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Volume X
Pages 1-107

Brookline Zoning Board of Appeals Hearing
420 Harvard Street Comprehensive Permit Application
420 Harvard Associates, LLC
December 12, 2016, at 7:00 p.m.
Brookline Town Hall
333 Washington Street, 6th Floor
Brookline, Massachusetts 02445

Reporter: Kristen C. Krakofsky

1

APPEARANCES

2 Board Members:

3 Jesse Geller, Chairman

4 Lark Palermo

5 Kate Poverman

6 Johanna Schneider

7

8 Town Staff:

9 Alison Steinfeld, Planning Director

10 Maria Morelli, Senior Planner

11

12 Applicant:

13 Victor Sheen, 420 Harvard Associates, LLC

14 Dartagnan Brown, Principal, EMBARC Studio, LLC

15 Bob Engler, President, SEB

16

17 Members of the Public:

18 Colm McMahon, 45 Coolidge Street

19 Karen, Babcock Street

20 Fred Bennett, 32 Coolidge Street

21 Sloat Shaw, 88 Thorndike Street

22

23

24

1 PROCEEDINGS:

2 7:05 p.m.

3 MR. GELLER: Good evening, everyone. We
4 are reconvening our comprehensive permit hearing on
5 420 Harvard Street. Again, for the record, tonight's
6 hearing is being recorded, and we also have a
7 transcribed -- transcription record.

8 For the record, my name is Jesse Geller.
9 To my right is Johanna Schneider, to my immediate
10 left is Kate Poverman, to Ms. Poverman's left is Lark
11 Palermo.

12 Tonight's hearing will largely be dedicated
13 to -- as people will remember, we started our review
14 of waiver requests, so we will continue that review.
15 And we will also move into a review of the draft
16 conditions, which were circulated, and they are
17 available online for those of you who have not seen a
18 copy.

19 We are, this evening, also going to hear --
20 I assume nobody's here, but we're going to enter into
21 the record a variety of letters from police, fire, a
22 letter concerning stormwater.

23 And are we also going to have Judi's
24 letter?

1 MS. MORELLI: Yes.

2 MR. GELLER: Okay. I understand that the
3 applicant also has a short presentation, just
4 updates.

5 And we will -- will offer an opportunity
6 for the public to provide some comments. What I
7 would ask is, again, keep focused on what the purpose
8 of this evening's meeting -- or hearing is, which is
9 primarily to review waivers and conditions. Waivers,
10 it seems to me, is more technical, but if you do have
11 comments, we're more than happy to hear them.

12 The next hearing is scheduled for December
13 the 28th, which is the last day, based on timing,
14 under 40B. So depending on how far we get this
15 evening, we may have a request for the applicant.

16 Okay. Maria.

17 MS. MORELLI: Thank you, Chairman Geller.
18 Maria Morelli, planner, planning department.

19 Just to reiterate, you are revisiting --
20 the board is revisiting waivers that you'd like to
21 discuss further. Those are namely waivers B, C, D,
22 DB, P, and U. We just updated those. Those are the
23 shaded cells in the waivers chart. The applicant has
24 clarified the uses from which he would like a waiver

1 request -- would like to have a waiver from local
2 zoning. In addition, he's added an additional waiver
3 request regarding educational uses.

4 And in regard to all of this, there are two
5 things that I'd like to mention. So there's been
6 some concern about proposed office use or retail use
7 at 49 Coolidge. What the applicant has done is he
8 has submitted revised plans that he will present
9 tonight that show that he's moving that office space
10 to the formerly spec'd amenity space on the
11 420 Harvard lot. Whatever office space you see on
12 the floor plans for 49 Coolidge, that is designated
13 as a leasing management office, and I will read into
14 the record the building commissioner's opinion.

15 So there is a waiver request regarding
16 office use at 49 Coolidge. The building commissioner
17 has given you his opinion on that particular request,
18 and he's also given you an opinion on -- if the
19 intended use is indeed restricted to the leasing
20 management office, he can point to that provision in
21 the bylaw under which that would be acceptable. So I
22 think those are the waivers we'll all be --

23 MS. POVERMAN: Wasn't it always for that
24 purpose?

1 MS. MORELLI: You know, that is not clear
2 to me. My understanding is that office space at
3 49 Coolidge could have been office space for the use
4 of the employees of the retail and office space at
5 420 Harvard.

6 Now, if that's the case, there could be
7 some crossover where clients might be using that
8 office space. It might be very hard to enforce that
9 separation, and they would need to have a waiver
10 request for, say, staff use. If you're going to have
11 the employees of, say, RE/MAX use office space at
12 49 Coolidge, or if you're going to have a math
13 tutoring tenant at 420 Harvard and the teachers
14 there, the staff there are going to be having office
15 space at 49 Coolidge, you'd have to grant a waiver
16 for that use at 49 Coolidge.

17 Now, we've received letters from Mike
18 Jacobs, who's a resident of Coolidge and obviously a
19 40B expert; Jay Talerman, who's an attorney for
20 concerned residents in the area; as well as the ZBA's
21 own 40B consultant, Judi Barrett. And I will read
22 her comments, but the gist is that if the use is not
23 permitted for retail or commercial in a T-5
24 residential district, which it is not, the ZBA cannot

1 grant a waiver for that use.

2 So the applicant understands that and has
3 modified or clarified the office use at 49 Coolidge
4 to be restricted to a leasing management office, so
5 someone would be there for the leasing of apartments
6 in the project. That is typically done in
7 multifamily complexes, and there is a provision in
8 our bylaw in the Use Table for Table 4.07, No. 71,
9 that the building commissioner does agree would be
10 for that use.

11 MS. POVERMAN: But not for tutoring?

12 MS. MORELLI: No, not for tutoring.

13 MS. POVERMAN: Can I ask the board members,
14 do any of you have an understanding, or do you share
15 my understanding that the space in 49 Coolidge that
16 was designated for office was already just to be used
17 for --

18 MR. GELLER: Yeah. That was my
19 understanding of it too, based on, I think, a comment
20 we received when we first started going down the road
21 of introducing 49 Coolidge. But I think, at the end
22 of the day, that's what they're doing.

