this question about specific -- repetitive petitions specific and material change, Mr. Rafferty's pointed out I think correctly you can't address the congestion issue in this context. So the congestion goes to the merits. There's nothing sure you can

do to reduce congestion short of increasing the size of the sidewalk or the like, and that's not -- I'm being facetious.

The other two are relevant; design and need. And specifically whether as James has pointed out whether what is being proposed tonight is nothing more than what was proposed back in April, except with more detail presented what the product line is going to be, the hours the operation. But the fact is there going to be a bakery is part of the premises, was told to us before and didn't --

ATTORNEY JAMES RAFFERTY: Mr. Chairman, that is not correct.

CONSTANTINE ALEXANDER: What's not correct?

ATTORNEY JAMES RAFFERTY: There is -- you're discrediting the testimony of Ms. Tosi. She was never operating a bakery. We are --

CONSTANTINE ALEXANDER: Mr. Rafferty, enough of your insolence. The fact of the matter as Mr. Williamson read, your client told us back in April that we're going to

have a -- we're going to partner with a group that many people may have heard, David Chang's Momofuko, is a group called Milk Bar. It's a dessert orientation. We are now partnering with them to have a dessert. Tonight you're still partnering with somebody.

ATTORNEY JAMES RAFFERTY: Mr. Chairman, with all due respect, we were not operating a bakery. And you have repeatedly said throughout the hearing, and just what you read, there is no mention of the word bakery. And I'd like Ms. Tosi to directly address that.

CONSTANTINE ALEXANDER: No, I'm not going to do that. You're going to have a dessert orientation on your proposal tonight. You had dessert orientation on your proposal -- I'm reading the words. I'm reading your client's words.

CHRISTINA TOSI: If it's helpful, I -- just to speak on Milk Bar's behalf, if that helps clarify what the relationship was then. The partnership was just for us to

make two desserts for them to put on their menu, which is what they've done in a few of their other stores. This proposal is for us to actually bring what we do, which is very different than what's on their menu.

CONSTANTINE ALEXANDER: I understand.

CHRISTINA TOSI: Okay.

CONSTANTINE ALEXANDER: My point is is that we were told in April there's going to be a pizza operation with a dessert orientation. We have the exact words from -- tonight we're being told it's going to be a pizza operation with a dessert orientation, but the product line is going to be expanded --

ATTORNEY JAMES RAFFERTY: Mr. Chairman, we're being told tonight, let's be clear, it's a pizza operation with a bakery. There will be cakes. You can buy a birthday cake in a bakery. What was being described last time as Ms. Tosi has repeatedly said, were two items -- two one three item they were going to offer as dessert. That's

by -- the characterization here, a bakery has a defined term. They're going to have -- she's told you, they're going to have a bake -- you can go in and buy a birthday cake in a bakery.

CONSTANTINE ALEXANDER: Doesn't a bakery have a dessert orientation?

CHRISTINA TOSI: I heard Milk Bar, a dessert orientation as just a description of our identity as a brand less as what was --

CONSTANTINE ALEXANDER: We'll get to that when we get to the merits.

Mr. Brandon, you're still here? Okay.

MICHAEL BRANDON: Thank you. Thank you for your patience and I'm sorry about the delay. Okay, just for a quick clarification on the --

JANET GREEN: Hold it close to your mouth.

MICHAEL BRANDON: For a quick clarification on the issue of a bakery. Is it indeed of a bakery or is it more

of a pastry shop? It sounds like -- well, I guess the question becomes is there actually going to be baking done on the premises?

CONSTANTINE ALEXANDER: And we went through this already in the question and answer. There will be --

MICHAEL BRANDON: I'm sorry.

CONSTANTINE ALEXANDER: No. There will be -- I think you said maybe one or two.

CHRISTINA TOSI: Yeah, certain items.

CONSTANTINE ALEXANDER: A couple of items. And the rest is coming from New York or from a kitchen that they have somewhere else in the Boston area. That was -- did I get it right?

CHRISTINA TOSI: That's correct.

MICHAEL BRANDON: So under our Zoning Ordinance, this is a question I guess for Mr. Rafferty, would this then be a bakery or would it be a separate fast food operation?

CONSTANTINE ALEXANDER: Well, I'll answer it. To

the extent that there's going to be pizza offered in this operation on a takeout basis of a more than a certain percentage, it becomes a fast order food establishment, which is why they need a Special Permit, which is why we're here tonight. Okay? It's not, it's no two businesses. It's in a sense -- my sense and Mr. Rafferty can correct me because I may be getting it wrong, it's basically two kind of businesses under a single, in a single space, in an operation. You have a rental space, you walk in, it's not going to be -- except when you pay the check, it's not going to be distinguishable. I walk in here I pick up a piece of cake from this bakery or I walk here and get a piece of pizza.

JANET GREEN: But they pay differently don't they?

CONSTANTINE ALEXANDER: No, no, you pay differently.

ATTORNEY JAMES RAFFERTY: Here's a critical mistake. And I feel --

JOHN HAWKINSON: The microphone, Jim. Sorry.

ATTORNEY JAMES RAFFERTY: Mr. Chair, you just said they're not going to be distinguishable. But they are. This was Ms. Tosi's presentation. When you walk in the door of Milk Bar, it's a separate setting, it's separate colors, there are bakery cases, there are birthday cakes. That's a bakery. And then there isn't a wall. These are two businesses operating without a wall between them. That was never the proposal.

ANDREA HICKEY: And before you would have ordered your Milk Bar cookie from the employees of the --

ATTORNEY JAMES RAFFERTY: Of & pizza.

ANDREA HICKEY: -- pizza place.

ATTORNEY JAMES RAFFERTY: Ms. Tosi told you, she was never opening a bakery in the prior proposal. And the fact that there was a reference to dessert offerings, and to make the conclusion that a prior reference to dessert offerings is the same as Ms. Tosi -- she wasn't here at the

last hearing. She told you, they came to her. She's going to get an opportunity to put a 250-square-foot bakery in Harvard Square, and she described it in comparison to what she operates in the city of New York. And I've repeatedly sat here and heard -- been told, and it's simply a misstatement, the word bakery has never appeared in that transcript. And to sit here and hear repeatedly that this is a bakery that we -- this is -- if it isn't an adequate change, the Board is certainly within its judgment will make that finding. But to suggest that it's, that there was ever a bakery in the prior presentation is simply not it.

CONSTANTINE ALEXANDER: Mr. Brandon, do you want to finish your comments?

MICHAEL BRANDON: I compliment you on your patience.

I don't think you understood my -- the point I was raising was under the Cambridge Ordinance would this use, the proposed Milk Bar use, be considered a bakery or a

retail shop? Or since apparently the food would be, would it be a fast --

CONSTANTINE ALEXANDER: Order food.

MICHAEL BRANDON: -- order food operation? Right, aside from whether the other side is selling pizza?

CONSTANTINE ALEXANDER: I don't know the answer to that. I don't think anybody can give you --

ATTORNEY JAMES RAFFERTY: Well, I can tell you that in the Table of Uses a bakery is a separate retail use.

CONSTANTINE ALEXANDER: To be sure. I understand that.

ATTORNEY JAMES RAFFERTY: And there are bakeries, and this would be a bakery. And it would seek -- if this was going into its own storefront, it would not seek a Special Permit.

CONSTANTINE ALEXANDER: Right. But it's not going into its own storefront.

ATTORNEY JAMES RAFFERTY: I'm not suggesting we

don't need a Special -- and I think Mr. Brandon's question, I don't want to spend any more time -- I think Mr. Brandon's question was, does the Milk Bar component constitute fast food or bakery? And we're saying it's bakery. I think that's what he's asking.

MICHAEL BRANDON: That answers my question.

CONSTANTINE ALEXANDER: Okay.

MICHAEL BRANDON: So, well I was going to suggest that reheating leftover pizza doesn't create a satisfying meal when the pie is --

CONSTANTINE ALEXANDER: Well, Mr. Brandon, let's not get into the merits. You have an opportunity to make your points presumably.

BRENDAN SULLIVAN: You know, we're probably going to be here until 12:30. We have spent 15 minutes and I haven't heard anything. Could you please just say what you're going to say, Michael, so we can move on.

MICHAEL BRANDON: Pie is stale especially when

it's left a bad taste --

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Wing it.

MICHAEL BRANDON: When it left a bad taste the first time it was served. Sprinkling on a few fresh toppings while offering milk to wash down the unpalatable ingredients --

CONSTANTINE ALEXANDER: Mr. Brandon, you're making the same point other people are making. Please. As Mr. Sullivan has said, we have a long evening ahead of us. And there are other people who are not involved in the pizza case at all who have cases that are very important to them, and we're going to have to hear at some point this evening. So, please, unless you're going to --

MICHAEL BRANDON: This is an untimely repetitive petition for the original fast food permit based on the same recipe that was here before. Tweaking the storefront's design and adding Milk Bar items to the fast food options do not create a new concept for this brand-driven chain whose

main focus will continue to be its pizza. Arranging for a pizza shop -- for a pastry shop to share part of the leased premises will not increase the percentage of eat-in business as the applicant asserts in its application. Indeed as passerbys (sic) stop in on impulse for a cookie or a sweet treat to eat on the fly, the addition of the Milk Bar will actually probably increase the takeout business at this very constrained location thereby adding to the concerns --

CONSTANTINE ALEXANDER: You're getting into the merits again, sir.

I think that's the end. We do need to move on. I don't think you made a point yet that we haven't already heard.

MICHAEL BRANDON: How about the Ranney decision?

CONSTANTINE ALEXANDER: Yes.

MICHAEL BRANDON: I believe it's off point in many ways. The legal memo you got cherry picked points out of it. It ignored other aspects which specifically --

CONSTANTINE ALEXANDER: We received copies of the entire decision, or at least I have anyway.

MICHAEL BRANDON: Right. Which were highlighted to bring out certain aspects and others were --

CONSTANTINE ALEXANDER: That's what a lawyer does when they represent a client. Okay?

MICHAEL BRANDON: Right. And so if I were a lawyer, I might point out other aspects such as that the Court specifically pointed out --

CONSTANTINE ALEXANDER: And I did point out in my judgment, some aspects that Mr. Rafferty didn't point out. I think -- I don't read the decision the same way he does.

MICHAEL BRANDON: Right. Interpreting the case is one thing, but if I can just make a couple of points about it.

CONSTANTINE ALEXANDER: Yeah.

MICHAEL BRANDON: The -- since you did read it closely, one is that the whole purpose of the repetitive

petition moratorium is so that opponents affected by the proposal don't have to repeatedly --

CONSTANTINE ALEXANDER: Exactly.

MICHAEL BRANDON: -- what their --

CONSTANTINE ALEXANDER: And that includes Zoning Boards of Appeal, too.

MICHAEL BRANDON: Yeah. Well, exactly. And that's what happened here egregiously partly because there are other boards involved. And Ms. Meyer talked about ten different things. And so not just having within the battle, now they're trying to extend this into a protractive war of attrition.

CONSTANTINE ALEXANDER: Okay.

MICHAEL BRANDON: And continues to change.

CONSTANTINE ALEXANDER: Stop, stop. I don't want you to challenge their tactics or their motives or their ethics. We're talking about --

MICHAEL BRANDON: I'm not saying it's unethical.

I'm just saying it's what's --

CONSTANTINE ALEXANDER: Okay.

MICHAEL BRANDON: Okay. Final point about the Ranney petition --

CONSTANTINE ALEXANDER: Yeah.

MICHAEL BRANDON: -- case, is it's not just -- what it says is that they have to respond in order for not to be a repetitive petition and to escape the moratorium, they have to specifically address the conditions that led you, led the Board to deny the application and they have not done that.

CONSTANTINE ALEXANDER: I'm sorry, they have, whether they did it to our satisfaction or to your satisfaction is something else. But they have. There were three -- one more time. There were three reasons that we turned the petition down the last time. One of them cannot be addressed in the context of the specific and material adverse change, that being congestion. The other two they

have addressed. Whether they've addressed it to our satisfaction, we will find out before the evening is over, but they have done that. So, please.

MICHAEL BRANDON: Well, they haven't addressed congestion.

CONSTANTINE ALEXANDER: I know because you can't address congestion in the context of changes to what their proposing. We will take up, should we vote that it's not a repetitive petition, we will take up the question of congestion as to whether with regard to this new proposal or different proposal we think they meet the requirements for a Special Permit about not causing excessive congestion.

JOHN HAWKINSON: Mr. Chair, if Mr. Brandon's done, I do have a question.

CONSTANTINE ALEXANDER: Say it again, please.

JOHN HAWKINSON: If Mr. Brandon is done, I do have a question.

CONSTANTINE ALEXANDER: Okay. Hopefully he is

done. We'll find out.

BRENDAN SULLIVAN: In conclusion....

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Please. Come on, Michael.

MICHAEL BRANDON: In conclusion, please deny that this is repetitive.

CONSTANTINE ALEXANDER: Thank you very much.

JOHN HAWKINSON: Thanks, Mr. Chair. John Hawkinson. This is sort of procedural but sort of not. And the question is, so the Ordinance requires you would have to find that there are specific and material changes in the conditions upon which the previous unfavorable action was based. Does the Board have an idea whether you view that as changes in all of the conditions upon which denial is based or any of the conditions? Does there merely need to be one change or many changes or some sort of preponderance sliding scale standard? That's what we're trying to understand.

Thank you.

CONSTANTINE ALEXANDER: When we take a vote, that's when every member of this Board will take that into consideration. I can tell you there's nothing in the Ranney decision that says you have to address each and every one. And in that case, the petitioner did do that. But the conditions that were problematic were specific. They're like the design of the exterior that we have in the case tonight.

James.

JAMES WILLIAMSON: Mr. Chairman, I just want to ask for purposes of clarification. The points that's been -- there's been some colloquy about it's been referred to as a bakery. Are there going to be things that are actually -- is there actually going to be a bakery? Are there going to be things that are actually going to be baked on the premises?

CONSTANTINE ALEXANDER: You were not here. You must have stepped out. There are going to be a few products

that are going to be baked on the premises --

JAMES WILLIAMSON: So there actually will be some things that will be baked?

CONSTANTINE ALEXANDER: Some, some. I don't know if they'll have a few --

JAMES WILLIAMSON: Then the majority will be shipped in?

CONSTANTINE ALEXANDER: And the rest will be shipped in from a kitchen in Boston or from New York City. How fresh the cakes will be when they come from New York City, that's not before us tonight.

CHRISTINA TOSI: Can I just add one clarification?

CONSTANTINE ALEXANDER: Sure.

ATTORNEY JAMES RAFFERTY: You want to give your name.

SUJEAN LEE: Sujean Lee. Anyway, Thank you for letting me speak. Just to clarify, we have had a partnership with &pizza and in other locations and --

CONSTANTINE ALEXANDER: I thought one other location I heard tonight. Did I get it wrong?

ATTORNEY JAMES RAFFERTY: She's talking about something else.

SUJEAN LEE: Yeah. We have worked with &pizza in the past and we have actually worked with them to create a flavor of a cookie and a soda that is available in other &pizzas. In the same way that you would think if you walked into, for example, Pinocchio's, and there was a flavor of a soda in Pinocchio's, that would not mean that Pinocchio's has partnered with a beverage company. And that is the type of relationship I believe that had been presented prior to today, which is that there was a single flavor of something that you normally expect in a pizza shop, a soda and maybe a cookie or two to grab on your way when you're visiting &pizza, just like Subway has cookies, and I don't know what, like if there were other savory fast food concepts.

ATTORNEY JAMES RAFFERTY: Could you describe the

bakery in one minute or less and whether you ever had a bakery in another proposal?

SUJEAN LEE: Okay.

What we are talking about today is something completely different which we have never done, and frankly rarely entertain because it's such a huge undertaking and a huge departure, which is a straight-up collaboration within one space to have a full-blown bakery, a Milk Bar presence, basically inside and next to another establishment which is &pizza. So when we are thinking about our brick and mortar locations, this would be a full-blown Milk Bar bakery concept that basically serves all of the menu offerings that are only available at other standalone Milk Bar locations. We, we are our own company. And so what we are -- what is being presented today is -- could not be more night and day I think than, than what had previously been hinted at, which is that a flavor that we had inspired could be enjoyed in a small side -- a peripheral side offering. I wanted to make

that clarification.

CONSTANTINE ALEXANDER: Okay, thank you.

I think we're going to close public testimony at this point. We've heard a lot.

We do have written communications in our file, many of which have either been accurately summarized or referenced already; namely, the comments from the Planning Board which Mr. Rafferty I think accurately described.

There are letters of opposition from citizens, some of whom have already spoken tonight. And they make the same points in opposition. I don't think there's anything to be gained by reading these long letters. And so I am not going to read anything in the file other than to say that we have a number of letters from citizens in opposition. We have, I think one in support, and we have the comments of the Planning Board. And we previously received comments from the Harvard Square Advisory Committee.

With that, I am going to close all public

testimony on this issue, specifically with the repetitive petition issue.

Is there any discussion board members want to undertake or do you just want to go right to a vote? Ready for a vote?

BRENDAN SULLIVAN: I am satisfied that there are material changes and it's a different proposal than the one that was before us.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Louder.

CONSTANTINE ALEXANDER: I'm not sure they heard you, Brendan.

BRENDAN SULLIVAN: I believe that there are material changes and that the proposal before us is far different than the one that was before us in April.

CONSTANTINE ALEXANDER: Okay. I'm going to make a motion?

JANET GREEN: Yes.

CONSTANTINE ALEXANDER: The Chair moves that, I

have to -- we've never taken a vote like this before. That what is being proposed tonight contains specific and material changes in the conditions upon which we previously denied relief.

This is on the basis that what is -- will go forth if we grant effective relief at the end of the day is an exterior appearance that is consistent with, identical to, what has been presented to us, which I've initialled. And it's -- make sure we're on the right page. It's the plan that's dated August 7, '17. No?

ATTORNEY JAMES RAFFERTY: Unless maybe they didn't change the date. If I could see it.

PATRICK TEDESCO: It says 8/7/17.

CONSTANTINE ALEXANDER: It's more important -- I want to make sure I initialed the right page, that's all.

ATTORNEY JAMES RAFFERTY: Yeah, that's it. But I guess -- at the bottom it's 9/19/17. You see the bottom reference. It's the date that threw me. You see, 9/19. I

knew it was a September drawing.

CONSTANTINE ALEXANDER: The date's not important,  
I just I want to make sure --

ATTORNEY JAMES RAFFERTY: No, but we're  
referencing a date. It's the 9/19 date.

CONSTANTINE ALEXANDER: Okay.

PATRICK TEDESCO: That's the revision date?

ATTORNEY JAMES RAFFERTY: The revision date,  
correct.

CONSTANTINE ALEXANDER: Okay, so back to it.

So the motion is to find that there have been  
specific and material changes based upon the fact of the  
plans that have now been submitted by the petitioner -- or  
rendering, which has been initialled by the Chair.

All those in favor of granting -- all those in  
favor of the motion which finds that this will not be a  
repetitive petition, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. We will now move on to the merits of the case.

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

CONSTANTINE ALEXANDER: We've gone through a lot of the merits already anyway.

JANET GREEN: Can we take a breather? Just five minutes.

CONSTANTINE ALEXANDER: Five minute break.

(A short recess was taken.)

(9:00 p.m.)

ATTORNEY JAMES RAFFERTY: Continuing on, Mr. Chairman.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: And I will attempt to abbreviate the presentation because it was difficult to discuss the changes without going through exactly what's here. But I do think there are a couple of aspects of this

application that would allow the Board to find that in its current form it really does present a -- is satisfying a need. We're all familiar with the criteria and it's set forth in the Ordinance.

And so in this location what's being proposed here, has more elements of a restaurant I would say than fast food. Not all fast food uses are alike. And there are references throughout about the fact well, there are pizza and there are other pizza offerings. By the way, a fast food permit that was issued a few years ago for the operation of Just Crust Pizza on Brattle Street, that operation closed three weeks ago. But, you know, comparing this -- what's being proposed here with 38 seats and a bakery serving, operating as a cafe in the morning and with a type of product -- what is unique about this product is not only its shape, it is not the traditional Neapolitan pie, it is not the place where you might typically call up and order six pizzas that get cut into the eighths if you're

having people over to watch a football game. It's a very individualized product. In fact, I have some images of how it's served. It is not served on disposable. It is actually served on -- and I should probably bring Mr. Murphy in perhaps at this point, because in reality the bakery, and as great a job as we appreciate Ms. Tosi and Ms. Lee doing, this might have a little bit more to do about the operations of &pizza, because while it's still very much a part of it. But the product offering, the way the product is served is different. They don't sell pizza by the slice. And there's a lot of customization to what is being proposed here. Local products they use to source it. It's a different style pizza. It's largely an individual pizza. And there's an attention to detail around the premises. And the reason I mentioned a place like Domino's is that what's being proposed here in terms of the interior is far different, and I know while the compatibility question doesn't arise on the storefronts with regard to the

interior, the interior experience is highly relevant.

Because as was noted earlier by some of the speakers in the prior portion of the hearing, this is a place where people can go and sit down and eat. And there are other pizza locations in very close proximity where you can't sit down, but you can go and get a slice. So the Board appropriately focuses on need, but I think need has to do with -- and the language talks about providing a service. And the service that's being provided here, as we said, is a dining experience. The fact that people, particularly the patronage here that a younger audience might involve taking pizzas out, that's the part of the Ordinance frankly that's hard to measure. How is it that one can enforce or even be able to reasonably estimate? So I think the applicant honestly looked at their operation in other locations and concluded that they probably can't -- the 80/20 bar might be high to reach. But, you know, it is relevant to the Board whether 80/20 is 70/30 or, you know, significantly numbers

in the other direction. That's why I go back to Domino's which is at the corner of Trowbridge and Mass. Ave. We all know that's an auto-focussed delivery operation. They're serving the same food product, although I bet my clients would disagree that what's being served there should be spoken of in the same terms. But when we look at the application of, or the reason for the fast order food establishment, I think some historical reference in context is appropriate. It's clearly, and as the criteria talks about, one of the big things is trash, litter removal, double parking, congestion. The physical location here, located in the super crosswalk, there is not an opportunity here for patrons to double park. There might be other locations where people who could choose to park in loading zone there, but there is no double parking in a crosswalk as bad as one might suggest, the traffic is in Harvard Square. This location there doesn't promote or even hint or suggest -- there's no invitation here. It's a huge

crosswalk in front here. So the vehicle circulation that's affected here, this is the type of use, and it's gotten recognized time and time again, that people wouldn't necessarily be driving into Harvard Square or driving -- running in to pick up a pizza in their automobile. And that, and I think you make that test and that determination by looking at the product, looking at the environment, looking at the way it promotes itself. This product and this operation here is really intended to create an experience and ambiance that is responsive to a certain demographic and to a population.

We all know of the youthful nature of the population in Harvard Square. The Planning Board noted in its recommendation that you approve this Special Permit. That the dominant demographic in Harvard Square -- they called it a festival of youth. And so the environment here that's being created here does, I think, admittedly suggest that the demographic focus might be towards younger people.

But be that as it may, some would suggest that that's an appropriate place for a vibrant college center.

CONSTANTINE ALEXANDER: Excuse me, I don't mean to interrupt you. But the last hearing, the one in April, your client represented that there would be no delivery service from the establishment. Is that still the case?

ANDREW MURPHY: That is the case, yes.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: On the operational side and I -- the one thing I would like Mr. Murphy to address, because it did come up -- it should appropriately come up in these hearings, is what is the operation of the business? And we all recognize that the zoning would say that if this was Pizzeria Uno, you could have a pizza restaurant here and none of us would be here.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: And so what's happening here that's different than a Pizzeria Uno? And that has to

do with the percentage of takeout. But the impacts of this operation are asked to be evaluated by the Board. And one of the biggest impacts of any restaurant operation is how they treat trash. And there's an innovative program that they're employing here in Cambridge, and I just wanted Mr. Murphy to speak directly to it. Because from the logistical operations here, things about where does the loading occur? There's a designated area on Palmer Street, they have worked out the logistics of that. But the trash, the coordination handling of trash here is going to far exceed what existed with the prior restaurant operation, and I wanted to share that with the Board.

ANDREW MURPHY: Drew Murphy, &pizza from Washington, D.C. A couple of things as Jim was talking about, the festival of youth. I can also testify that I might not be quite that same demographic. We do have locations at Georgetown University, which is not too far away from where I live. At George Washington University, at

Gallaudet University. And certainly there's a lot of students that come but certainly there a lot of people like myself and my family that go there. So it is a neighborhood type of operation. There is the same -- if anyone knows Georgetown, it's very similar to this location. So quick segue.

No. 2, and I've talked about this in the past, we've been working with Steve Nutter. We were introduced to him by a couple of folks at Cambridge Green and he has -- we've identified EOMS Recycling. They do Sweetgreen's recycling. They work with several other folks in Harvard Square. And so as we'll continue to work with Steve on that. But those are the people that we initially talked to. And, you know, we'll probably move forward with in the short term.

Anything else, Jim?

ATTORNEY JAMES RAFFERTY: Yeah, can you just speak to the nature of the pizza, how local products are used and

how customers get to customize the pizza. And finally, could you describe what it's served on and what those images show?

ANDREW MURPHY: Sure. A couple of things:

No. 1, we have our, we have ten pies, if you will, that are on the menu when you walk in. And you can order any one of them. The most recent one, we have the Maverick. There's the OG. Different names. And we rotate some in and out, but more perhaps importantly, the price is about ten dollars a pie, for any one of those ten. Or you can go down the line and make up your own with the 30 different ingredients, and the price would still be ten dollars for the pie. So we allow our customers to customize their own pizza or they can of course choose from the menu.

In terms of there's a slide going around right now, there's a particular tray that the pizza is put on when it goes to the oven and that is recyclable. People take it back to their table and then as they leave, they put it on

top of the bin and it gets reused.

ATTORNEY JAMES RAFFERTY: And then finally the criteria set forth in 11.31. They're set forth in our application, but we noted first is the operation will not create traffic problems, reduce available parking, threaten the public safety, or encourage or produce double parking on the adjacent public sidewalks.

This operation should operate no differently than the predecessor restaurant uses in this location. There's nothing to suggest that this type of product offered in this setting is going to somehow attract a type of patronage that would differ from or that would in any way encourage double parking. There's nothing to suggest that. They don't promote call in. They don't have delivery cars pulling up. Many pizza operations do that. That's how they succeed. None of that takes place in this location.

The second criteria is the physical design, including use of materials shall be compatible to the

physical characteristics of other buildings. I won't recount for you the extensive review that this design went through. And the standard isn't whether, well, I like the white or I prefer this color. It's compatibility. And there was an acknowledgement, and clearly a finding in the prior case, that that test wasn't met here. And the specific element of the design that was found to be lacking was the prominent use of black. That was picked up on when we met with Mr. Sullivan, and not only did he feel strongly about the black, but going to this notion of branding, he asked that they consider a color that they don't have any affiliation with. And I want to stress the significance of that, because in the competitive marketplace now for restaurants and the like, people do -- operators do find a certain affiliation with an image or a look. And they've deviated from this significantly here. So the portion of the space that's related to the &pizza operation now has a look and a color that isn't present anywhere. We looked

closely at the number of crimson colors. Cardullo's has a crimson awning, and they didn't want to be seen -- we were asked to try to diversify it a little, but that awning frankly was drawn to be effective. If you look at the entrance, the prior awning, they might seem like minor details. We spend a lot of time on this. The prior awning extended over the entrance to Tory Row. We were asked to step it back from Tory Row to reveal more of the entry, and you'll see in that elevation it does that.

The two awnings before were the Milk Bar awning and the &pizza awning were coming together, were read more continuously. They abutted each other. The idea was to separate that. And the prior awning, particularly on the Milk Bar side, had a prominent use of pink, and that was suggested that they move away from that. So if you, if you look at that, I would suggest that there have been few applicants before this Board that have gone to the effort to meet the compatibility standard and they were assisted

greatly by the professional guidance and direction afforded them by the Community Development Department and the design professionals that work for this city. And I think that had a large impact on the Planning Board's recommendation that this, that this be allowed.

Of course now we come to the establishment fills a need for such a service in the neighborhood or in the city. I know we've been over this many times. The need, define need. The view here and frankly and many times this Board finds a need exists. There was an interesting deliberation, and some of the conclusions are contained in the second communication from the Planning Board when they talked about what that need means and how do you -- what does need meant in this context. The need to have an active storefront utilized. The need to be able to keep Harvard Square as a vibrant place. That was all cited as examples of need. But with regard to this particular location the need, the need that's being provided here, and it occurs in other places,

but it's going to occur uniquely here, is to create a restaurant-style environment where people can come and enjoy a moderately priced meal. That's a bit different. And this is going to be different. This is going -- if you were used to getting deep dish Chicago pizza in Pizzeria Uno, this isn't what that's going to be. This is something different. So that doesn't exist. No one is doing that pizza in that form here. So that's why we believe that it does meet the need.

Patrons from walk-in trade, it's almost a given in this location in Harvard Square, particularly that the primacy of the pedestrian circulation here across from the T station at ground zero in Harvard Square. I don't think anyone strongly believes that, you know, someone's going to come into Harvard Square and circle around for 15 minutes to try to get a parking space here. You might take your car to Harvard Square and park and walk into this place, but there isn't any parking adjacent here, and I don't think the

applicant needs to apologize for that. It's a pedestrian-based environment. It's an urban setting that has thriving retail with limited parking, and that works. And this will simply be consistent with the overall operation of the square in that way.

E, the greatest extent feasible, biodegradable materials, as Mr. Murphy noted, it's a primary theme of the restaurant in its operation. And you might hear some testimony tonight this restaurant has strong views on cultural and environmental issues and it has a commitment and a passion around certain things in protection of the environment, and it is paramount in their thinking.

F is suitable, suitable receptacles. And they actually provided me -- they're so pleased with their state-of-the-art trash barrels.

CONSTANTINE ALEXANDER: Excuse me, Mr. Rafferty. Assuming we can move on. These items were covered at the last hearing. And if there have been no changes from what

you told us you were going to do the last time, I don't think there's any need to go into the detail right now.

ATTORNEY JAMES RAFFERTY: Well, there's only one criteria left.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: And is the Board then going to adopt the testimony in the prior hearing, because I'm trying to --

CONSTANTINE ALEXANDER: With regard to the issues, the points we have to find with regard to a fast order food establishment, yes.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: We're going to find that -- because we didn't have a problem the last time. I don't know why we would have a problem this time.

ATTORNEY JAMES RAFFERTY: Okay. Well, we're on F and it talks about convenient and well-suited marked waste receptacles. We didn't have that before?

CONSTANTINE ALEXANDER: No.

ATTORNEY JAMES RAFFERTY: So I'd like to offer it into the record as demonstration of satisfaction of that requirement.

And the final requirement talks about compliance with ingress, egress, building code requirements around handicap access, and we meet all of those. So for the reasons set forth --

CONSTANTINE ALEXANDER: What about congestion? You said you were going to turn to that.