23 MS. POVERMAN: Yeah.

24 MS. MORELLI: However, I want to clarify.

1 You'll notice that in the previously submitted
2 waivers list, there were all sorts of provisions
3 for -- or requests for waivers from certain uses in a
4 residential district. And in the course of that
5 discussion, the applicant was just working on
6 different scenarios, being very diligent about --
7 because obviously there is one space that they have
8 not leased. They don't have a perspective tenant
9 yet. So the applicant is just thinking out different
10 scenarios.

11 But we just have to clarify that because of
12 the Jepson case -- this is Jepson versus the ZBA of
13 Ipswich -- that we really could not -- the ZBA cannot
14 grant a waiver for office or retail use in a district
15 that does not permit it.

16 MS. POVERMAN: And what was the bylaw
17 again, the Table of Use?

18 MS. MORELLI: So in Table 4.07, Table of
19 Use, that is Use No. 71. It should be way down the
20 end.

21 And if you'd like me to read for the record
22 Judi Barrett's opinion --

23 MS. POVERMAN: I just want to read this
24 first, if I could.

1 MS. MORELLI: It might be easier when we go
2 to the table and I read Commissioner Bennett's
3 opinion. I think it might be better to tie that in
4 then.

5 MS. POVERMAN: Sure. Sounds good.

6 MS. MORELLI: So this is dated -- this is
7 to me from Judi Barrett, the ZBA's 40B consultant,
8 dated Monday, December 12, 2016, at 11:05 a.m.

9 "In my opinion, the board cannot use the
10 comprehensive permit to allow a commercial use in a
11 Chapter 40B development unless the use is permitted
12 in the district. I think Jepson settles the matter:
13 'We conclude that when commercial use is permitted on
14 the property to be developed under the local bylaw or
15 ordinance, the board, under General Law Chapter 40B
16 in Sections 20 to 23 has that authority,' and,
17 'Nothing in General Law Chapter 40B, Sections 20 to
18 23 expressly prohibits the inclusion of incidental
19 commercial uses when such uses are permitted on the
20 proposed property by zoning ordinance or bylaw'" --
21 that emphasis is added by Judi -- "'to complement an
22 affordable housing development.'"

23 She continues, "The board may grant
24 dimensional waivers where necessary to accommodate

1 the commercial use and the residential units." And
2 again, she's referring to the Jepson case.

3 So what the applicant is going to show
4 you -- just to make sure we haven't lost our place --
5 are plans that show how the formerly -- the spec'd
6 residential amenity space on the 420 lot will now be
7 office use, and the space -- whatever's designated as
8 office on the 49 Coolidge lot is intended to be for
9 the leasing management office.

10 Okay. Just other bits of housekeeping: At
11 the last hearing, we did have some outstanding
12 materials that were expected from the applicant.
13 Number one, I still need full-sized plans, which the
14 architect will give me tomorrow. That's not a
15 problem.

16 Dan Bennett, the building commissioner, did
17 get a height calculation methodology from the land
18 surveyor. However, he does have questions about how
19 that was done. It is a little complicated. This is
20 a complicated site, so Mr. Bennett does request
21 additional time with the applicant to clear that out,
22 and we would be able to respond at the next hearing.

23 There also is a building code analysis that
24 the building commissioner had requested, and that is

1 also something that will be discussed in person, the
2 applicant and Mr. Bennett.

3 Pat Maloney, who's the chief of
4 environmental health, is reviewing the rubbish plans
5 that indeed have been submitted. The applicant can
6 speak to them if you want. But Dr. Maloney has been
7 a little busy with the licensing, so he will need to
8 get to us this week, and not in time for this
9 hearing.

10 The noise management was referenced on
11 sheet A105, and again, we're going to have both
12 Dr. Maloney and Commissioner Bennett look at that.

13 There was a site section across the
14 driveway. Remember, we wanted some assurance that
15 any retaining walls or guardrails were not going to
16 be within 6 feet of the front yard property line,
17 just to ensure that there are no visual obstructions,
18 and that looks fine. We just want to measure the
19 plans and then comment at the next hearing.

20 I do have some letters to the ZBA from the
21 police department, fire department, and Peter Ditto
22 regarding stormwater that I can read into the record
23 whenever you wish.

24 MR. GELLER: Go ahead.

1 MS. MORELLI: Okay. So dated December 9th
2 from Deputy Fire Chief Kyle McEachern. "To whom it
3 may concern, the Brookline Fire Department has
4 reviewed the plans for 420 Harvard Street and
5 384 Harvard Street. As presented, we have no
6 objections or concerns at this time."

7 Dated December 12, 2016, from Deputy
8 Superintendent Myles Murphy, traffic division of the
9 police department to the Brookline ZBA. "After
10 reviewing the latest submitted plans for these two
11 40B proposals specific to safety from the police
12 perspective, I don't see any outstanding issues nor
13 has any been brought to my attention. I do support
14 the adding 'no parking this side' signage on Fuller
15 and Centre Street near the respective developments to
16 reinforce the current conditions of no curbside
17 parking." He is referring to the 40B proposal of
18 420 Harvard and 40 Centre Street.

19 And from Peter M. Ditto, director of
20 engineering and transportation, dated December 12,
21 2016, regarding 420 Harvard Street stormwater
22 management update. "Board members, this memo is to
23 update the board on the status of the stormwater
24 management program for the project at 420 Harvard

1 Street.

2 "The developer's consultant submitted a
3 site feasibility plan dated December 9, 2016,
4 showing a conceptual on-site infiltration system.
5 The concept plan was reviewed and found to be
6 acceptable. However, the final location and size of
7 the system will be determined upon establishment of
8 the soil characteristics.

9 "Because it appears that the infiltration
10 system will not be able to handle runoff from the
11 25-year design storm, an overflow to the storm drain
12 in Fuller Street will be allowed."

13 And there is a follow-up letter from
14 Commissioner Bennett regarding waivers. I don't know
15 how you want to handle that, if you prefer to just go
16 through the waivers and then I can insert his
17 comments, if relevant.

18 MR. GELLER: Yeah. I think that's good.

19 MS. POVERMAN: I actually have a question
20 about Mr. Ditto's. You may not be able to answer it
21 now. But I don't know how common it is if a storm
22 drainage system is found not to be able to handle a
23 25-year storm, for it to be allowed to then drain
24 into a street and the city's storm drainage system.

1 MS. MORELLI: So I've discussed it with
2 him. Obviously, I can't speak to the technical bits,
3 but he has -- this has been allowed before. It is
4 allowed. If you have any questions about why this
5 would be permitted or on how many projects it's
6 permitted, I will have him respond to that. But this
7 is not uncommon to allow.

8 MS. POVERMAN: And I assume that that is
9 sort of a standard -- industry standard, that you
10 look at the 25-year storm. And I would just think
11 something we need to address in the future is the
12 fact that with global warming and reviews I've read,
13 large downpours are expected much more frequently in
14 the future, and that I just wondered if he knew of
15 any changes that were expected to the relevant
16 standard of whether, you know, 24 years, you know --

17 MS. MORELLI: Yes.

18 MS. POVERMAN: -- relevant downpours, etc.

19 MS. MORELLI: What the baseline would be.

20 MS. POVERMAN: Right. If that would
21 change, and if he had any understanding as to what
22 that might be.

23 MS. MORELLI: Sure. It's nothing that is
24 pertinent to this case.

1 I also think -- I understand that Peter
2 Ditto tends to be very succinct. It could be that a
3 certain percentage is roof runoff where it might be
4 clean, so that's not so much of a problem. It's
5 cleaner -- the majority of the runoff is clean.
6 That's probably why it's not a problem to have it
7 connect overflow to the storm drain in Fuller Street.
8 But obviously, I defer to him for the technical
9 explanation.

10 MS. POVERMAN: And if you could just
11 confirm from him that -- obviously, he assumed that
12 if the runoff could go to Fuller Street, the
13 stormwater drainage system obviously would not be
14 flowing towards Coolidge Street and therefore damage
15 people's property on Coolidge Street. But would it
16 be sufficient to drain it towards --

17 MS. MORELLI: Yeah. There can't be any,
18 like, overflow onto abutters' properties. The
19 project team is not asking for a waiver from Town
20 Bylaw Article 8.26, so the rate of runoff cannot be
21 increased onto abutting properties.

22 MS. POVERMAN: Okay. Thanks.

23 MR. GELLER: Thank you, Maria.

24 I want to now bring forward the applicant

1 to give us their updates.

2 MR. SHEEN: Thank you, Mr. Chairman. For
3 the record, Victor Sheen on behalf of 420 Harvard
4 Street development.

5 I just want to sort of follow up on Maria's
6 earlier description in terms of a couple of small
7 changes that we're making to clarify the uses on the
8 ground floor of 49 Coolidge as well as 420 Harvard
9 Street.

10 In reviewing the uses in the last couple
11 days with Maria and our 40B consultant, we've
12 determined that accessory use can be allowed versus
13 principal use, as we were asking waivers from
14 previously. So this being an apartment development,
15 the accessory use will be a management office, as we
16 fully intend to have on-site.

17 And so what we've decided to do is,
18 switching the location of the previous -- sort of the
19 management office location to 49 Coolidge and then
20 having sort of more of a back-of-house function that
21 we had previously thought would have been sort of an
22 overflow for the RE/MAX offices, and now would remain
23 on the 420 side versus the 49 Coolidge side. So
24 49 Coolidge -- and as we go through the plans, I will

1 show you that portions of the first floor and the
2 entirety of the basement would be exclusive accessory
3 use only as to the management -- property management
4 services.

5 MS. POVERMAN: Wait. I'm sorry. You said
6 that the property management services were being
7 moved to --

8 MR. SHEEN: To 49 Coolidge, entirely.
9 Because previously we were splitting between the two
10 sides.

11 MS. POVERMAN: Okay.

12 MR. SHEEN: So in that case, the space
13 previously identified as the sort of leasing office
14 and amenity areas will be converted back to primarily
15 office use. Because we have no retail frontage, so
16 it would just be back-of-the-house offices.

17 MS. POVERMAN: Okay.

18 MR. SHEEN: Aside from the uses, the ground
19 floor remains the same without any dimensional
20 changes as we had intended previously.

21 There will be no -- again, there will be no
22 changes as to the underground garage parking as we
23 had previously reviewed and commented on.

24 We updated the landscape plans, so now the

1 ground floor background for 420 Harvard has been
2 updated to reflect the current footprint -- proposed
3 footprint of the building.

4 The second floor and up have not changed
5 from the previous submission.

6 In terms of 49 Coolidge, as you can see,
7 the light blue portions of it --

8 MS. POVERMAN: Could you slow down just a
9 little bit?

10 MR. SHEEN: Sure.

11 MS. POVERMAN: So you're on A. What page?

12 MR. SHEEN: 107.

13 MS. POVERMAN: Okay.

14 MR. SHEEN: So A, 107 lays out the intended
15 modification to the existing 49 Coolidge single-
16 family home with a ground floor -- portions of the
17 ground floor would be the leasing office with a stair
18 that goes down to the lower -- sort of the basement
19 level. Currently, the basement level has utility
20 rooms, a bathroom, and some additional storage. So
21 those would be -- those areas would be converted to
22 an office use along with a first-floor access point.

23 The rear of the building on the ground
24 floor and on the second floor will be a two-bedroom

1 unit, as we have proposed previously.

2 The grand stair that currently exists
3 within the single-family home would lead to the upper
4 duplex, which would be a three-bedroom unit, as we
5 have shown previously.