ATTORNEY JAMES RAFFERTY: Right. So the congestion was addressed in A, you know, when it talks about creating traffic problems and the like. That's a portion of the condition. It also talks about threatens the public safety in the streets and sidewalks. So the generic criteria under the Special Permit talks about congestion. This, this -- that requirement talks about whether any use would create congestion. If it's found to create

congestion, a Special Permit doesn't get granted. So in this case we don't believe there's any congestion being created here beyond an active retail environment. The fast food nature of this business doesn't contribute any differently to the congestion predecessor uses here, prior uses here, a newsstand with active coming and going with transactions back in the day when newspapers and periodicals were taking place. We don't have any expectation that the foot traffic generated into that bakery is going to be at the same volume that it occurred when it was a, when it was a newsstand. You look at the other restaurant uses that are considered there, the diners here will come and go, the sidewalks here are ample and well sized. It's a complete pedestrian environment. So the idea that the proposed sidewalk seating has been in existence at that location for the life of Tory Row is an issue that gets approved by the City Council. Ultimately in this case they'll have to get a license from the License Commission to address that. So the

impacts we're having on traffic are consistent with other operations of this type and no different than the allowed uses that would go here. Because I think the test for the Board in this case is does a fast food use here have a different impact here than a successful restaurant or a successful retail location, and whether it's a retail that sees a lot of coming and going or whether it's a retail. We do know on the delivery side it's limited and we can manage those deliveries. So our position on congestion is that there's nothing created -- there's no added congestion here. This in reviewing this application the applicant was encouraged to stay open late, to keep the sidewalks active, not to have the place go dark. The proposed hours are even -- you heard in the prior application it was an encouragement, do breakfast, make this a lively corner and a lively place. That isn't coming voices who think there's too much congestion. The responsiveness around opening early was directly related to the request that we want this

corner in this location to be active, to reflect the buzz and activity of Harvard Square. Bringing in Milk Bar now I think is going to do that more effectively. I think conventional tastes would direct breakfast business more in the direction of a Milk Bar perhaps than having an avocado pizza at 7:30 in the morning, but again that's a demographic decision. But for those reasons when one contrasts the expressed desire by the Advisory Committee which specifically talked about staying open late and the desire to opening early, that would suggest that the use that's desired here is one that does provide activity, not congestion. But pedestrians, people in the street. So for the reasons contained in the application and our testimony tonight, we would suggest that the applicant has met the criteria contained in 11.30 and we would urge the Board to grant the Special Permit.

CONSTANTINE ALEXANDER: Thank you. Comments from members of the Board?

BRENDAN SULLIVAN: Well, a couple of questions.

What are the, what are the proposed hours?

CONSTANTINE ALEXANDER: Seven to two.

BRENDAN SULLIVAN: Are we still at the seven to two?

ANDREW MURPHY: Yes.

BRENDAN SULLIVAN: Okay. Seven a.m., two a.m.

ANDREW MURPHY: So Milk Bar will be opening for breakfast I believe Christina mentioned at seven, and we will be opening for lunch at eleven and we will both be remain open until two.

BRENDAN SULLIVAN: Okay.

Now, &pizza and Milk Bar are going to cooperate this space. What if, and we're being asked to approve both operations under this move and who approve a Special Permit under the fast food ordinance, now what if Milk Bar doesn't make a go of it and then they decide that it's not working out and they want a divorce out of this, so what happens

then to the dynamics?

ATTORNEY JAMES RAFFERTY: I would suggest that given the posture of the application that the applicant is proposing that the Board grant a Special Permit operation to &pizza to operate a fast food pizza restaurant here with a bakery as depicted on the floor plan. Now the bakery happens to be Milk Bar. But I would think that the Board would be within its purview to make that floor plan and the elevation contained here in the presence of the bakery an element of the their approval if they thought it was a relevant factor in granting -- or meeting the requirements of a 11.31.

CONSTANTINE ALEXANDER: My thought on this and it was just this, Brendan.

JOHN HAWKINSON: Mr. Chair.

CONSTANTINE ALEXANDER: When we make a motion to grant relief, which will either pass or not pass, I'm going to propose certain conditions for consideration by other

members of the Board. One of the conditions I'm going to propose is that if there is no bakery operation of -- along the nature of what's been described tonight, Special Permit's over and they have to come back with a new proposal to -- with a new partner or no partner and get another Special Permit. So it's not going to be permanent. It's got to be along the lines of what we've been told tonight. I want to put a stake in the ground.

BRENDAN SULLIVAN: Basically that both of these operations are tied at the hip.

CONSTANTINE ALEXANDER: Yeah, exactly.

JANET GREEN: So wait a minute, so that the bakery is tied at the hip or this particular bakery?

CONSTANTINE ALEXANDER: No, no. I would not suggest -- I don't think it's fair to the petitioner. I think having a bakery is essential. If you don't have a bakery, then you're back to the petition that we denied in April.

ANDREA HICKEY: A bakery operating independently in the same space?

CONSTANTINE ALEXANDER: Yeah.

ANDREA HICKEY: What if &pizza decides they're going to bake some cookies and that's their bakery? That's a very different sort of --

CONSTANTINE ALEXANDER: Then they have to come back. They'll have to come back to us and point that out and we'll decide whether we could grant a Special Permit again or renew it with this modification.

ANDREA HICKEY: Then I think we need to be very specific about what would constitute an acceptable substitute bakery concept.

CONSTANTINE ALEXANDER: I don't, I don't think we have to decide tonight what would be acceptable bakery other than if what the bakery they're going -- and Milk Bar goes away, the bakery that's going to be there has to be of a kind in terms of product offerings, sharing of space, of

what has been proposed tonight.

ANDREA HICKEY: Would it have to be a separate entity?

CONSTANTINE ALEXANDER: I don't know why that's essential, no. I don't think -- to me, I'm only one person. The motion I would make is no, it doesn't have to be a separate entity. But if the role, we've been told a story tonight, I don't mean to be pejorative. We've been described how they're going to operate. If we grant relief, we should do it on the basis that they will operate as they told us they're going to operate. And if there are changes, come back before us and we'll decide if we will allow them to continue to operate in this practice.

ANDREA HICKEY: To me the first case that we decided it was very important conceptually for it to be a separate space for it to be a new petition. When I say a separate space, I mean operated by an independent sort of entity. I consider that heavily in deciding that this was

in fact a different case. On that basis to me --

CONSTANTINE ALEXANDER: You're saying if I got it right.

ATTORNEY JAMES RAFFERTY: Mr. Chair, if I can offer. Mr. Murphy says they're perfectly comfortable with the independent characterization of the bakery. They do not intend to operate a bakery. If for some reason the Milk Bar bakery operation were to change, they would have an independent bakery operation. If Inspectional Services found that was not in compliance with the Special Permit, I agree I think they would have to return here and to get a different Special Permit, but an independent bakery, different employees.

ANDREA HICKEY: To me that was an important factor in deciding that this was a new case.

ATTORNEY JAMES RAFFERTY: Agreed.

ANDREA HICKEY: So, I would like to see that as part of the decision.

CONSTANTINE ALEXANDER: Okay. If we ever get to the vote --

ANDREA HICKEY: Thank you.

CONSTANTINE ALEXANDER: -- I'll welcome any comments and changes to what I scoped out.

BRENDAN SULLIVAN: I think you're correct?

CONSTANTINE ALEXANDER: I agree with you as well. I'm not -- but let's get down to the words. We're not there yet.

ANDREA HICKEY: I didn't mean to take away from your time.

BRENDAN SULLIVAN: No, no, I'm glad you added to it which you always do and wonderfully, but I think you're correct. I just basically asked the question to see what the mechanism was going to be forward should the bakery, the Milk Bar cease operations. And my thinking is that two of these operations are very much an integral part of what we are asking to be approved tonight.

ATTORNEY JAMES RAFFERTY: Agreed.

BRENDAN SULLIVAN: And should one change, they either have to substitute that quickly for the same thing, the corporate --

ANDREA HICKEY: Or a like kind of sort of independent.

BRENDAN SULLIVAN: The corporate entity may change, the name may change, but that the operation has to remain pretty much the same. Or they would have to come back to us and say, we have a different type of bakery, the offerings are a little bit different, so on and so forth, and then we can make a determination.

ANDREA HICKEY: I agree.

CONSTANTINE ALEXANDER: Sean, did you want to make a comment?

SEAN O'GRADY: Well, there's talk in here about a Special Permit issued for fast order food establishment hereunder maybe utilized only by the owner or operator of

such establishment as described in the application. Or those documents may be modified. So I suppose you could modify that.

CONSTANTINE ALEXANDER: I think we can -- we're okay.

ATTORNEY JAMES RAFFERTY: Right. So but to be clear, the fast order food establishment operator is the &pizza entity and that wouldn't change. I think what we're saying is if the bakery operator changed, they would need -- I think what I'm hearing the Board say, it would have to be an independent bakery. But I don't think the bakery would be constrained by the change of ownership limitation that the fast food operator would be limited by.

CONSTANTINE ALEXANDER: No, I agree with that.

ANDREA HICKEY: The bakery component as I see it is not a fast food component.

CONSTANTINE ALEXANDER: No, it's not. If it was just a bakery, they wouldn't need a Special Permit at all as

Mr. Rafferty pointed out.

Are you all set?

BRENDAN SULLIVAN: All set.

CONSTANTINE ALEXANDER: Patrick?

JANET GREEN: I'm comfortable.

CONSTANTINE ALEXANDER: I will now open the matter up to public testimony. I'm going to follow the same process I did before. Anyone who wishes to speak in favor of granting the Special Permit, please raise your hand and we'll recognize you one by one.

Sir, why don't you come forward again. Yes.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Point of clarification.

CONSTANTINE ALEXANDER: Yes.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Could you frame what the question is being discussed right now? I mean what is --

CONSTANTINE ALEXANDER: The question right now is

whether we should grant a Special Permit to the petitioner to operate a fast food, fast order food establishment at 8 Brattle Street on the basis of what they've described to us tonight.

Answer your question?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I want to keep on task.

CONSTANTINE ALEXANDER: Sir.

JOHN MAZELLA: John Mazella, 24 Norris Street. Yes, as I like to speak in favor of granting the Special Permit, because honestly looking at the current space and the high pedestrian traffic proximity to, you know, proximity to a lot of college students who, you know, have unceasing appetite for pizza, I think that this combination Milk Bar/pizza establishment is really kind of a best case scenario. You've got a spread of, you know, you got pizzas presented in an interesting way. You've got Milk Bar, you know, taking care of dessert, breakfast. You're serving

from early morning to late at night. You know, a pedestrian walking by that -- walking by there at nighttime, you know, like if you're awake you can go to this area and get something, hang out with friends. And I think it's just, it's a good use of the space, you know, as a pedestrian. I graduated college and I think as a college student it's the kind of place I would have liked to be able to walk by or stop by quickly or okay, let's stop in. You know, we just had dinner, we'll stop by Milk Bar. Or before we go out, grab pizza, you know, and keep going, you know. So yeah, anyway, that's, I think it's great. I think it's a good idea. I think it's interesting and I think that it really serves the citizens who will be around, the kind of people who are likely to walk around there at any time of day.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Sir. Come to the mic.

EDWARD HOFF: Edward Hoff. I just want to speak

briefly. I think this is going to look very appropriate for Harvard Square. I think the changes that have been made, including the colors and the presentation, make it appropriate. I also think it's going to be very inviting. And I know I'm thinking about this as someone who is not a student anymore, but who walks down into Harvard Square looking for the right kind of places to go and I think it's an appropriate use. And so all and all I think this is exactly what I was looking for as a citizen of Cambridge who is in Harvard Square a lot. And so I'd like to support it.

CONSTANTINE ALEXANDER: Thank you. And thank you for staying around to this late hour.

Ms. Jillson.

ATTORNEY JAMES RAFFERTY: Amazing the people who thought there was material change now speak in favor.

DENISE JILLSON: Denise Jillson, Harvard Square Business Association. You know, I'm not going to reiterate what I talked about last August, I mean last April, but, you

know, I'm here to give our full support. And also to, you know, compliment &pizza and our new friends at Milk Bar.

This has been an extraordinarily difficult for, for all of us and for members of the public for sure. It's been a long process and, you know, much too probably the detriment of &pizza, they were, they tried to be accommodating. There were so many meetings that they had with the public and kept changing the design, but I can't tell you when I saw the design at the Planning Board after I believed the BZA recommended that the Planning Board encourage &pizza to work with the staff at both the Cambridge Historical Commission as well as the Cambridge CDD, and they really worked very well together and they worked very hard, and I think we came up with a much better and a more beautiful design, one that's appropriate for the aesthetic. I'm sure you've seen this. I think it's in your package, but I blew it up it a little bit and maybe we could just -- this is what we've been dealing with all summer and actually since Crimson

Corner left. It's not, it's our marquis location and it's really, it's very sad when people come out of the T station and look across at our marquis location and this is what they see. And the complaints that I get from people are, you know, what are you doing about the homeless in Harvard Square? And I keep telling them the reason that they come to Harvard Square is because in fact we take very good care of our homeless population which is why they gravitate to Harvard Square. This poor child, I mean I know this child. This child, you know, goes to the day care center at the Salvation Army here in Central Square. And, you know, this is not what we want to present. And I think that this design, and we're doing everything we can, you know, to help the homeless, keep them fed and keep them sheltered and all of that stuff, but we don't want to present this as our marquis corner. And my fear always, and when I met with Drew back in January was we would like something that's opened early in the morning but that stays open late at

night, that is clean and beautiful and welcoming and activated with a three season patio that shows the best that Cambridge has to offer. So, you know, some people say well, you know, it doesn't have to be pizza. It could be anything. But what we wanted more than anything were those three things: Early in the morning, late at night, beautiful and a three season patio, and that's what they've given us and that's what we have and I really hope you will support this.

Thank you very much.

CONSTANTINE ALEXANDER: Thank you for taking the time.

Anyone else who wishes to speak in favor? I thought I saw a hand back up. Ma'am, you want to speak in favor?

LAURA DONOHUE: Laura Donohue, 90 Putnam Ave. also the owner of Bob Slate Stationery which is one block away from this proposed location.

CONSTANTINE ALEXANDER: You're what? I didn't catch that. The owner of what?

LAURA DONOHUE: Owner of Bob Slate's Stationery. May I address a question to Mr. Rafferty? But I just, it's part of my response. Did you say that you would not be participating in delivery through Grubhub or any routine delivery operations? I apologize for asking that question. It has been a very long evening.

ANDREW MURPHY: We will not.

LAURA DONOHUE: Okay.

CONSTANTINE ALEXANDER: And point of fact I think --

LAURA DONOHUE: Sorry for that.

CONSTANTINE ALEXANDER: No, no. Because they represented to us that they're not going to have a delivery service as Drew, Mr. Murphy just did. When we get to making a motion, one of the conditions I'm going to suggest that we impose is that there will be no delivery. So that if it

does happen, they will be in violation of the Special Permit.

LAURA DONOHUE: With that in mind, I'm going to offer a string of comments which are a little bit independent if that's okay. First of all, I would like to, as a 12-hour a day resident of that block of the neighborhood, I would like to offer my appreciation for the concern by this Board and by the applicant for trying to put forth an appropriate proposal. This is, as we've said, a very important significant corner. And I really appreciate the concern and the care that has been presented by both parties because we all care very much about what's gonna happen here. My perspective is as somebody that's there 12 hours a day, which I think might be very different from somebody passing through. I have not participated in all the previous meetings. I have tried to catch up with what's been going on.

With regard to the congestion, my perspective is

twofold. There are people with all due respect, and I apologize for my outburst, who park routinely on the crosswalk. They are Uber drivers, and that is a problem -- James, you will have your chance. That is a problem completely separate from this applicant and I am there all day. That is a problem completely separate from this applicant. Okay?

Secondly, the congestion that is of great concern to a lot of us is that lovely little loading zone that is used by pretty much all of us on that block. We request simply that you be a very good neighbor. And that is why the question about the delivery, because if your delivery vehicles are going to be sitting there all day long waiting to pick up and drive, that would basically preclude any of us using that. So you've addressed that. But the point is sharing that loading zone especially with all the other construction that's going to be happening across the street is critical to the success of all of our businesses. Being

a nice neighbor is required. We expect that you will do that because you have a history of doing that elsewhere.

Secondly -- thirdly, I might add based on a photo that I saw from the 40s, it was Bob Slate Stationer and laundry. You may recall that. There was a shared space due to the high cost of rent.

ATTORNEY JAMES RAFFERTY: Oh, not there.

LAURA DONOHUE: Not there, but across the street. And it was a very interesting shared set of businesses that had very little to do with each other. Apparently you could get a notebook and get your shirts cleaned.

The decision criteria here which I think Denise picked up were the needs that we have an active lively streetscape which realistically is talking about a restaurant. There are very few retail operations non-restaurant that are going to be open those hours. So I don't think any of us were looking at something that would not be a restaurant. And you have certainly addressed the

lengthy hours. We want an experience that is suited to the residents and the visitors. I think that's up to you to succeed or fail. I don't really think that's part of this, that we should be trying to judge.