6 MS. POVERMAN: Has the square footage of
7 the apartments changed?

8 MR. SHEEN: No, no, nothing has changed.
9 So the only two changes that we've made on the plans
10 were simply notation changes as a clarification to
11 the allowed uses as an accessory use for the
12 property.

13 The height of the building, nothing changed
14 on the exterior. We have submitted additional height
15 calculations as requested by the building
16 commissioner, so that will be worked out. But the
17 overall height has not changed, so it's just a matter
18 of the indicative -- relative height to the elevation
19 of the street, which Dan will comment on.

20 As Maria indicated before, we included
21 additional information regarding the railing. This
22 is looking towards 44 Fuller. So we will not have
23 any sort of visual obstructions to the first 6 feet
24 or 5 feet -- 6 or 5 feet of the -- 6 feet from the

1 property line, there wouldn't be any obstruction. I
2 can't read it. Is that 10 feet? Yeah, so it's
3 roughly about 10 feet back -- 16 feet back where the
4 railing would -- and technically, we don't
5 actually -- we can actually push this back even
6 further because the requirement at this point is
7 only, I think, 18 inches. We could actually push the
8 railing back further if needed.

9 The exterior of the building has not
10 changed since the last proposal.

11 So that's -- I'll go back to the -- maybe
12 the ground floor so we can go through the waiver list
13 in a little bit more detail.

14 MS. POVERMAN: Maria, in terms of the
15 waiver list, I probably don't have any comments, but,
16 as you recall, we got it really at the last minute,
17 so I may have comments just because I actually had a
18 chance to go through it.

19 MS. MORELLI: Okay.

20 MR. SHEEN: So, if you please, I'd like to
21 go through the revised waiver list.

22 MS. MORELLI: I'm just going to pull this
23 up on screen.

24 MR. SHEEN: Sure.

1 MS. MORELLI: I just want to mention, for
2 the sake of the public, that the latest, which is
3 dated December 12th, has not been posted online, but
4 I'm going to pull that up now.

5 MR. SHEEN: Should I go through all of it,
6 or should I just go through the highlighted portion?

7 MS. MORELLI: So the shaded cells means
8 that the board is going to be revisiting those
9 particular waivers. There's also, I believe, a
10 shaded cell where you have added since we last met.
11 So let's just start with the shaded, I would
12 recommend.

13 MR. SHEEN: So in terms of educational
14 uses, we had previously been thinking about getting
15 potentially, like, a Russian school type of tenant
16 into the 420 Harvard portion of the retail space. In
17 discussion with the building commissioner, it is
18 currently not an allowed use, and we'd like to
19 withdraw that request. So the educational use no
20 longer applies.

21 MS. POVERMAN: For either property?

22 MR. SHEEN: For the property.

23 MS. MORELLI: Is that what you discussed
24 for educational use?

1 MR. SHEEN: He said that none of the uses
2 are currently not allowed -- will not be --

3 MS. MORELLI: So educational is different.
4 So under 40A, educational and religious uses are
5 exempt, and let's just --

6 MR. SHEEN: So we were not clear on that.
7 This is waiver 17.

8 MS. MORELLI: Okay. So principal Use 17 is
9 trade, professional, or other school conducted as a
10 private gainful business, so that's not an
11 educational use.

12 MR. SHEEN: Right. I mean, it's a
13 for-profit math tutoring, so --

14 MS. MORELLI: So if it's for-profit math
15 tutoring, I don't think that falls under 17, so
16 that's not the provision you would be wanting a
17 waiver request.

18 MS. POVERMAN: Yeah. I think we'd have
19 to -- for education, wouldn't it have to be not
20 for-profit? I just know under 40A you have to get a
21 special permit in order to have tutoring in
22 somebody's home, which is what I see is the
23 equivalent -- well, not a Russian school. And my
24 concern there would be, you know, people dropping off

1 kids and traffic created by kids coming and going.

2 MR. SHEEN: So we're getting rid -- we're
3 withdrawing our request.

4 MS. POVERMAN: Okay.

5 MR. SHEEN: The next one has to do with,
6 again, on the 49 Coolidge side. We left Use 21 in
7 there, but I think, based on the discussion with the
8 building commissioner, that can be -- that's not
9 applicable anymore. It can be covered under 71, so
10 we would like to withdraw that request as well.

11 MS. PALERMO: 20 and 21.

12 MR. GELLER: Yeah. The updated chart has
13 21.

14 MS. MORELLI: Look at December 12th, what I
15 handed out. I'm sorry. That's waiver B, as in
16 "Boston."

17 MS. PALERMO: So 21 is gone. Okay.

18 MR. SHEEN: Right. B.1 and B.2 are out.

19 MS. POVERMAN: Okay.

20 MR. SHEEN: The next one, automotive
21 services and uses, we believe they are required to
22 build. So under both the 49 Coolidge parcel, we're
23 still asking for a waiver for uses 22 and 23 under
24 49 Coolidge, the T-5 zoning district, and Use No. 22

1 for L-1.

2 MS. PALERMO: I have a question about the
3 parking at 49 Coolidge. Is that now going to be for
4 the use of the property management leasing office?

5 MR. SHEEN: Yes. So they would continue to
6 be sort of nonresidential uses -- would be used by
7 the property.

8 MS. PALERMO: But specifically for the
9 leasing office, not for any use at 420?

10 MR. SHEEN: That's right.

11 MS. MORELLI: But just keep in mind that --
12 and I don't know if it's easier to go to the garage
13 level plan where you see that there is the property
14 line that separates the T-5 district from the L-10.
15 There are eight parking spaces, and four of those
16 spaces would be for commercial use, and four of them
17 would be for residential use. So that's why
18 there's -- just because there's overlap, there is
19 going to be -- there are going to be spaces below
20 ground that -- on the T-5 side that will be
21 commercial spaces.

22 MR. GELLER: Let me ask you a question.
23 The section that they're citing, Section 22, right,
24 allows use for any lots -- any other lot located

1 within 1,400 feet. So is it their ask and is it our
2 intent to grant the right to rent out parking to
3 third parties, people who are not in either
4 49 Coolidge or 420 Harvard? They're tight on parking
5 as it is.

6 MR. SHEEN: Our intention is not to --

7 MR. GELLER: As I assume.

8 MR. SHEEN: Yeah. It's for our on-site
9 tenants.

10 MR. GELLER: But if that's the case, then
11 there needs to be --

12 MS. MORELLI: Yeah. I think Use 23 should
13 cover everything. If you read, "Parking area
14 abutting or across the street from a nonresidence
15 district for the parking of passenger cars of
16 tenants, employees, customers, and guests of
17 buildings or establishments in the adjoining
18 nonresidence district provided no sales or service
19 operations are performed." That is allowed by
20 special permit in the T-5 district, and it is allowed
21 in the local business district.

22 MR. SHEEN: So just to clarify, Use No. 22
23 is allowed by right under L, so the use -- so the
24 waiver request for the 420 parcel actually would be

1 withdrawn.

2 MR. GELLER: So you're withdrawing it for
3 420 Harvard, so let's now ask the question on 49.

4 MS. MORELLI: I just want to be clear on
5 what you're withdrawing. You're still asking for a
6 waiver from Use 22.

7 MR. SHEEN: But not for the --

8 MS. MORELLI: You don't need it for 23.

9 MR. GELLER: He doesn't need it.

10 MS. MORELLI: Right. And that's not in the
11 waivers.

12 MR. SHEEN: No. But 22 is by right under
13 L.

14 MS. MORELLI: That's correct, it is. I'm
15 sorry.

16 MS. PALERMO: So that one is being
17 withdrawn?

18 MR. GELLER: Yes. He doesn't need it.

19 So then the question is on 49 Coolidge,
20 what does he need?

21 MS. PALERMO: Right.

22 MS. MORELLI: So I'll just explain what is
23 actually happening. There are residents at
24 49 Coolidge. There are two residential units. Their

1 parking is going to be on the 420 side below grade.

2 MR. GELLER: I understand that part.

3 MS. MORELLI: And there's going to be
4 commercial parking associated with the leasing office
5 on 49 Coolidge, which is a residential district.

6 MR. GELLER: I understand that.

7 The issue is: All I want to achieve, which
8 I believe is what Mr. Sheen wants to achieve, I want
9 him to have parking for his project. I don't want
10 him to decide that he can make more money by renting
11 out to third parties who are within 1,400 square feet
12 of the site. That's all I want.

13 MS. PALERMO: Can that be a condition?

14 MS. MORELLI: Yes. I was going to say --

15 MR. GELLER: But I think we need to make
16 that clear.

17 MS. SCHNEIDER: But I guess, then, that
18 raises the question of does a waiver from 23 with
19 respect to Coolidge get you the same result? So
20 let's say we don't give the waiver with respect to
21 22, but we give it with respect to 23, which we can
22 do because it's a special permit use, doesn't that
23 cover you without us having to impose a condition?

24 MS. PALERMO: Although, doesn't this relate

1 to an area abutting or across the street?

2 MS. SCHNEIDER: Well, it is abutting 420;
3 right?

4 MS. PALERMO: But it's parking for 49.

5 MS. POVERMAN: Or it's parking for
6 visitors.

7 MS. PALERMO: No. It's parking for
8 49 Coolidge. Yeah. I think we need to clarify it in
9 the conditions.

10 MR. SHEEN: Okay. Should I go on?

11 MR. GELLER: Let's back up for a minute.
12 So -- because you raised 23. So for 49 Coolidge, the
13 ask is Table of Uses No. 22; correct?

14 MR. SHEEN: For 49 Coolidge, we're asking
15 Table of Uses No. 22 and 23.

16 MR. GELLER: And 23?

17 MR. SHEEN: Yes.

18 MR. GELLER: Okay.

19 MS. PALERMO: I'm still not clear why he
20 needs 23.

21 MR. GELLER: What is the negative for you?

22 MS. PALERMO: Well, we can clarify it with
23 conditions, but it implies that --

24 MR. GELLER: No more so than 22.

1 MS. PALERMO: Well, to me it implies that
2 there could be -- we can clarify with conditions.
3 Never mind. We'll do that.

4 MR. GELLER: Okay. Go ahead.

5 MR. SHEEN: So the next section had to do
6 with retail and consumer uses. We talked in length
7 to staff about this one, and we decided to remove any
8 waiver requests associated with the 49 Coolidge
9 parcel, so that no longer applies.

10 MS. POVERMAN: I need to catch up again.
11 Hold on. These two copies are driving me nuts. Let
12 me just catch up on mine.

13 But you're withdrawing that, D.1 and D.2?

14 MR. SHEEN: So the residential -- on the
15 residential parcel, the T-5 parcel, we're no longer
16 asking for any waivers. So now that's just
17 nonapplicable.

18 We are still asking for 38C. It's
19 currently allowed by special permit under the L zone.
20 And 38C has to do with open-air use, other than
21 commercial recreational facility, seasonal outdoor
22 seating for a licensed food vendor that does not
23 exceed six months in each calendar year, and Uses 22
24 to 28 inclusive, including, but not limited to, the

1 sale of flowers, garden supplies, or agricultural
2 produce.

3 MR. GELLER: Explain to us why you would
4 need open air --

5 MR. SHEEN: So one of the tenants that
6 we're pursuing is Winston Flowers, and we would like
7 to have Winston Flowers -- the ability to display
8 potted plants and whatnot whether it is in the
9 Harvard Street frontage side of the property or --
10 very much the same as -- you know, currently there
11 are other vendors on Harvard Street that overflows
12 onto --

13 MR. GELLER: So the Harvard Street side,
14 what's the distance from the building to the public
15 sidewalk?

16 MS. MORELLI: So let me just look at the
17 plans.

18 MR. GELLER: And I hear what you're saying.
19 I know Winston Flowers very well. But I'm not sure
20 that in practical reality you're going to have a lot
21 of displays.

22 MS. MORELLI: Before I get to that, just
23 remember, the implications of granting this waiver
24 also affects the courtyard.