CONSTANTINE ALEXANDER: Right.

LAURA DONOHUE: I think that you've heard plenty from the residents of Cambridge that branding is really not our thing. You will provide a good product that is unique, that is a great experience, at a price that people feel like and you will succeed. If you choose to bring a cookie cutter national brand into Cambridge, I can probably guess that you will not. I think that is up to you to do and succeed, and I think you have already put forth some effort that shows that you are trying to understand who we are and what we want, and I think that is something for you to do, not necessarily for all of us to debate in advance here.

And what I echo what Denise is saying is to me the choice is another empty storefront for another year, which

when I see the visitors all summer coming out the T and walking passed that empty storefront and wondering what the heck is going on with Harvard Square, I would like to see a nice business in here. That does not mean you tolerate any business, but I am saying that is a very grave concern to those of us that are here all day, as is the fact that another bank simply is not acceptable. We'd all love a small independent business. If you can prove to us that you are a fit with our community, that's a big step towards being part of our community. Sorry for the long stuff.

Thank you very much.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down and stick around. I think the mic goes back to you.

ATTORNEY JAMES RAFFERTY: She -- Ms. Donohue spoke under the heading of in favor so I just --

LAURA DONOHUE: I said I'm kind of in the middle, that's why I waited to the end. I thought I was favorable

but I'm in the middle. Mr. Rafferty, that was pretty favorable.

ATTORNEY JAMES RAFFERTY: No, no. You did a great job.

LAURA DONOHUE: You've heard from me before.

ATTORNEY JAMES RAFFERTY: I know. I'm a customer of yours.

CONSTANTINE ALEXANDER: Anyone else wishes to speak on this matter? Ms. Gifford, are you going to speak in favor or against?

PEBBLE GIFFORD: Against.

CONSTANTINE ALEXANDER: Against. Before you speak, is there anyone else who wishes to speak in favor?

SUJEAN LEE: Can I say some more words?

ATTORNEY JAMES RAFFERTY: Can she speak? She's part of the applicant team.

CONSTANTINE ALEXANDER: Only a few words, yes, of course, come forward.

SUJEAN LEE: Thanks. Hi, I'm Sujean, I have the privilege of working with Christina Tosi at Milk Bar, but what is especially meaningful for me to be part of this conversation is that you will find it very difficult to find someone who cares more about Harvard Square than myself. I was a student here, I came here in 1999, graduated in 2003. I have loved Harvard so much. I loved Harvard so much the year that I arrived that I spent four years doing student government, and my ties to this campus, to this community run very deep. And I only say that because when I think about the opportunity to come in and create this experience in this space with &pizza, I just want to point out that what we are trying to do especially in line of this new petition is something that honestly I don't think has really ever been done before because what we're trying to do is not just offer pizza that you can eat and then ice cream that you can grab afterwards, we are trying to create a collaborative community gathering space for students, for

their parents, for tourists, for visitors, for people who want to come to Harvard Square to experience something they can't experience anywhere else. And so just to a pizza spot --

CONSTANTINE ALEXANDER: Okay, and in terms of your love for Harvard Square, I don't doubt for a moment you were going to move on to other things in your life, Harvard Square will stay and this operation will stay. So that's our job is to make sure that whoever is running the place meets what we think are the requirements for our Zoning Ordinance.

Anyway. Anyone else in favor?

(No Response.)

CONSTANTINE ALEXANDER: None. Opposed? Ma'am, before I get to Ms. Gifford you were opposed before and I cut you off or I said you were going astray. Is there anything you wanted to add now? And if you do, please come forward again.

MERILEE MEYER: Merilee Meyer, M-E-Y-E-R, 10 Dana Street. Refresh what the question is again.

CONSTANTINE ALEXANDER: We're talking about.

MERILEE MEYER: I'm playing by the rules.

CONSTANTINE ALEXANDER: We're now talking the big enchilada. The question of whether we should grant the Special Permit, to operate an operation with the independent bakery that they described to us tonight.

MERILEE MEYER: What would anybody say that would counter the first vote? I mean, the --

CONSTANTINE ALEXANDER: First vote is done.

MERILEE MEYER: We're already down the road here.

CONSTANTINE ALEXANDER: What we decided what they're now proposing tonight is different, specific and material changes from what we turned down last time. So now, it's a fresh slate.

MERILEE MEYER: Okay.

As an art historian, this corner is very important

to me because of the location, the date, the history. It's part of the context of what Harvard Square is. The pinnacle of what Harvard Square is. And when I see long awnings like that and plate glass and it may be a better design from what was originally presented, but to me it's still belongs in a shopping mall because of the sleek gentrification it presents, and I do have a problem with that.

No. 2, I don't like the idea of the frosted windows because I don't know what they're gonna do there.

And as far as organic, you know, beautifully presented pizza, Church Street has the same long skinny pizza on wooden pallets.

I am afraid of the bigger issue here, the bigger -- it's this piecemeal planning that is really terrifying me in that this is not the only small thing that's going on in Harvard Square. There are at least four other projects that are under, underway. And we are losing a bakery and cupcakes across the street in the big

development going on there. So we're losing our local small businesses to bigger development.

As far as this is concerned, I'm still not convinced that it is a good fit for Harvard Square. And I also really resent the what is it, festival of youth? There are more generations than just students that work around Harvard Square. There are some fabulous retired intellectuals that I mean rule the world, who knew the Kennedys, who knew, you know, I mean there are some really fabulous people here. And we continue to cater to the Millennials and the techies. What are we gonna do put digital, digital signs on the kiosk? You know, I know I'm getting off topic.

CONSTANTINE ALEXANDER: Yes.

MERILEE MEYER: The point is this is piecemeal planning and this is an epicenter of the square and --

CONSTANTINE ALEXANDER: I suggest, I suggest you make those comments to the Planning Board frankly. I mean,

we're a Zoning Board. And in terms of Harvard Square the only thing we vote on are fast order food establishments.

MERILEE MEYER: Well, to that point one last comment. And it has been brought up on several occasions, mentioned that it's either a pizza or it's going to be a bank. And I do not see that as, as a -- I find that a false choice.

And there is a new petition submitted about zoning in Harvard Square where banks would have a less presence of storefront on the pedestrian street. And which would preclude and even make the idea of the bank a moot point. So, so that, that is a possibility. But --

CONSTANTINE ALEXANDER: Okay.

MERILEE MEYER: I thought I had something really profound to say, but I guess not. Okay, thank you very much.

CONSTANTINE ALEXANDER: Thank you for taking the time to stick around.

Anyone else wish -- Ms. Gifford. Just get it over with.

PEBBLE GIFFORD: I just want to go home. Over with? Good evening.

JOHN HAWKINSON: Can you use the mic, please?

CONSTANTINE ALEXANDER: Use the mic. And we know who you are, give your name and address to the stenographer.

PEBBLE GIFFORD: Pebble Gifford.

JANET GREEN: You have to hold it close.

PEBBLE GIFFORD: Pebble Gifford, P-E-B-B-L-E Gifford, 15 Hilliard Street. I was going to say Cambridge.

I have lived -- I'll begin, I'm speaking against this for some very emotional and some very practical reasons.

CONSTANTINE ALEXANDER: Hold it again closer to your mouth.

PEBBLE GIFFORD: I'm going to speak against this pizza in this particular place. I'm not against the fact

that it's this particular pizza joint or anything to do with that. I'm against the fact that this corner is going to be taken over by a pizza operation for the simple reason, this is the heart of Harvard Square and has been the significance, has had the, you know, the significant meaning to so many people including my family and your families and your kids and everything. And I see it gradually deteriorating. We're gonna lose -- the thing that made it a square and in the true sense of the word like a San Marco or any other square you want to mention, is that it had something really significant on the different corners. You had Curious George which is doomed, and that whole Abbott Building I think is doomed as well. When they get finished with the luxury restaurant on the roof. The other corner was the Tasty, and I'm trying to remember what was next to the Tasty but that's long gone. What was it?

CONSTANTINE ALEXANDER: Wurst House.

PEBBLE GIFFORD: Yes. Traditional eateries. And

then we had a kiosk in the middle of course. And I always call it Nini's Corner was the standard meeting place for a lot of people of my generation and you could get magazines and you could get slush and you could get a few other things, too, if you, if you knew the owner.

CONSTANTINE ALEXANDER: Don't look at me.

PEBBLE GIFFORD: And it's a place decades of Harvard grads remember these places, and they come back as visitors. And what they come back -- when they come back, what they're gonna see, first thing they see is they drive up JFK Street is a pizza joint. That's the first thing you see is you come up towards the square is gonna be pizza. And they're gonna say holy cow, what's happened here? This isn't right. It can't be deteriorating that fast. Then they'll look over to the left, and I don't know what they'll see at the Abbott Building on the first floor. I think it's going to be a doorway to a shopping mall is what I hear. They're gonna put a mall in there, many shops and people

have to get into those shops. So there goes the square as we know it.

CONSTANTINE ALEXANDER: Ms. Gifford, I don't want to be rude but your point is, and I think you've made it already, is that this is not -- this is an inappropriate business to put in this area of Harvard Square.

PEBBLE GIFFORD: Yes, thank you for summarizing what I was trying to say.

Somebody here said that the square was all about the youth. That we just have to think about youth when we try to sell things in Harvard Square. That is wrong. I was President of something called the Harvard Square defense fund for 25 years and we dealt with that question all the time and we came down -- up with the conclusion that the secret to the square is balance. Every interest group has its way in the square. It can't be youth. It can't just be old matrons like me. It can't be tourists only. It has to be a balance. And the group that you're trying to balance

are the students, the youth. There are some of those, like my children, and then the residents and then the tourists perhaps. So what you're losing, and you certainly lost it in my case, is the residents aren't going to be -- they're not using the square they used to. I used to be able to go to the square on any given day and buy all -- many of my needs and be done with it. I didn't have to get in the car to go to some shopping mall and get what I needed. You can't do that in the square anymore, you really can't.

And I am going to share this with you, my kids, you can't keep kids like my kids or your kids out the square. They love it. And my son always had a saying, and I'm sure you've heard this, you can take the boy out the square but you can't take the square out of the boy? That was a very popular saying in my house.

Now, I'd like to just talk --

CONSTANTINE ALEXANDER: Yes, if you could bring your comments to a conclusion, I would appreciate it.

PEBBLE GIFFORD: Okay. I wanted to mention the specific problems with this place.

CONSTANTINE ALEXANDER: That's a good idea.

PEBBLE GIFFORD: That I don't think that you -- well, that was the big one, is that you're taking away one of the cornerstones of the square. But what I wanted to mention now is the impact. You are going to create traffic problems. You all have this? This plan?

CONSTANTINE ALEXANDER: Yeah, yeah.

PEBBLE GIFFORD: All right. If you look at this plan, they're --

JANET GREEN: Microphone.

PEBBLE GIFFORD: Okay.

If you look at this plan, cars are going to keep doing what they always do, and myself included, is you drive down Mass. Ave., go by the kiosk, and you round the corner into Brattle Street. Now there is a big pedestrian sidewalk separating these -- &pizza and the bakery Milk Bar area from

traffic. But in this picture you'll see the DPW truck guys pulled over, and I've done this, and probably in getting a lottery --

JANET GREEN: Microphone.

PEBBLE GIFFORD: He's probably in getting a lottery ticket. And you all see as much as I have, how many people a day stop at that corner and go in and get a lottery ticket. That is traffic congestion. I, I think people are going to be doing that to get a pizza.

CONSTANTINE ALEXANDER: Okay. All right.

PEBBLE GIFFORD: Wait a minute. I'll be finished in two minutes. Everybody else has talked for hours including Mr. Rafferty. So I want to finish.

ATTORNEY JAMES RAFFERTY: I get paid to talk.

CONSTANTINE ALEXANDER: And took the words out of my mouth, he gets paid to talk.

PEBBLE GIFFORD: Please look at this. This is important. Look at the two entrances to this operation.

Look at where they are. One is the Milk Bar entrance which seems to be the old rendering, and they're going to keep the entrance to Nini's corner. And the other entrance is down at the end of Tory Row. So those are the two places you're gonna enter this place. I'm saying if you're coming to Harvard Square in a hurry to get a pizza, I would stop here at the Milk Bar corner, run in from Milk Bar, here's where you order your pizza, right here, and then rundown to the other end and pick up my pizza and leave. That is gonna be the -- I think that is gonna be the traffic is -- if it's anything like my traffic. But the way I use the square. And I have to admit that now I'm double parking in front of Otto's because the pizza at the other end of the square is closed. And I think to say there isn't going to be traffic problems is a big mistake. 23,000 people who board the T --

JANET GREEN: Microphone.

PEBBLE GIFFORD: Excuse me. 23,000 people a day board the T from the entrances. And the main one is that

first one right on that corner where those people are pouring in and out all day long. And now you're gonna introduce, and now the cabs are there, bikes, you know that, and now you're introducing all the traffic. If this takeout bakery if it's as good as it sounds, it will be a lot of people taking it out. And I won't go on about the need, you've heard enough about need. And I won't go on about the physical design. I think it's quite unpleasant and spooky and dark, and I would change it into something quite different. And the whole parking, you're going to have double parking there as I've just said. And that affects safety and I -- I think I said that already. So, thank you very much. I think it's a big mistake and wrong and a very nice operation, but it's in the wrong place at the wrong time.

CONSTANTINE ALEXANDER: Thank you. Anyone else wishes to speak on the matter? And please don't repeat. The hour is getting later and later and later. If you try

to confine your comments to points that have not been made already.

Sir.

TIM MUDARI: Thanks very much. Tim Mudari.

Again, 112 Fayerweather Street. I will keep it brief. I won't reiterate a lot of what was just said. I will say two things about the proposal relative to the merits that it will be judged on. Last time the Board was concerned about the impact on pedestrian safety and the traffic in and out of the building. I think the same problem still exists. As a matter of fact, they've taken away some seats, and I can only imagine they intend to do the same amount of business since their costs have not changed. And so I think they're probably anticipating more takeout traffic from that facility which is going to make the traffic worse than it was before when it was addressed as a problem as far as the Board considered it.

And then without reiterating the point, this is

the marquis of the square and the people that pop out of the T station, the first thing they're going to see Bank of America, the CVS, the Starbucks, and, you know, another fast food takeout pizza place on the corner here. I think one of the powers that the Board has to judge these petitions based on their appropriateness for location. For this particular location I do not think it's appropriate. And other people have said a lot about it, I don't want to say it all again, but I'm against it.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to speak in favor -- sir, yes, the one closest to me. We didn't let you speak before so now is your opportunity.

MARCUS MELLO: Hi. My name is Marcus Mello. I live in Thayer Hall. I've been a grad student here for five years and I really, really love Cambridge and Harvard and getting to know it. And, yeah, my main concern is just one

that concerns ethics and business ethics and it just concerns &pizza's practice of encouraging some of its employees to get their ampersand branded on to their neck, on to their arms, on to their ears. You see this in their social media, you see it on-line. There are articles that have done on it. You also see them referring to their workers as their tribes' people, as their tribesmen. You see them saying we are on the hunt for new tribes people. I think for a place that is supposed to be emblematic of specific virtues of Harvard Square and be an uplifting place, those practices are not that. It's not a business that I would want to give my money to based on those practices. I'll just go to Tasty Burger or El Hefe's or wherever. But I mean, that's really what my main concern is with this business. I don't think that these practices are very appropriate, especially for a city like Cambridge that is progressive and forward looking and a place that I would like to live in for years after I graduate. So, yeah, those

are basically my comments. And I'm not sure if these issues have been discussed here or if this is the appropriate place for them, but I do think that they need to be heard and voiced.

CONSTANTINE ALEXANDER: I let you speak. I don't think they are appropriate. How they -- what they are require their employees to do or suggest they should do, is not a basis for us denying or granting a Special Permit they're seeking. But I think the sentiment, to my opinion, the sentiment you express is a good one and I hope the representatives of the &pizza take it to heart and it's not consistent with Harvard Square or at least the Harvard Square that I like to see. So thank you for taking the time to come down.