1 MR. GELLER: We understand that. Believe
2 me, if he was talking about the 6 inches in front of
3 Harvard Street, I wouldn't be as concerned.

4 MS. MORELLI: I actually don't have my
5 scale, but I think it's like 2 feet. It's not a lot
6 of --

7 Do you remember, Dartagnan? Or you don't
8 have a scale?

9 MR. SHEEN: We don't. But, you know, our
10 intention is for -- I mean, so let's get to the
11 elephant --

12 MS. POVERMAN: Well, let me ask one
13 question. Is it equal to the space that Model
14 Hardware has, for example, where they put out all
15 their shovels? Because they have a fair amount of
16 space relative -- do you want to put some flowers out
17 there?

18 MS. SCHNEIDER: Well, I think he wants to
19 get to the elephant in the room.

20 MR. SHEEN: So let's put that -- table
21 that.

22 Our intention for the courtyard is
23 primarily -- or exclusively for tenants of the
24 building use only. It's not meant for the public.

1 There are no direct public access to that space.

2 MR. GELLER: Other than the office now.

3 MR. SHEEN: Right. But the intention is
4 not to be in a -- our intention is not to put a food
5 vendor out there so they can sell hot dogs six months
6 out of the year. You know, the -- it's for the quiet
7 enjoyment of our tenants in the building.

8 To the extent that we are courting Winston
9 Flowers, you know, I do think that's why we left it
10 in there as a discussion point, because we do believe
11 that having a merchant that engages Harvard Street --
12 it's a public benefit and it create pedestrian safety
13 as well as foot traffic.

14 MR. GELLER: Okay.

15 MS. POVERMAN: What about the cafe that you
16 talked about?

17 MS. SCHNEIDER: Well, just picking up on
18 what he said for just a second, though, I mean, it
19 seems to me that if our concern is about a retail or
20 restaurant or whatever tenant using what we believe
21 to be designated open space for the residential
22 tenants, that's the kind of thing that we could
23 address in a condition to the decision rather than
24 beating a dead horse and trying to posit what he may

1 or may not be doing and --

2 MS. POVERMAN: I'm not sure what you mean,
3 because we could just deny the waiver.

4 MS. PALERMO: No. But we can --

5 MS. SCHNEIDER: There may be some uses that
6 we think would be okay. I mean, I think the idea of
7 a flower shop with a little bit of spillover, if
8 there's room, is a nice idea. And I think we do want
9 to provide --

10 MR. GELLER: We want this to be a
11 successful retail space.

12 MS. PALERMO: And we can limit the use in
13 the conditions to the other space and say it's
14 restricted to the use by tenants and it is prohibited
15 to use it for a cafe, outdoor use.

16 MS. POVERMAN: But I'm thinking about --
17 I'm thinking of the neighbors. You know, are
18 neighbors going to want -- and perhaps we can hear
19 them after this. Are neighbors going to want people
20 chit-chatting, picking out their flowers, picking out
21 their -- customers of Winston. I mean, I love
22 Winston. That'd be great. But picking up their, you
23 know, little trees or something like that, I think
24 that could be a major disturbance as to --

1 MS. SCHNEIDER: On the sidewalk?

2 MS. POVERMAN: Not on the sidewalk. In the
3 space --

4 MS. PALERMO: We'll restrict it. They
5 can't use the space for anything other than the
6 tenants' quiet enjoyment.

7 MS. POVERMAN: That's fine. But I thought
8 we were talking about the use of the courtyard.

9 MR. GELLER: No. We're talking about the 2
10 feet from the face of this building to where the
11 public sidewalk starts on Harvard Street. That's all
12 we're talking about.

13 I will say it plainly and clearly. I don't
14 think any one of the ZBA -- and you know what I'm
15 going to say. None of the ZBA members are going to
16 entertain placing commercial uses like hot dog stands
17 or cafe tables or a skating rink --

18 MR. SHEEN: That's not our intention.

19 MR. GELLER: -- in the landscaped area.

20 MS. POVERMAN: Okay. Now I understand.

21 MR. SHEEN: The next one is --

22 MS. POVERMAN: So what does this do to D.1
23 and D.2?

24 MS. PALERMO: It leaves it as he wrote it

1 on this latest, December 12th.

2 MR. GELLER: And what will happen is, in
3 the discussion of the conditions, we will make it
4 clear what the limitations -- assuming we're willing
5 to entertain this waiver request, what the
6 limitations of the grant are.

7 MR. SHEEN: So D.1 no longer applies. It's
8 D.2 for 420 Harvard Street.

9 The next box has to do with communications.
10 We're withdrawing that after discussions with staff,
11 so DB.2 no longer applies.

12 MR. GELLER: No Brookline Public Radio
13 System? Radio's coming back.

14 MR. SHEEN: The next one has to do with the
15 maximum height of buildings. As we stated earlier,
16 the exterior height of the building remains the same.
17 If this specific -- you know, it's still being shaded
18 because, I guess, the building commissioner still
19 needs to review the calculations, the methodology of
20 the height and the elevation, which we've provided to
21 him.

22 MR. GELLER: And, Maria, let me just throw
23 in -- one point that was confusing to me is -- and it
24 was sort of assisted by a letter from somebody that

1 we received, which is if there's no change to
2 49 Coolidge, why is there a waiver --

3 MS. MORELLI: So that wasn't updated. That
4 should be crossed out. There is not going to be any
5 height change at 49 Coolidge, so that's not
6 applicable.

7 What we want to do is be very careful about
8 what the height is so you understand what the delta
9 is between the regulations and the waiver request.

10 MR. GELLER: Okay. Thank you.

11 MR. SHEEN: So that's correct. There will
12 be no change to the exterior height of 49 Coolidge.

13 MS. POVERMAN: I actually have a question
14 on G.1 and G.2, now that I have reviewed them. It's
15 waivers of a designer review, for example, of
16 advertising features, the way the sign looks, for
17 example. When you, I guess, put it up, they give you
18 like 20 feet or something like that. I'm not sure
19 that we want to have a waiver for that or for the --

20 MS. MORELLI: I beg your pardon. I believe
21 that those are exceptions. So it's a little
22 confusing, I admit. Design review requirements
23 except --

24 MS. POVERMAN: Okay. Got it. Then never

1 mind.

2 MR. SHEEN: Okay so the next shaded blocks
3 has to do with waivers P.1 and P.2. We believe,
4 based on the last conversation with the building
5 commissioner, those were required to build.

6 MR. GELLER: Can you confirm that, Maria?

7 MS. MORELLI: Yes, that's correct.

8 Actually, if you go to his original letter,
9 he did say -- I'm sorry. It wasn't P.

10 Did you say that was P?

11 MR. SHEEN: P.1 and P.2.

12 MS. MORELLI: He actually said it wasn't
13 applicable. I think exceptions for -- I'm not sure
14 why he said that wasn't applicable. Maybe something
15 about corner lots where that wouldn't be applicable.
16 But when I read that particular bylaw, I think it is
17 applicable. There are certain -- if you look at
18 Fuller Street, there is a modal pattern.

19 MR. GELLER: Let's double check with
20 Commissioner Bennett.

21 MS. POVERMAN: I think there's actually a
22 typo: "Devious." Shouldn't that be "deviant" or
23 "deviation"? "Any devious from setback modal
24 pattern."

1 MR. GELLER: For those of you who are
2 conspiracy theorists.

3 MS. PALERMO: Perhaps the developer can
4 explain why he thinks he needs it.

5 MR. SHEEN: I can't explain why.

6 MS. PALERMO: Okay.

7 MR. GELLER: It's hard enough for us to
8 explain.

9 MR. SHEEN: The next one has to do with --
10 this one's exception U dealing with minimum
11 landscaped open space calculations. We had discussed
12 keeping the two parcels separate. This is why we
13 decided to keep them separate, so we can clearly
14 identify the lot area for 49 Coolidge being 3,105
15 square feet of lot. We're maintaining approximately
16 1,400 square feet of landscaped open space, which
17 includes 1,040 square feet of hard surface area. And
18 so we are adding a waiver -- I believe it's the
19 definition -- in the definition section there was a
20 30 percent -- a maximum of 30 percent hard surface
21 area of the total landscaped area requirement, so
22 that's why those additional calculations were added.
23 For the 420 Harvard side, there was about
24 10,851 square feet of lot area, and we'll have 1,516

1 square feet of landscaped open space, inclusive of
2 1,045 square feet of hard surface area.

3 So on the 49 side, even though we are
4 above -- we're at 45 percent of landscaped to total
5 area, but we are 74 percent hard surface area of the
6 total landscaped area, so that's why we would need a
7 waiver request.

8 MS. MORELLI: I just want to ask the
9 applicant, does your landscape architect intend to
10 submit a more detailed landscape plan?

11 MR. SHEEN: I think the current -- or the
12 updated plan that we are including in the package is
13 sufficient to illustrate the intention of the
14 courtyard area. We will submit the additional
15 working drawings as part of the building permit
16 process to the building inspector.

17 MS. MORELLI: They would actually have to
18 also go to the assistant director for regulatory
19 planning.

20 MR. SHEEN: Sure.

21 MS. PALERMO: I'm sorry, but you may have
22 already told us this a while ago. Do we know what
23 the hard surface is going to be?

24 MR. SHEEN: So we believe, as indicated in

1 the example material, the pictures, we believe those
2 hard surface areas will be large-format pavers.

3 MS. PALERMO: Will be -- excuse me?

4 MR. SHEEN: Will be pavers.

5 MS. PALERMO: And made out of what? We
6 don't know. This could be covered in conditions,
7 perhaps. You know, I want some level of --

8 MS. MORELLI: So the less they provide in
9 the plans -- remember, when they provide construction
10 drawings, there has to be a sign-off for their
11 building permit. Anything that they're not providing
12 on the plans -- there is the discretion -- the
13 assistant director for regulatory and planning has
14 the discretion. She will be reviewing and approving
15 the plans. But we just have to make sure in the
16 conditions that she has the authority to review and
17 approve -- not just review the plans.

18 MS. PALERMO: Materials.

19 MS. MORELLI: That's correct.

20 MR. SHEEN: So as you can see from the
21 sketches from our landscape architect, there will be
22 landscape buffers along the 45 Coolidge properties,
23 and we are also in discussion with the owners of
24 45 Coolidge as well as 44 Fuller to provide

1 additional landscape buffering that may be needed to
2 further mitigate the impact.

3 But the intention is to have a certain
4 amount of hard surface area, because remember, this
5 is actually above the parking garage, so we will
6 likely have to raise portions of the landscaped area
7 as planters in order to provide the soil depth.
8 Hence there's -- you know, a portion of the ground
9 floor surface will remain as sort of impervious.

10 So I believe the remaining items were
11 previously discussed.

12 MS. MORELLI: Except for HH regarding
13 partial demo at 49 -- demolition.

14 MR. SHEEN: Oh, yes. So we are withdrawing
15 our demolition waiver for 49 Coolidge because we
16 believe we will qualify under the existing
17 percentage. I think it's 25 percent for elevation,
18 so we wouldn't need a waiver for that. So HH.1 would
19 be withdrawn.

20 MS. POVERMAN: There's DD.1 and 2, which is
21 enforcement, and I thought that was supposed to be
22 withdrawn.

23 MS. MORELLI: I believe you denied that.
24 So the cross-out in there means that -- anything that

1 was crossed out, that reflects the board's vote as of
2 the November 30th hearing, so we did not grant the
3 waiver. Oh, for DD. That should be crossed out. So
4 that is denied. DD is denied.

5 MR. GELLER: Okay. Thank you.

6 Okay, Board, let's very briefly run through
7 any comments -- remaining comments we have. I think
8 we've addressed most of the issues.