MARCUS MELLO: Thanks.

CONSTANTINE ALEXANDER: Let's see, we've got one. Again, please no -- don't just repeat something that was said.

Sir.

TIM SHAW: Tim Shaw, 147 Mount Auburn Street. Two of my mine might be repetitive but I've actually rehearsed these at home and I think I can read them in one minute and 28 seconds.

CONSTANTINE ALEXANDER: All right. I'll start to time you. Go ahead.

TIM SHAW: I oppose the Special Permit. I'm a 44-year-old resident of Harvard Square, Cambridge homeowner, Cambridge taxpayer, and a Cambridge voter. And I believe the proposed use is inappropriate for five reasons:

One &pizza's a national chain and this would further the trend of large chain stores pushing out the perky, interesting local businesses that have made the square what it is.

Two, it combines what were previously two smaller retail occupancies into one large one, reducing the number of smaller places needed by the quirky, small global

businesses that everybody wants.

Three, its design is not synthetic to the fabric of the square.

Four, Harvard Square already has plenty of pizza outlets.

And last but not least, although this is not in the purview of the Board, I know, a business that makes a practice tattooing its employees with the corporate logo should not feel welcome in our town.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Let's see, I know James you want to speak.

Obviously I want to try to work this way. There was a hand back there. Maybe not. Hopefully there -- sir. And then you next, James.

NEAL DEPAUL: Forgive me, but I think I missed.

Is this opposition, because I'm for. If I could just quickly 30 --

CONSTANTINE ALEXANDER: Unless you're going to say something in favor that hasn't been said before, I'd ask that you spare us and give us --

NEAL DEPAUL: Thirty seconds.

CONSTANTINE ALEXANDER: I'm sorry?

NEAL DEPAUL: Thirty seconds.

CONSTANTINE ALEXANDER: Thirty seconds.

NEAL DEPAUL: My name is Neal DePaul, again, I live on Winter Street. The bottom line here, and I don't think it has been said, is choice; choices for our families, places that we can take our relatives. And this operation as it stands now with the bakery, offers me a choice that I do not have and have not had in Harvard Square since Bertucci's left. So I would strongly urge the Board to consider that this offers me a choice that I can take three generations of my family into Harvard Square, the highlight of Cambridge.

Thank you.

CONSTANTINE ALEXANDER: Thank you. James.

JAMES WILLIAMSON: So --

CONSTANTINE ALEXANDER: Do you want to put your computer down on the table so you're not juggling?

JAMES WILLIAMSON: All right. Okay, so it sounds like I get the impression that you're moving toward approving this, but I'm gonna say what I feel it's important to say anyway.

CONSTANTINE ALEXANDER: Please.

JAMES WILLIAMSON: First of all, I guess it's too late to thank Mr. Murphy for offering to fly me to Washington, D.C. when we first met, given how I have -- the views that I've expressed on this, although I'm kind of interested in going down there for the commemoration of the march on the Pentagon if you want. If that offer still stands.

I first of all have a question about the images. As I mentioned in my letter and provided images, the image

that was presented to the Planning Board at their relevant and contemporaneous meeting has a different rendering for an important component of this.

CONSTANTINE ALEXANDER: I think you stepped out of the meeting just when Mr. Rafferty dealt with that issue.

JAMES WILLIAMSON: No, I didn't step out --

CONSTANTINE ALEXANDER: Or maybe not.

JAMES WILLIAMSON: Brendan said 45 minutes. I got back here in 30 minutes and you had already been well underway.

CONSTANTINE ALEXANDER: Well, if I can summarize it and Mr. Rafferty and other members of the Board can correct me, it was one item that's different. It's like a lattice design --

JAMES WILLIAMSON: Yes.

CONSTANTINE ALEXANDER: -- near on the --

JAMES WILLIAMSON: In the doorway.

CONSTANTINE ALEXANDER: The doorway by Cardullo's, right there. And they don't how it got in the plans. It was shown to the Planning Board. They've taken it out. They'll put it back in if we wanted them to put it back in so it would be absolutely consistent with what they showed the Planning Board.

JAMES WILLIAMSON: I just think, you know, frankly I get a little tired of, you know, we can show the Planning Board one thing and you don't get to comment on it at the Planning Board and we get to show something different to the BZA and well, you know, they voted, they, based on what they saw and then something different gets to be presented.

CONSTANTINE ALEXANDER: I think the comment is that this is not material to this Board. This change, this change it's not material. If it were something more significant, I think your point would be well taken.

JAMES WILLIAMSON: Yeah, okay. I think it's pretty significant.

On the question of the problem of homelessness. Homeless people are sleeping in every single doorway in Harvard Square. They're not just now in front of this vacant storefront. They're all over the place. Putting something or not putting something, whatever it may be, isn't going to do anything without homeless people sleeping all over. Harvard Square is drowning in homelessness and maybe if we had more affordable rents, we might not have such a crisis of homelessness. But we shouldn't forget that there was a place there called Crimson Corner and the owner decided to evict them. That's not, you know, that's why that space is empty because they were evicted before an appropriate replacement was found.

I guess I just want to point out because there seem to be some uncertainty, although I think, Gus, certainly you know and I think others know, that under the Special Permit guidelines 11.33 makes is very clear that granting a Special Permit shall specifically detail in its

decision the kind of fast order food for which the permit is granted and shall also identify those other aspects of the establishment as outlined in the application, to which alterations will require the issuance of a -- to your point. But I think it's well within the purview to be very specific about --

CONSTANTINE ALEXANDER: I'm going to try. It's going to be on the fly, and I trust my fellow board members will help me along, but yes, we have that in mind.

JAMES WILLIAMSON: Right.

Now as far as balance, I really appreciated what Pebble Gifford said about balance in Harvard Square. I was at a Historical Commission hearing, a former reporter, investigative reporter for the Boston Globe who lives two blocks from Harvard Square that says, I don't care about Harvard Square and the market. You know, it's no hope, it's useless. You know, of course he wanted a dormer or whatever he wanted for his house. But people who live right in

Harvard Square have given up on Harvard Square. They don't think there's any hope, and I think it's constructive to think about why. And I'm going to come back to that. But the idea of this being just for young people, I think is a serious mistake and I'm offended as someone who has lived in Cambridge for 50 years.

On the congestion issue, someone earlier took exception to my silent gesture of affirmation, but right across the street there's Life Alive. I sit out outside often at 1369 and I watch the Ubers pull up regularly all night long letting people off for Life Alive, people from Life Alive going out and getting in the Ubers, and I would not be at all surprised if there's going to be significant Uber traffic dropping off people at this establishment, picking people up at this establish. I think that's a congestion issue that I frankly hadn't thought about in the earlier iteration of this application and hearing. But I think it's a serious issue and I think it's -- the kind of

people who are likely to be coming to a place like this are going to be making considerable use of Uber.

On the awnings, there was a lot of back and forth about the awnings. I think, I submitted late last night a last letter with images of the awnings according to people I talked to, including the people who the proponents supposedly spoke with, there was a sense of the openings on the sides of the awnings was consistent with adjacent awnings -- actually, it's only consistent with the Tory Row awning which is going to be gone anyway. But if you look across the street at T Deluxe or at the awnings along Brattle Street they're all closed at the ends, and I actually think that's a significant -- I would see as significant preference for a design if they're gonna be awnings for whatever place is gonna be there, that they should be consistent with an in fact a better design.

My view is, and I think there's also this thing of can't have it both ways. If this is going to be such a

wonderful thing with Milk Bar as a component and so many, you know, it's gonna draw people, you can't really say that and say there aren't going to be significant issues of congestion. I mean which is it? Either it's going to be successful, and a lot more people are coming and there's going to be congestion or it's just a failed project that isn't worth entertaining.

Finally my view is that getting back to what I said about the guy who lives in Harvard Square and doesn't give a damn, and many people don't, and I hear it a lot, why don't people give a damn? I think it is because of the corporatization of Harvard Square. I think it is because we don't have owner/operator establishments like the ones that are owned by Tom Brush just down the street which are so successful the License Commission got called in he had to shut down for three days because the roof was so packed. People like those kind of places and those are the kind of places that we need to bring back into Harvard Square, not

to have more dressed up -- yeah, Milk Bar a little different, a little more interesting than another pizza place.

Finally just on the heart of the matter in terms of the criteria of pizza. Okay, so Milk Bar is a little different. You can argue that it's a little maybe more interesting, but we still have five pizza places within two blocks of this location. We have Just Crust. We have Cambridge One. These are --

CONSTANTINE ALEXANDER: Apparently Just Crust is closing. You got four.

JAMES WILLIAMSON: Oh, I didn't know that.

So you have Oggi which is hidden by the construction. Nobody talks about the construction in Harvard Square. Everybody talks about the homeless in front of here. What about the horrible construction that's underway at Holyoke Center? That's the problem in Harvard Square. So we have numerous pizza places, and as I

indicated in the letter with the image that I sent in, there was a guy having pizza in the window at Russell House right across the street. So it's not exclusively or mainly a pizza place. There's plenty of opportunity to get pizza. There's no need for a pizza place. And that's the majority of what's going on here. Yes, the Milk Bar idea, there's some novelty to it, but I think you're making a serious mistake if you're gonna have another -- a corporate pizza place with Milk Bar in this location in the middle of Harvard Square and it's going to be just one more step down in the direction of fostering a place in Harvard Square that the people who live in this town have already sadly and largely given up on. So I hope you won't go there, but I suspect that you will.

Thank you.

CONSTANTINE ALEXANDER: Thank you, James.

I want to make a personal observation. Most of the opposition I've heard tonight relates to the fact that

Harvard Square ain't what it used to be, that it's -- we need to do better in terms of having more diverse operations. I agree personally, and I'm not speaking as a member of the Board. I agree with all that. But what about our Planning Board? We're a Zoning Board. We have no ability to control how Harvard Square gets developed, except with respect to fast order food establishments where the City Council says an applicant now must get a Special Permit from us. There are other boards whom you should be making your speeches to, a board singular, to deal with this issue regarding Harvard Square. Harvard Square is an important part of Cambridge and nobody's taking responsibility at the Planning Board. They should be taking responsibility for trying to improve the planning and the development of Harvard Square. Maybe it's not -- and maybe it's not possible. Maybe the development they feel is desirable. But we're not the persons who can do that, and we can't by on a case-by-case basis create what you want, what most of

you want us to do. End of speech.

I trust no one else needs to speak. Wants to speak? Apparently not. Oh, I'm sorry. Mr. Brandon, I thought you were back here. You've got to be brief, Mr. Brandon. And don't repeat things that other people have said. I say this all the time and you do it anyway, but I'm going to say it again.

MICHAEL BRANDON: No, I won't do it. Everything has been said. Just kidding.

CONSTANTINE ALEXANDER: First time. Go ahead.

MICHAEL BRANDON: I just support what has been in my view eloquently said by James, Pebble, many others. I wouldn't mind fast food operation at a different, this --

CONSTANTINE ALEXANDER: Right.

MICHAEL BRANDON: -- at a different location. But this is the prime, premier location in the square. Congestion is already a problem. As pointed out, the cars park in the crosswalk. Don't just double park. That will

increase. The question of the Ubers added, Uber just started delivery, you know, restaurant delivery.

CONSTANTINE ALEXANDER: They're not going to be able to do that or anyone else.

MICHAEL BRANDON: But you know, that's in there quite clearly.

CONSTANTINE ALEXANDER: We'll see when we get to the motion.

MICHAEL BRANDON: We'll see.

On the design issues, I agree that what is now evolved is better than what was there before. I also agree that it's inappropriate for the location given the history of the city or the site. As far as what you said, Mr. Chair, about this Board not being able to control the overall changes you do have in your criteria, criteria that you could apply. I thought at least one of the reasons that you denied last time had to do with that in terms of changing the character of the square and the other Section

10.41, integrity of a district. Well, this is a very special district. So I hope you won't grant this. I think I see the writing on the wall, but -- oh, I did want to point out a few deficiencies in the application form I think.

CONSTANTINE ALEXANDER: Are these deficiencies such that we should deny the relief or just deficiencies?

MICHAEL BRANDON: Well, I'll call them to your attention and you can decide. I don't think so, but I don't know. You're the attorney.

One is that the entity that is listed as the applicant is IMA.

CONSTANTINE ALEXANDER: We've talked to that already. Move on. Mr. Rafferty called this to our attention how the name change at the outset of the meeting, and it doesn't reflect our decision we're going to make tonight whether the name of the entity.

MICHAEL BRANDON: Okay. So that is not the

correct entity?

CONSTANTINE ALEXANDER: It is the -- we pass on the business that's proposed to be conducted there. If the business complies and the entity belongs to the same entity, it has a different name, is there, we allow it. Okay? They can't do -- they can't get permission from us if we grant it and then sell the license or the Special Permit to Domino's, a famous reference tonight. That they can't do. But because it's whether it's call it this A or B or C being still the same corporate ownership, that's all that we need to worry about.

MICHAEL BRANDON: Well, okay. The one that's listed is the applicant is not registered with the state to operate.

CONSTANTINE ALEXANDER: But by the time, if we grant relief and open for business of the --

MICHAEL BRANDON: Okay. Another small glitch is that the, in the notarized ownership certificate is listed

as Brattle Street Properties, LLC. And, again, there's no such entity registered with the state. And the more possibly significant shortcoming in the application is that it does not include a report. This was on the current application from the Harvard Square Advisory Committee.

CONSTANTINE ALEXANDER: We did get a report.

MICHAEL BRANDON: When did that come in?

CONSTANTINE ALEXANDER: August.

JOHN HAWKINSON: Today.

CONSTANTINE ALEXANDER: What?

JOHN HAWKINSON: One today.

CONSTANTINE ALEXANDER: One today? We had one in August.

ATTORNEY JAMES RAFFERTY: No, there was one in August, right.

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY JAMES RAFFERTY: They only appeared once.

CONSTANTINE ALEXANDER: Yeah, that's what I

thought when -- well, I don't want to get into that. But we do have a recommendation and it's short to your point. I have it right here. It's dated --

JAMES WILLIAMSON: Well, they slipped it in the other night without public notice.

CONSTANTINE ALEXANDER: Well, no, this is the one -- there is a date here I think, I can't find it for a second. Anyway, we do have one from the Harvard Square Advisory Committee and there was a meeting I understand --

MICHAEL BRANDON: On this, on the current proposal? Not the previous --

CONSTANTINE ALEXANDER: Yeah, yeah, yeah, the current proposal.

MICHAEL BRANDON: But the current proposal wasn't available. The design certainly wasn't in front of them.

CONSTANTINE ALEXANDER: All I know --

MICHAEL BRANDON: In any event, it's supposed to be included in the application then the public could have

read it.

PEBBLE GIFFORD: I can clarify that for you.

CONSTANTINE ALEXANDER: Okay, thank you.

Mr. Brandon, anything else?

MICHAEL BRANDON: No. Thank you.

CONSTANTINE ALEXANDER: Thank you.

I am going to close public testimony at this point. As with regard to the earlier decision we made, there are letters in our files that deal with the merits. All the points in those letters have been covered so there's no reason to read them again or to read them at all.

I do appreciate the time the citizens of the city have taken to -- we have to stay here but you don't, and to express your opinions is good. It's good for the city.

End of discussion. Do we want to discuss -- comments you want to discuss or go to a vote?

BRENDAN SULLIVAN: Go back to Mr. Rafferty.

CONSTANTINE ALEXANDER: I'm sorry?

BRENDAN SULLIVAN: Let's go back to Mr. Rafferty.

Do you have any final or you want to waive your --

CONSTANTINE ALEXANDER: Oh, yeah. Do you have anything you want to add?

ATTORNEY JAMES RAFFERTY: Well, only to state that the application --

JAMES WILLIAMSON: Can you use the mic, please.

ATTORNEY JAMES RAFFERTY: Sure.

The application we believe as set forth does meet the criteria in 11.31, and I don't think there's much more that we need to offer given the hour.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

I'm going to try to frame a motion, and as I indicated earlier, I'm going to impose a number of conditions. I'm doing them on the fly and I ask everyone on the Board to listen carefully and to offer comments.

The Chair moves that we make the following

findings:

That the petitioner has satisfied to our satisfaction the conditions for a fast order food establishment of a nature that they're proposing as set forth in Section 11.31 the our Ordinance.

Furthermore, there is a requirement for all Special Permits that I'm going to turn to and they are as follows:

That the requirements of the Ordinance cannot be permitted without a Special Permit from us. It's self-explanatory.

That traffic generated or patterns of access or egress resulting from what is proposed will not cause, congestion, hazard or substantial change in established neighborhood character.

I would comment that there's been obviously a lot of commentary about congestion. This is an area of Harvard Square I don't think you can avoid having some congestion.

I think if we have appropriate conditions, we can at least minimize the motor vehicle congestion. And I think -- I have some other suggestions regarding like, for example, no sandwich boards will also reduce the reduction of sidewalk space for people who traverse this area.

That the continued operation or development of adjacent uses will not be adversely affected by what is proposed. We have heard no testimony to that effect tonight. We have heard from the owner of Robert Slate -- Bob Slate, not Robert. Bob Slate. And I don't see here -- I have not heard anything that would say that other businesses are going to suffer in the area from the proposal before us tonight.

That no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant or the citizens of the city. Nuisance and hazard are I think legal terms, and we've heard nothing tonight that would suggest certainly nuisance or even hazard except

to the extent of the congestion problem, which we're going to try to address.

And that generally what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance. With regard to whether it does derogate from the intent -- well, it doesn't derogate from the intent and purpose of the Ordinance, but what is being proposed will impair the integrity of the district is a very much a judgment call and we'll make that judgment when we vote on the matter.

So on the basis of all of these findings, the Chair moves we grant the Special Permit being requested subject to the following conditions:

And I'll go slowly and please again offer any thoughts if you will.

One, the external appearance of the petitioner's and Milk Bar's premises at 1-8 Brattle Street shall be as

shown on the plans, not only -- yeah, the plans submitted by the petitioner and initialled by the Chair. Which I've done. It's the ones you've given us. And shall be maintained so that the amount of black color in this appearance shall not be materially increased. And so that in all other respects such appearance shall not be materially modified.

Two, I got to make it up as I go along. Should at any time Milk Bar's operations on the premises be materially different from what has been described to us tonight in our record --

ANDREA HICKEY: Or any successor bakery.

CONSTANTINE ALEXANDER: I'm going to get there. I'm going to try to get there a different way but, yeah. Be different. Let's start again.

Should at any time the Milk Bar's operations on the premises be materially different from what has been described tonight, whether and with regard to and also what

they've told us in connection with the decision we made regarding a repetitive petition, petitioner's Special Permit shall terminate provided that the petitioner shall have the ability to come by with another -- to come back to this Board seeking a new Special Permit with respect to another independent bakery occupying the premises at 1-8 Brattle Street.

So the bar has been set. You've told us what you're going to do, that's where it's got to be. If you start -- if the products -- all of a sudden Milk Bar offers half the products that they've said, and they're not operating a bakery that's been proposed tonight, no more operations unless you come back before us and seek a new Special Permit or a modification of the Special Permit we would be granting tonight.

ATTORNEY JAMES RAFFERTY: Excuse me Mr. Chair, I understood that colloquy on the Board to be a requirement that there be an independent bakery.

CONSTANTINE ALEXANDER: I said that independent bakery.

ATTORNEY JAMES RAFFERTY: But you specifically tied it to Milk Bar. So if it's someone other than Milk Bar, would you expect the applicant to return?

CONSTANTINE ALEXANDER: Yes. But they have to return with a new proposal that would be with another independent bakery.

ANDREA HICKEY: That wasn't my understanding or what I commented on.

CONSTANTINE ALEXANDER: How did you want to phrase it then?

ANDREA HICKEY: I think that if another bakery independent of &pizza operating in a substantially similar manner with an array of products were to replace Milk Bar, that they should not have to come back.

CONSTANTINE ALEXANDER: Okay, you're right. And I didn't phrase it as well as I should have.

So if it's not Milk Bar but it's an independent bakery that is going to conduct its business as was described to us tonight by Milk Bar, you do not have to come back. In any other respect, not an independent bakery you want to replace it with, you want to cut back the product offerings, you have to come back and get another Special Permit or go out of business.

ATTORNEY JAMES RAFFERTY: Right. So as I understand it, the plans and the use as described in the application by the proponent show the existence of an independent bakery.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And that's a requirement of the Special Permit. And if an independent bakery isn't there, they would have to return and address --

CONSTANTINE ALEXANDER: Or if the independent bakery's going to be there --

ATTORNEY JAMES RAFFERTY: Is going to materially

change.

CONSTANTINE ALEXANDER: Materially change as what was described tonight.

ATTORNEY JAMES RAFFERTY: Understood.

CONSTANTINE ALEXANDER: That's the two circumstances.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: That's next three I guess, all external signage on the premises from time to time shall comply with the Cambridge Zoning Ordinance as in effect from time to time without the need for a Variance or other zoning relief.

Next, that the hours of operation on the premises of 1-8 Brattle Street by &pizza and Milk Bar and/or another independent bakery shall be from seven a.m. in the morning to two a.m. each day.

ATTORNEY JAMES RAFFERTY: Could I speak to that?

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY JAMES RAFFERTY: I think there might be a point at 1:30 on a Wednesday morning that the bakery might not be doing business and I mean --

CONSTANTINE ALEXANDER: I don't think Inspectional Services is going to come -- first of all, I don't think Sean will be up, come down and check and say oh, my god, it's 1:45 and the lights are all out --

ATTORNEY JAMES RAFFERTY: I guess I'm asking the Board to consider the wisdom of imposing a closing time requirement typically -- so I mean there's an expectation the business would be there to support late operation, and that's what they intend to do. They'll have to get a CV license from the License Commission. But if one is in Harvard Square, sometimes, you know, on a non-weekend night, I'm just suggesting, if it's in the BZA decision, we all know it runs with the land and it places an enforcement obligation upon ISD that might not be practical.

CONSTANTINE ALEXANDER: I respect your views, I

personally don't accept them. But a crucial part of this application for people like the Harvard Square Advisory Committee is we want some night life. We want some activity in the square.

ATTORNEY JAMES RAFFERTY: I understand.

CONSTANTINE ALEXANDER: And you represented, your client did -- they represented to the boards we're going to be open, and you did tonight, seven a.m. -- somebody will be there, the lights will be on from seven a.m. to two a.m. And I want to make that a firm condition. If you don't -- if you close at 1:30 on a Thursday night on occasion, I don't know if anybody's going to come and shout you down. But if it happens to be a pattern or people complain, you're going to have to come back before us.

Next condition, that the petitioner and Milk Bar and/or the independent bakery on the premises shall not offer product delivery service from its premises. Prohibited delivery service shall include delivery of

products to customers in vehicles or otherwise located outside the premises except for customers using petitioners outdoor or patio seating.

ANDREA HICKEY: Could I add to that?

CONSTANTINE ALEXANDER: Sure.

ANDREA HICKEY: That delivery prohibited would be by in-house delivery, contract, or third party delivery services.

CONSTANTINE ALEXANDER: Fine. That elaborates it more. The point is we want no delivery service in whatever form from the premises. And that includes the bakery products, too.

BRENDAN SULLIVAN: So that's the substitute language, Andrea's?

CONSTANTINE ALEXANDER: I accept that substitute language.

ANDREA HICKEY: Right. I don't want the delivery component of the decision to be construed as an in-house

delivery operation.

CONSTANTINE ALEXANDER: No, okay. I understand why you're elaborating and I think that's a good idea. So that's fine.

And last, neither the petitioner nor Milk Bar shall maintain sandwich boards at or near the premises at 1-8 Brattle Street. And that's the deal with the street congestion. Every sandwich board however desirable they may be, reduces space for people to walk back and forth. You might want to make it clear you're not going to do that.

ATTORNEY JAMES RAFFERTY: Just so we're clear, you're referring to the A frame signs?

CONSTANTINE ALEXANDER: Yes. The sandwich board.

BRENDAN SULLIVAN: That has to get City Council approval.

ATTORNEY JAMES RAFFERTY: Right, you need approval anyhow, but I understand.

CONSTANTINE ALEXANDER: But a lot of people put

them up without City Council approval. No, I've seen them around.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: Anyway even if they do get City Council approval, we don't want them.

ATTORNEY JAMES RAFFERTY: I understand the condition would be that --

CONSTANTINE ALEXANDER: Right. Don't bother wasting your time.

ATTORNEY JAMES RAFFERTY: If they were to apply for such a thing, they would be violating a term of --

CONSTANTINE ALEXANDER: Not applying wouldn't violate it.

ATTORNEY JAMES RAFFERTY: Well, they shouldn't even apply because it's not going to comply with zoning.

ANDREW MURPHY: Gentlemen, we're not going to use them.

CONSTANTINE ALEXANDER: I didn't think you would,

but I just wanted to make it clear.

ATTORNEY JAMES RAFFERTY: And we'll check with Ms. O'Hare to make sure.

CONSTANTINE ALEXANDER: I have no other conditions.

BRENDAN SULLIVAN: Well, so you have read 10.43 the criteria for granting a Special Permit and that they have met those criteria.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: And you have imposed conditions.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: But that we should also find that under 11.3, 11.31 that they have also met those conditions.

CONSTANTINE ALEXANDER: I said that.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: I opened my -- I started

my comments with that.

BRENDAN SULLIVAN: So we affirm that?

CONSTANTINE ALEXANDER: Yeah. We affirm that.

Both as 11.31.

ATTORNEY JAMES RAFFERTY: That's the first finding  
you said.

CONSTANTINE ALEXANDER: Okay. I think that's it.

All those in favor of granting the Special Permit  
on the basis of these conditions please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor Special  
Permit's been granted.

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

\* \* \* \* \*

(10:40 p.m.)

(Sitting Members Case BZA-014181-2017: Constantine

Alexander, Brendan Sullivan, Andrea A. Hickey, Patrick Tedesco, Slater W. Anderson.)

CONSTANTINE ALEXANDER: I'm going to resume our hearing. If I could ask those of you who are not interested in the cases -- we're going to continue the hearing. Please step outside so we could try to have a meeting. As I said, we're going to call case -- next we're going to call case No. 014181, 81 Kirkland Street No. 2.

Is there anyone here wishing to be heard? You do want to be heard.

BRIAN HOWARD: Yes, please. My name is Brian Howard of 81 Kirkland Street, apartment No. 2. And the reason I'm before the Board today is to ask for relief in regards to an increase in GFA associated with building a roof on top of an existing second-story deck on my apartment. Seeking to build this roof in order to remedy some architectural flaws with the existing design. It's in place today. And I've detailed these in the application,

and I know we're a little over time so I don't know how much detail you want me to go into.

CONSTANTINE ALEXANDER: If I may, I don't think you need to go into a lot of detail because it's a very straightforward case. A case we've seen before. Just for the record, your problem is FAR, floor area ratio. Currently you're at 0.85 in a district that says you shouldn't be more than 0.75. So you're a little bit over already.

BRIAN HOWARD: Already non-conforming.

CONSTANTINE ALEXANDER: And you want to add another 88 -- 85, I'm sorry, 85 feet by virtue of putting the roof over it. It's from a calculations point of view, which would bring you to 0.88. But you're still not significant, from our experience, that dramatically over what the Ordinance requires. No, that's it.

I mean -- and the reasons why you want to -- you elaborate on this at length in your application, but why

don't you explain to the other members of the Board why it is that -- what's the hardship that you're trying to rectify by putting a roof over the deck.

BRIAN HOWARD: Yeah, so there are a few problems with the existing design as it stands today. First and foremost, my neighbor who has joined me at the hearing today has been a longtime resident of the building, has had ongoing problems with leaks on the flat roof that's underneath the existing second-story deck.

The way that the wind and snow kind of blows in in the wintertime, it creates a big snowbank on the roof.

CONSTANTINE ALEXANDER: I'm sorry, I'm just trying to move it along.

BRIAN HOWARD: Yeah.

CONSTANTINE ALEXANDER: The hardship is not peculiar to you. It would be to anyone who owns this structure is going to have this leaking problem.

BRIAN HOWARD: Correct, right.

CONSTANTINE ALEXANDER: Which is important from a zoning point of view.

A personal hardship that only applies to you doesn't justify a Variance. But your point is it's not a personal hardship. It runs with the structure.

BRIAN HOWARD: Correct. The second point that I would note, and I won't go through everything in detail just in the spirit in time, but the second major issue that we have is the that the way that the roof currently slants down, it basically drops the snow and ice onto our rear egress. We've got a set of steps that are covered with ice during the winter, and even as the snow melts, it just drips down onto those steps. So we think that enclosing that with a roof would make it more of a safe egress from the property.

CONSTANTINE ALEXANDER: And the third one is about -- is to the affect that if we grant your relief, it won't be a substantial detriment to the public good or

nullifying or substantially derogating from the intent and purpose of the Ordinance.

In this regard have you talked to your neighbors?

BRIAN HOWARD: Yes, and I've included written statements from all of the abutters to the property.

CONSTANTINE ALEXANDER: I don't think we have it in our file.

BRIAN HOWARD: I did actually bring printouts with me.

CONSTANTINE ALEXANDER: There weren't any the other day when I was at n the office.

There are some, it must have come in later after I was at the office. We have a letter, just for the record, a letter from Jeffrey Newton and Robin Wheatley, W-H-E-A-T-L-E-Y who reside at -- well, 81 Kirkland, apartment No. 1, and they are expressing their enthusiastic support.

And we have a letter from Michael Byrne,

B-Y-R-N-E, 79 Kirkland Street, which is directly next to obviously 81 Kirkland. And they say I'm writing this letter to offer 100 percent support and approval to Brian Howard's plan.

And then we have in the form of a petition from a number of people, the residents I have trouble reading the handwriting, but the residents at 11 Holden Street.

BRIAN HOWARD: That's Margaret. She's my direct rear abutter.

CONSTANTINE ALEXANDER: Okay. All right, and she says she enthusiastically supports what you want to do.

And also something from James Grey and Patricia Marti, M-A-R-T-I, 84 Kirkland Street which is obviously down that street.

BRIAN HOWARD: Right.

CONSTANTINE ALEXANDER: And we talked about Jeff Newton. I'm not going to read the same ones over again. We have more than one copy of these letters. Okay, so you have

all letters in support?

BRIAN HOWARD: Yep.

CONSTANTINE ALEXANDER: No opposition from any neighbor?

BRIAN HOWARD: No opposition.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board or -- at this point?

BRENDAN SULLIVAN: One of the byproducts, I mean, you get this from time to time when people say, and I fully understand, you know, yes, it's an element that is going to get snow on it, snow is going to pile up, the leaking is really just bad workmanship that, you know, with rubber roofs and all of the other flashings that can be easily cured. The byproduct of allowing this roof over is that the area underneath now can be enclosed.

CONSTANTINE ALEXANDER: That's right. I appreciate that.

BRENDAN SULLIVAN: And so --

PATRICK TEDESCO: Would they need a Special Permit to enclose it?

CONSTANTINE ALEXANDER: No, I don't think so.

BRENDAN SULLIVAN: I don't think so.

SEAN O'GRADY: As of right.

CONSTANTINE ALEXANDER: As of right. I mean the harm, I use the word generally, is creating the roof which creates more FAR which is why he's here tonight. Putting -- enclosing the room doesn't create any more FAR, and unless there are setback issues, which I don't think there are. You can do this as a matter of right.

SEAN O'GRADY: Yeah, we don't recognize setback issues with an enclosure.

CONSTANTINE ALEXANDER: I'm sorry?

SEAN O'GRADY: We don't recognize setback issues with an enclosure.

CONSTANTINE ALEXANDER: You don't?

SEAN O'GRADY: No. If you have a roof, you can have it enclosed. We changed that interpretation four or five years ago.

CONSTANTINE ALEXANDER: But you do for windows in setbacks?

SEAN O'GRADY: Yeah.

BRIAN HOWARD: Speaking on my own behalf I already have an enclosed front porch on the property, so I have no intention of enclosing the rear deck. In fact there's already an enclosed portion that's existing on the deck today and I would be eliminating that interior space to make that into an exterior space.

CONSTANTINE ALEXANDER: How do you get out onto the deck today if we grant you the relief. What does it abut? A bedroom or a living room?

BRIAN HOWARD: It abuts the kitchen. There's kind of a rear closet space, and then a hallway in the back of the house that goes out into the what is kind of a mudroom

area and then out into the deck.

CONSTANTINE ALEXANDER: And what's the rough square footage of the deck?

BRIAN HOWARD: I believe the existing is 150. I have --

CONSTANTINE ALEXANDER: 150 square feet. It could be a room to be -- you can create a room out of that to enclose it.

ANDREA HICKEY: Yeah.

CONSTANTINE ALEXANDER: So something to be said for that or to be concerned about it. But on the other hand --

BRENDAN SULLIVAN: You may not have an intention but you may not be there for the rest of --

BRIAN HOWARD: Yes, I understand.

BRENDAN SULLIVAN: But somebody else may. I would....

CONSTANTINE ALEXANDER: On the other hand, in my

view anyway, we have an immediate problem that needs rectifying. I would be loathed to deny relief just because someone could do something maybe in the future. Anyway, that's my point of view.

I'll open the matter up to public testimony.

Anybody here wishing to be heard on this matter. Sir, do you want to speak?

JEFF NEWTON: My letter is on the record. My name is Jeff Newton. I live at 81 Kirkland Street, No. 1. My letter is in the record. I'm just here personally to reaffirm everything that I said.

CONSTANTINE ALEXANDER: Good. I think that's very nice for you to do. We as a Board appreciate when neighbors --

JEFF NEWTON: It was very interesting for me to see your work.

PATRICK TEDESCO: It's not always so interesting.

CONSTANTINE ALEXANDER: Close public testimony.

I've already identified the letters of support which is the only commentary that we have. Discussion or ready for a vote?

ANDREA HICKEY: Ready.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that we make the following findings with regard to the Variance being requested:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that the structure in its current form is defective in terms of potential for leakage and damage to the structure overall and there's problem that runs, as you will, with the structure and is not just peculiar to the petitioner before us tonight.

That the hardship is owing to basically the shape of the structure, and the way it's configured with this exposed deck that leads to the leaking problems that have been identified.

And that desirable relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of the Ordinance.

The Chair would note that the relief being sought is rather modest in nature. It does -- it has a neighborhood support.

So on the basis of all of these findings, the Chair moves that we grant the Variance requested on the condition -- let me step aside for a second. We -- these are the plans.

BRIAN HOWARD: Yes.

CONSTANTINE ALEXANDER: We're going to approve based on these plans. If you decide to change them, you're going to have to come back before us.

BRIAN HOWARD: Understood.

CONSTANTINE ALEXANDER: Okay. Based -- subject to the condition that the work proceed in accordance with the

plans prepared by Runcible, R-U-N-C-I-B-L-E Studios, each page of which has been initialled by the Chair. The date appears to be August 9, 2017.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

BRIAN HOWARD: Thank you very much.

(Alexander, Sullivan, Hickey, Tedesco, Anderson.)

\* \* \* \* \*

(10:55 p.m.)

(Sitting Members Case BZA-013611-2017: Constantine

Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey,

Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013611, 35-37 Berkshire Street.

Is there anyone here wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair, members of the Board. My name is James Rafferty appearing this evening on behalf of the applicants. And seated to my far right is the applicant Wilfredo Villnaueva V-I-L-L-N-A-U-E-V-A. He is the owner's representative on the project. And the project architect is to my immediate right. And I ask you spell your name for the Board.

ALBERT COSTA: My last name is Costa, C-O-S-T-A. My first is Albert.

ATTORNEY JAMES RAFFERTY: Okay.

So, Mr. Chair, this is a continued case but a case not heard. Some board members may recall the application is an application to seek a Variance to allow for -- to rebuild

a three-family home that was destroyed by the fire on Berkshire Street and also to add a fourth dwelling unit in the basement. I take it back. It was a case heard. It was not a case not heard, right? It was definitely a case heard.

CONSTANTINE ALEXANDER: Yeah, a case heard.

ATTORNEY JAMES RAFFERTY: It was a case heard.

And the issue at the time was the Board allowed us to continue to explore whether there might be an opportunity to create an affordable unit for the fourth unit because the property had been a three-family house. Well, we did spend sometime analyzing that both from a financial and a regulatory perspective and candidly we're not able to reach a consensus on the owner about would be needed.

CONSTANTINE ALEXANDER: With the owner? I'm sorry. With the owner?

ATTORNEY JAMES RAFFERTY: The owner about what -- I had -- we had to spend sometime educating the

owner about the economics and the return associated with what those rents look like.

CONSTANTINE ALEXANDER: Does he realize that one of the reasons you explored that is because board members were expressing extreme skepticism as to whether we were going to grant relief to have a fourth unit. So it would be --

ATTORNEY JAMES RAFFERTY: Right. So my point is we're not seeking the fourth unit.

CONSTANTINE ALEXANDER: I know that. That means if you don't seek the fourth unit -- oh. At all?

ATTORNEY JAMES RAFFERTY: At all.

CONSTANTINE ALEXANDER: Than the numbers have changed. Did you give us a new dimensional form?

ATTORNEY JAMES RAFFERTY: Well, they've changed slightly. But the difference was that the prior building had a -- so it's a three-unit dwelling and what's proposed is to use a portion of the basement which was going to be a

separate dwelling unit as part of the first floor unit. So the dimensional form hasn't changed much. There's a slight change -- and the reason we're here is because the home was destroyed and the recent amendment to Article 8 on properties destroyed by fire, if there is no change, they can, they can -- they actually don't have to come to the Board. They're no longer subject to that.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And there is a very modest change here, and so that's why the matter remains before the Board. But the relief before was to allow for the reconstruction of the dwelling and a fourth unit. And we wish to withdraw that portion of the application that seeks approval to add the fourth unit.

CONSTANTINE ALEXANDER: What's the reason -- what extent do you not -- with the three units, do you not comply with our Ordinance? Why are you seeking relief in short?

ATTORNEY JAMES RAFFERTY: Because, in short,

because the new structure slightly exceeds by less than I think less than 200 feet. The prior structure, there's a slight --

CONSTANTINE ALEXANDER: Up, down, or what?

ATTORNEY JAMES RAFFERTY: Footprints. It's not really basement. And I hashed it in and Mr. Costa is here. And so there is a slight area where you'll see that the building is indented, and I hashed it here. And it involves putting in -- putting in a full staircase rather than a -- so if you see, if you can see the footprints and that's -- and I'm looking at the dimensional form to see the difference. In the rear of the house where the stairway is now, Mr. Costa is proposing, or the architect to in-fill those little notches. So that square footage, that's the change in the footprint. But for that the building remains the same. But because that is exceeding, it doesn't qualify for the as-of-right rebuild because there is a slight modification to the footprint and that continues, that

stairway goes all the way up to the three units.

CONSTANTINE ALEXANDER: And you still need a Variance?

ATTORNEY JAMES RAFFERTY: We need a Variance because the --

CONSTANTINE ALEXANDER: It's not a Special Permit.

ATTORNEY JAMES RAFFERTY: We need a Special Permit on the windows, yeah.

CONSTANTINE ALEXANDER: That's a separate vote.

ATTORNEY JAMES RAFFERTY: Right. Yeah. So the reason -- the relief -- the reason the case remains before the Board is because it does not qualify for the exception.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: Because the exception limits the replacement structure to equal the size and footprint of the destroyed structure and we have a slight deviation --

CONSTANTINE ALEXANDER: Got it.

ATTORNEY JAMES RAFFERTY: -- on that. And the square footage differential is in the 200-foot range. Do you recall that?

ALBERT COSTA: 122.

ATTORNEY JAMES RAFFERTY: I apologize, it's 122 --

ALBERT COSTA: It's 122 square feet.

BRENDAN SULLIVAN: Is this reflective in that plan?

CONSTANTINE ALEXANDER: That's what I'm going to get to that. I'm a little confused.

ATTORNEY JAMES RAFFERTY: That's the Monday filing.

CONSTANTINE ALEXANDER: Okay. Which I've attached to the plan.

ATTORNEY JAMES RAFFERTY: Correct. That's the plan.

CONSTANTINE ALEXANDER: That's the plan. It's the same thing.

ATTORNEY JAMES RAFFERTY: Right, right.

CONSTANTINE ALEXANDER: I think that's what  
Brendan's question.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Okay. I just want to be  
sure.

ATTORNEY JAMES RAFFERTY: What I did. What I did  
to illustrate it, I took the prior footprint and showed the  
area that's different and that's my true representation of  
what's different about the prior structure that's -- part of  
the issue is the building is gone now. So where we did the  
dimensional form we put some red asterisks. We talk about  
existing conditions, we asterisked it and said, well, prior  
building because existing conditions technically now is  
zero. There is no square footage, there is no setback.

CONSTANTINE ALEXANDER: Obviously.

ATTORNEY JAMES RAFFERTY: So as Mr. Costa that  
states, there is 122 square feet additional in this proposal

than in the place the building --

CONSTANTINE ALEXANDER: One of our concerns the first time around, the last time, was density and the fact that you were going to add another dwelling unit and that's obviously off the table. And now as you say, you're seeking modest dimensional relief.

ATTORNEY JAMES RAFFERTY: Right. But because it is a new basement, to be fair --

CONSTANTINE ALEXANDER: I understand.

ATTORNEY JAMES RAFFERTY: -- you'll see in the floor plan that the first floor unit, half of the first floor unit is being used as living area.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: The ceiling height was 7,2 in the basement before the fire. The balance of the basement deals with storage and mechanical equipment, but a portion of the basement -- so that is the modification in this plan. In the prior plan the basement was a separate

fourth unit.

CONSTANTINE ALEXANDER: Right, understood.

Understood.

ATTORNEY JAMES RAFFERTY: And I want to point out one other thing because I notice in the plan that you have, there is actually a slight error that I wouldn't want to confuse anyone. I think the architect just failed if -- on the floor plan you'll see, there's a -- can I mark this and show it?

CONSTANTINE ALEXANDER: Go ahead. Explain to me what you're doing with the markings.

ATTORNEY JAMES RAFFERTY: Okay, so what's happening that the markings on the plan talk about units 1, 2, 3, 4. And that's so --

CONSTANTINE ALEXANDER: We know there's no 4.

ATTORNEY JAMES RAFFERTY: There's no 4. So you'll see unit 1 was marked as 2. It was using the old designations on those units.

CONSTANTINE ALEXANDER: That's fine.

ATTORNEY JAMES RAFFERTY: That's fine.

CONSTANTINE ALEXANDER: I understood.

ATTORNEY JAMES RAFFERTY: Okay. That was the change. I just noticed it tonight that oh, we forgot to catch the fact. It's labelling --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- units incorrectly.

CONSTANTINE ALEXANDER: I'm sitting here thinking about your public notice. Make sure your public notice is sufficient for what you're proposing tonight. You just talk about adding an additional -- you said, petitioner seeks to reconstruct non-conforming three-family structure that was recently destroyed by fire and add an additional dwelling unit in the basement. You've withdrawn the request for an additional dwelling unit in the basement.

ATTORNEY JAMES RAFFERTY: Right. So the first part remains relevant, and that is the building we proposed.

The only difference tonight from the last time is the removal of the fourth unit.

CONSTANTINE ALEXANDER: I apologize. I just want to make sure there was no deficiency.

ATTORNEY JAMES RAFFERTY: Understood. No, I've have had the same concern when I looked at it. We would have had time to re-advertise it but we didn't think we did.

CONSTANTINE ALEXANDER: I don't think you do either.

Questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: I'll open the matter up to public testimony.

Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We do have a letter, letters in the file. We originally had a

letter from City Council Toomey supporting the project. We now -- apparently he left a message with Mr. O'Grady and Mr. O'Grady memorialized it in writing. (Reading) Tim Toomey called to say his letter of support is contingent on the added unit being affordable in perpetuity.

Now, you've said you're not going to -- so his letter of support is not -- no longer there because you're not adding a fourth unit. Just for the record.

ATTORNEY JAMES RAFFERTY: Correct. So he is speaking to a portion of the application that we are withdrawing.

CONSTANTINE ALEXANDER: Okay. So he's not addressing the merits of what you're seeking tonight --

ATTORNEY JAMES RAFFERTY: No.

CONSTANTINE ALEXANDER: -- which is adding additional space.

ATTORNEY JAMES RAFFERTY: Right. He was speaking to the fourth unit, yeah. I think he must have been aware

of the comments of the Board and the continuance and --

CONSTANTINE ALEXANDER: I assumed that to be the case as well.

ATTORNEY JAMES RAFFERTY: I never spoken to him.

CONSTANTINE ALEXANDER: Okay.

Discussion or ready for a vote? I'm ready for a vote.

ANDREA HICKEY: Ready.

JANET GREEN: Ready.

CONSTANTINE ALEXANDER: These plans are the final plans as you've marked them up. Understood?

ALBERT COSTA: Yes.

CONSTANTINE ALEXANDER: You make changes you have to come back and spend another night with us. Okay?

This is illustrative --

ATTORNEY JAMES RAFFERTY: But yeah, that's, that's the former footprint.

CONSTANTINE ALEXANDER: Former footprint?

ATTORNEY JAMES RAFFERTY: Right. To help you understand what the changes in the footprint.

CONSTANTINE ALEXANDER: That's what I thought it was.

Okay. And we have two votes to take. We have a Special Permit. Why don't you just talk two seconds on the Special Permit. More than two seconds, as long as you like.

ATTORNEY JAMES RAFFERTY: We have some windows in a non-conforming wall and I'm looking at the elevations. Do you recall -- we've add some new windows. Where in the building?

ALBERT COSTA: No, I don't think we have. It's in the same spot as it used to be.

ATTORNEY JAMES RAFFERTY: Same number of windows?

CONSTANTINE ALEXANDER: Well, but what used to be is no longer there.

ALBERT COSTA: So that was -- I mean it doesn't exist anymore, right.

CONSTANTINE ALEXANDER: Right. When you build the new structure, you're going to have a wall that's too close to the lot --

ATTORNEY JAMES RAFFERTY: Yeah, I asked you the wrong question. It's not even --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So some of the windows of this structure are going to be on non-conforming walls.

CONSTANTINE ALEXANDER: And that's your Special Permit.

ATTORNEY JAMES RAFFERTY: Right.

JANET GREEN: And three parking spaces.

ATTORNEY JAMES RAFFERTY: But the parking spaces aren't changed, because we only had three units.

ANDREA HICKEY: I think you need to withdraw your request for lack of a fourth parking space technically.

ALBERT COSTA: I think so.

ANDREA HICKEY: You have to withdraw your request.

ATTORNEY JAMES RAFFERTY: Yes, yes. We're not seeking, thank you, yes. I've got two withdrawals. I'm withdrawing the portion of the Variance application that sought approval for the construction of a fourth unit. And we're withdrawing the request for a modification in the parking requirements because it's no longer relevant.

CONSTANTINE ALEXANDER: Right.

Okay, let me start with the Variance request. The Chair moves that we make the following findings with regard to the Variances being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being that this structure was destroyed in a fire that affected the entire neighborhood, and that to be -- there's a desire and it's in the interest of the city to have the structure rebuilt. And the hardship was -- if we had to do it in complete compliance with our Ordinance that it would not be desirable in terms of the structure

that you wish to build.

That the hardship is owing to the basically the shape of the lot because that's where you have your setback issues.

And that relief may be granted without substantial detriment to the public good or nullifying and substantially derogate from the intent and purpose of the Ordinance.

In this regard what is being done is certainly in the -- what the City Council wants, rebuilding and updating of the structures, or rebuilding the structures that were damaged by fire.

The relief sought is very modest in terms of a Variance, just a few hundred feet to fill in the basically two jogs in the structure. And that's it.

So on the basis of these findings the Chair moves we grant the Variance on the condition that the work proceed in accordance with the plans submitted by the petitioner prepared by Eco E-C-O Builders Group, LLC, the first page of

which has been initialled by the Chair.

All those in favor of granting the Variance please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Variance granted.

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

CONSTANTINE ALEXANDER: Let's turn to the Special Permit.

SEAN O'GRADY: Can I just interject? Are you sure you need a Special Permit, Jim?

ATTORNEY JAMES RAFFERTY: Well, we've got non-conforming side yards. The rear complies, and the front obviously doesn't apply. So we're building -- are you suggesting that the Variance covers it?

SEAN O'GRADY: Yes.

ATTORNEY JAMES RAFFERTY: I know we talked about that from time to time. And in approving the Variance for the building --

CONSTANTINE ALEXANDER: Well, we allow you to build in accordance with these plans that shows the windows, so I don't think you need the Special Permit.

ATTORNEY JAMES RAFFERTY: As long as that view remains consistent between now and the Building Permit I would agree.

CONSTANTINE ALEXANDER: If not, you can come back and see us again.

ATTORNEY JAMES RAFFERTY: You wouldn't want to just throw it on there in case there's uncertainty. I mean....

CONSTANTINE ALEXANDER: You want me to read through all the nonsense?

ATTORNEY JAMES RAFFERTY: No. I just want you to find to the extent relief is deemed necessary for the inclusion of windows in the non-conforming wall, that portion of the Special Permit, the application is granted?

CONSTANTINE ALEXANDER: I don't want to go there.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: I think we leave it -- you've heard from the Inspectional Services Department that based on the current practices, that you don't need the Special Permit. I think we can leave it right there.

ATTORNEY JAMES RAFFERTY: So in light of the information provided by Inspectional Services, we'll withdraw the Special Permit request based on the representation that it's not necessary, not required.

CONSTANTINE ALEXANDER: And if things change you can come back for a repetitive petition.

The case is over. We granted you the Variance you requested and no Special Permit.

\* \* \* \* \*

(11:10 p.m.)

(Sitting Members Case BZA-014160-2017: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 014160, 1160 Massachusetts Avenue.

Is there anyone here wish being to be heard on this matter?

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman, members of the Board. For the record, attorney Sean Hope, Hope Legal Law Offices in Cambridge. I'm here tonight with the owner and proprietor of Salt and Olive.

CONSTANTINE ALEXANDER: We know.

ATTORNEY SEAN HOPE: Mary Taylor. I think the Board is very familiar with the building and Salt and Olive and Ms. Taylor. This is an application requesting a Use Variance. This is, as the Board is familiar, this is a

block that is zoned Res. B although all of the uses, primarily especially at the ground floor are retail or commercial, therefore, requiring a Variance. We did submit with the application because we wanted to make sure there wasn't any confusion, a summary of the concept in how the reasons why we had the numerous applications. But really to cut to the chase, this beer and wine license is something that, a package store license that come very infrequently. And although there was an initial desire to add beer and wine to the Salt and Olive offerings as more after an education and a pairing as opposed to selling just beers, she was told by the License Commission that it was highly unlikely. So we moved forward with a restaurant concept to complement the Salt and Olive brand. The Board granted the Variance, and right at the ninth hour we were going to look to start construction, they -- Mrs. Taylor gets a call from Atlantic Brokers saying we have a Trader Joe's license that they need to sell because of the cap quota. And so this

shifted the gears and so we very quickly put an application together, a transfer application at the Licensing Commission, which they granted but that was subject to getting the Variance approved by this Board.

CONSTANTINE ALEXANDER: And the relief you're seeking basically is a modest extension of your non-conforming use. You have a retail and restaurant operation which we approved, non-conforming because it's residentially zoned, and now you just want to add the beer and wine component to your operation.

MARY TAYLOR: Yeah, just to be perfectly -- Mary Taylor, owner of Salt and Olive. So the one thing I want to be clear on is if we do in fact obtain this license, we will not go immediately to the restaurant idea. We will add this on to our existing retail store.

CONSTANTINE ALEXANDER: Okay, either way it's an extension of a non-conforming use.

MARY TAYLOR: Right.

CONSTANTINE ALEXANDER: Your retail use is non-conforming.

MARY TAYLOR: Okay.

CONSTANTINE ALEXANDER: So you're going to extend it.

MARY TAYLOR: Got it.

CONSTANTINE ALEXANDER: So one way or another you're just -- it's not a new, different kind of non-conforming use. It's just what I would consider a modest extension --

MARY TAYLOR: Correct.

CONSTANTINE ALEXANDER: -- of what you now have or allowed to have.

ATTORNEY SEAN HOPE: Well said. That's right.

CONSTANTINE ALEXANDER: Questions from the members of the Board?

JANET GREEN: I thought the pairings were really interesting. You know, that was quite a different concept.

CONSTANTINE ALEXANDER: I'll open the matter up to public testimony.

Is there anyone here wishing to be heard? James.

JAMES WILLIAMSON: Thank you. Well, I just have a question. And maybe you can help with the simple clarification. I don't understand that -- how it is that a transfer is necessary. I know it's considerable controversy right now in the city. Liquor licenses, and Sean will know the answer probably, liquor licenses are now I thought free.

CONSTANTINE ALEXANDER: Free, right.

JAMES WILLIAMSON: They used to -- you have to pay for them, but there is a question if there's a liquor license attached to a particular address and this is what's tying up the Middle East from being able to have a liquor license in a new location. So I guess I just don't understand how it's even necessary to have a transfer.

CONSTANTINE ALEXANDER: Well, that's not an issue for us. That's not a zoning issue. That's a licensing

issue. I don't know the answer either. That's not before us tonight.

MARY TAYLOR: We do know -- okay.

CONSTANTINE ALEXANDER: Sorry, but I can't be any more specific than that.

Ma'am.

LAURA DONOHUE: Sorry I have to sit again. Once again Laura Donohue, 90 Putnam Ave. I live very close to this address. I live on the edge of Riverside that is probably a five-minute walk from this address. I think this would be an excellent addition to the neighborhood. There really isn't much in terms of a specialty store where you can get gifts and go in and enjoy yourself. We have wonderful Zinneken's right down the street. We have Au Bon Pain, but there really isn't much else. So I'm looking forward to a very nice unique experience coming to the neighborhood by a woman-owned business, independently owned, formerly lived in Cambridge who knows Cambridge who I think

will make sure it fits if -- with what we want. I think it will be responsibly run. I've worked with Mary on the Board at the Harvard Square Business Association and I'm confident that she is a responsible business owner and will look after any late night activities with alcohol sales, which is obviously a concern in the residential neighborhood. So I would like to speak in favor of this application.

Thank you.

CONSTANTINE ALEXANDER: Let me just clarify. It's a residentially zoned neighborhood, but it's not really a residential neighborhood. That's one of the reasons why we granted relief in the past.

LAURA DONOHUE: It is, and you know, a block a way, though. But so I'm just saying I think it's a nice transition --

CONSTANTINE ALEXANDER: It is.

LAURA DONOHUE: -- for the residents to just trot around the corner and have a really nice unique experience

right there without having to actually to go into the square.

CONSTANTINE ALEXANDER: You jogged something in my mind. What are going to be your hours of operation?

LAURA DONOHUE: Thank you.

CONSTANTINE ALEXANDER: Thank you.

MARY TAYLOR: We're going to be eleven to probably eleven Monday through Saturday.

CONSTANTINE ALEXANDER: Eleven in the morning until eleven at night?

MARY TAYLOR: Yep. And we may -- well, we're discussing whether eleven is going to be too late. But we were going to mirror the businesses that are currently in our building, those are their hours now.

CONSTANTINE ALEXANDER: That's in connection with the food operation, the restaurant operation.

MARY TAYLOR: The Zinneken's, the waffle place.

CONSTANTINE ALEXANDER: Right. I know, but I mean

initially all you're going to have is you're going to have your liquor and your olives, olive oils and the like.

MARY TAYLOR: Yep.

CONSTANTINE ALEXANDER: You're still going to keep the eleven to eleven hours?

MARY TAYLOR: I think so, yeah. And then on Sundays will be much shorter hours, probably twelve to six perhaps.

CONSTANTINE ALEXANDER: Okay.

JAMES WILLIAMSON: Mr. Chair, just to clarify, this is not a liquor license in the sense of a restaurant liquor license? This is a package store license, is that what --

ATTORNEY SEAN HOPE: That's right. And that's the answer to your question.

JAMES WILLIAMSON: Appreciate it. That's totally different.

CONSTANTINE ALEXANDER: Ms. Jillson.

DENISE JILLSON: Since I'm here and it's 11:15.

Can I just say how much I appreciate what you people do as citizens of Cambridge, as residents. It's amazing. You don't get paid enough.

CONSTANTINE ALEXANDER: We don't get paid at all.

DENISE JILLSON: I know. We should be paying you.

Anyway, just to speak on behalf of Mary. You know, Salt and Olive arrived in Harvard Square a few years ago and it immediately became terrific partners in the community. Mary sits on our board, she serves on various committees, and just paints a -- you know, Oktoberfest and Mayfair and just brings a wonderful element to the square that we also truly appreciate. So, kudos to everybody and go home soon, please.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Is there anyone else wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I'm going to close public testimony. There are no letters in the file that I recall one way or another. No, just your correspondence elaborating about how you're going to operate if we grant you the relief you're seeking.

So I'm going to close public testimony. Is there any discussion or ready for a vote?

ANDREA HICKEY: Ready.

JANET GREEN: I'm ready.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that we make the following findings with regard to the Variance being sought to operate as part of Salt and Olive, and alcohol retail store.

That a literal enforcement of the provisions the Ordinance would involve a substantial hardship. Such hardship being that this is a residentially zoned district, but the nature of the structures there are not residential.

This is the basis for which we granted Variance relief to the petitioner in the past.

That the hardship is owing to the fact that this is an area that's frankly is not zoned to reflect how that area operates in terms of commercial and residential activities.

And that relief may be granted without substantial detriment to the public good or nullifying and substantially derogate the intent and purpose of the Ordinance.

The petitioner is proposing it will be a welcome addition to the Harvard Square area in terms of product offerings.

It's a very modest extension of what we previously approved with regard to the operation of the business at this residentially zoned area.

So on the basis of all of these findings, the Chair moves we grant the requested Variance to allow the conversion or the extension of the existing store into an

alcohol retail store.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

\* \* \* \* \*

(11:20 p.m.)

(Sitting Members Case BZA-014217-2017: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 014217, 144-146 Raymond Street.

Is there anyone here wishing to be heard on this matter?

ATTORNEY ANDREW BRAM: My name is Andrew Bram. I'm representing the petitioners Ari Epstein to my right. To his right is Steve Greenberg and to my left is Tova Greenberg they have the design/build team for this.

You probably -- most of you probably remember the great movie When Harry Met Sally? And that scene when Meg Ryan is faking a pleasurable experience and the woman at the next table says, I'll have what she's having.

CONSTANTINE ALEXANDER: Right.

ATTORNEY ANDREW BRAM: Well, this is that 81 Kirkland Street that you just decided a few minutes ago, and we'll have what they got.

This is an indentation, it's a dormer that when it was created many, many years ago --

CONSTANTINE ALEXANDER: 1994 to be exact is when the Board allowed it to be built.

ATTORNEY ANDREW BRAM: Right. It was created with an indentation for a deck. In the years since then because of a problem with water infiltration, this whole thing has now created problems on both the exterior siding of this building and on the interior of the room where the dormer, dormer was created. And the petitioners are now here requesting that they be allowed to close that off and incorporate that space into the interior. Mr. Greenberg can address the cost if the board wants to hear it, but in terms of financial hardship, it will cost more to repair the problems that have been created by the water infiltration

than it would be to simply close it in and incorporate the space. And in the file there is a letter of support. My client went to pretty much every neighbor and got notice from the city, and they have all signed a petition urging the Board to allow this relief. It's a minimal relief. It's 27 square feet. It increases the FAR by I think only 0.1, 100th. The FAR is slightly over what would be allowed.

CONSTANTINE ALEXANDER: Right now the FAR is 0.79 in a 0.75 district. And if we should grant you relief which is an additional 27 feet, you'll go to 0.8. A little more over but not dramatically over.

ATTORNEY ANDREW BRAM: Right.

CONSTANTINE ALEXANDER: Okay.

And just for the record, this dormer is 18 plus feet long now with the indentation in the middle.

ATTORNEY ANDREW BRAM: Right.

CONSTANTINE ALEXANDER: It will continue to be that. It means it does not comply with our dormer

guidelines, but I don't think anybody was worried about that in 1994 when the relief was granted, and I don't see any reason for us to turn it down now because the dormer's going to be there no matter what. It's just a matter of cost.

ATTORNEY ANDREW BRAM: Yes.

PATRICK TEDESCO: I think it does comply three out of the four.

CONSTANTINE ALEXANDER: Yeah, usually we focus on at least I focus most on the length of the dormer. But you're right, in all other respects it does conform.

Brendan, did you sit on this case back in 1994?

BRENDAN SULLIVAN: I may have.

CONSTANTINE ALEXANDER: I meant to check when I read the old decision.

Anyway, okay, ready for a vote?

ANDREA HICKEY: Yes.

CONSTANTINE ALEXANDER: The Chair moves that we make the following findings with regard to the relief being

sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that this dormer in its current form is ill-conceived and not in the best interest of whoever owns the home causes problems of occupancy in terms of damage to the structure.

The hardship is owing to the shape of the structure and the fact that it has this slotted indented space between the two other, other parts of the dormer.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of the Ordinance.

In this regard the Chair would note that the relief is very modest in nature.

As indicated, we do have neighborhood support. And that's all she wrote.

So on the basis of all this, I move we grant the

Variance on the condition that the work proceed accordance with these plans. If you modify them, you're going to have to come back. So this is it. Plans prepared by Steve Works, LLC and initialled by the chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

\* \* \* \* \*

(11:25 p.m.)

(Sitting Members Case BZA-014237-2017: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 014237, 156 Line Street, L-I-N-E.

Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: No one's here. And we have a letter?

SEAN O'GRADY: Yes. It's stapled in the back. It should be right there.

CONSTANTINE ALEXANDER: We have a letter from Sean Hope, Esq., counsel for the petitioner.

(Reading) Please accept this request on behalf of the petitioner to continue the above-referenced case to a

date in December 2017. Granting the requested continuance would allow for further discussions with the existing tenant Cambridge Health Alliance prior to presenting the case before the Board.

Okay. The Chair moves that we grant the requested continuance subject to the following conditions:

That the petitioner sign a waiver of time for a decision.

No. 2, that the posting sign be modified or a new one be posted reflecting the new date.

And the time when are we going to continue the case to?

SEAN O'GRADY: Did he say December?

CONSTANTINE ALEXANDER: I don't think he said anything.

PATRICK TEDESCO: I thought he said December.

CONSTANTINE ALEXANDER: Did he say December.

Yeah, to a date in December.

SEAN O'GRADY: All right, so we have the 14th of December.

CONSTANTINE ALEXANDER: Okay. We'll continue this case until December 14th at seven p.m. subject to the following conditions:

That the petitioner sign a waiver of time for a decision.

That a new posting sign be maintained, posted and maintained to reflect the new date and the new time. And that the new sign be maintained for the 14 days required by our Ordinance.

And lastly, that to the extent any plans or dimensional forms change, these must be in our files no later than five p.m. on the Monday before the scheduled continued hearing date.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case

continued.

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

(Whereupon, at 11:30 p.m., the

Board of Zoning Appeals Adjourned.)

\* \* \* \* \*

**ERRATA SHEET AND SIGNATURE INSTRUCTIONS**

The original transcript and Errata Sheet has been delivered to Inspectional Services Department.

**INSTRUCTIONS**

After reading this volume of the Zoning Board of Appeals transcript, note any change or correction and the reason therefor on this sheet. Sign and date this Errata Sheet.

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I have read the foregoing transcript of the Zoning Board of Appeals, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statement(s) made by me.

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.

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

That the hearing herein before set forth is a true and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of October, 2017.

---

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

My Commission Expires:  
April 29, 2022

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME IN ANY RESPECT UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING REPORTER.

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