9 Let me say this, for my own summary: I am
10 generally okay, subject to the things that need
11 further definition, like height, from the building
12 commissioner. And also subject to conditions that
13 effectively limit the use -- I'm sorry -- the parking
14 to the two properties.

15 And, Lark, you also had some language that
16 you wanted in a condition on pavers or whatever.

17 MS. PALERMO: Well, I think Maria made the
18 suggestion that we specifically authorize or require
19 the approval of the assistant director as to the
20 materials used for the hard surfaces in the
21 landscaping.

22 MR. GELLER: That's fine. I'm fine with
23 that.

24 And then the last one was the limitation on

1 the use of -- it was under Section 38C -- along
2 Harvard Street in front of the retail space, making
3 it clear that that -- the open space --

4 MS. SCHNEIDER: Well, do we want to frame
5 it a different way, though? I mean, I agree with you
6 in terms of the concept, but I feel like we need a
7 better way to phrase it. To say that the courtyard
8 and open space shall be limited to the use of
9 residential -- do we want to do residential tenants
10 or all tenants of the building? I don't want to
11 prohibit people who are working there from taking
12 their lunches outside, for example.

13 MR. GELLER: I don't have an objection.

14 MS. SCHNEIDER: I mean, because that's --
15 we sort of avoid getting into: Is there room on
16 Harvard? What's the use? How much space can they
17 take up? So I would rather, and I think it's
18 probably more protective of the neighborhood for us
19 to have a condition that limits that courtyard to
20 tenants of the building, residential and commercial.

21 MS. MORELLI: Just to be clear, since they
22 have been -- the applicant has been very specific
23 about a possible use like Winston Flowers. You know,
24 the possibility that there could be some excess --

1 there could be inventory put back there. You don't
2 want --

3 MR. GELLER: "Put back there."

4 MS. MORELLI: In the courtyard.

5 MS. PALERMO: No. I think that's exactly
6 why Johanna's suggestion is the one that I would
7 agree with, and that is that the courtyard's use is
8 limited exclusively to the residential tenants,
9 period, as a condition.

10 MS. SCHNEIDER: The intent of that space, I
11 think, was always to meet the --

12 MS. MORELLI: I heard "tenant." I didn't
13 know if you meant the retail --

14 MR. GELLER: Well, wait. Johanna's comment
15 was if somebody from, for instance, the office or
16 from the retail space wants to sit outside to eat
17 their lunch, that's saying they can't do that. Are
18 you prohibiting them from --

19 MS. PALERMO: No. I think there's a better
20 way to get at it. I think, you know, residential
21 tenants and -- for the, you know, enjoyment -- you
22 know, the quiet enjoyment --

23 MR. GELLER: The use is a noncommercial use
24 within -- it's a soft use within that open space.

1 MS. PALERMO: Right. But, again, what I'm
2 suggesting is if we say that the courtyard -- we are
3 conditioning our comprehensive permit on restricting
4 the use of the courtyard for the quiet enjoyment of
5 the residential tenants and employees of the
6 commercial tenants.

7 MS. SCHNEIDER: Yes.

8 MR. GELLER: Okay. Anything else on
9 waivers? Comments?

10 No. Okay, thank you.

11 Okay. So, Maria, for the next hearing --
12 or precedent to the next hearing we'll get a
13 cleaned-up --

14 MS. MORELLI: You will get a cleaned-up
15 waivers list, yes.

16 MR. GELLER: Sometime before, say, 5:00?

17 MS. MORELLI: How about tomorrow?

18 MR. GELLER: Okay. I want to invite
19 members of the public now to offer testimony. Again,
20 I would ask that you focus on the topics for this
21 evening's hearing, which is review of the waiver
22 requests as well as the proposed conditions that have
23 been circulated.

24 Again, if you do wish to speak, speak into

1 the microphone that is at the dais. Start by giving
2 us your name and your address.

3 Is there anybody who wants to speak?

4 MR. MCMAHON: For the record, Colm McMahon,
5 45 Coolidge Street.

6 Just a brief note: So the applicant has
7 said that they will -- they've committed to working
8 with abutters to achieve acceptable and effective
9 screening between the properties and the abutting
10 neighbors. We think it would be worthwhile having
11 some summary note in the conditions to ensure that is
12 carried out.

13 MR. GELLER: Thank you.

14 Anybody else?

15 KAREN: I'm Karen. I'm currently living on
16 Babcock. And I just -- you know, I love community,
17 and I don't have one anymore where I'm living, and
18 that's the problem.

19 But I also live in a great building. We
20 don't hear our neighbors in the building because it's
21 insulated in the walls. Apparently, there's metal in
22 the walls for the fire codes, but it also acts as an
23 insulator. And when I move, I don't want to hear my
24 neighbors either, so pay attention to the

1 construction. Thank you.

2 MR. GELLER: Thank you.

3 Anybody else?

4 MR. BENNETT: Fred Bennett, 32 Coolidge.

5 I think it's Condition No. 57. I didn't
6 memorize the whole text, but it's something along the
7 lines of a revision can be submitted and must be
8 approved by the committee. That's fine with me. I
9 think provisions are appropriate for situations like
10 this.

11 However, I think it's not worded
12 sufficiently to cover -- you know, what if the
13 developer -- the applicant decided, well, maybe I
14 need a revision to add a sixth floor after all. So
15 that's my concern. I'd like to go on record as
16 having expressed that.

17 MR. GELLER: I'm not going to let you go.
18 Go through it again.

19 MR. BENNETT: Sorry. I'm a little hoarse
20 today.

21 My concern is that -- I think it's
22 Condition No. 57, which sort of says that the
23 applicant can request a revision -- submit revisions
24 later for review by this board, I believe?

1 MR. GELLER: Yeah. I think what it
2 actually says is that if the applicant revised any of
3 his plans, gotta come back to us.

4 MR. BENNETT: Right. Okay, yes. Okay.
5 Then I guess my concern is that he can come back and
6 say, well, I couldn't get it right the first time.
7 I'd like to add a sixth floor or I'd like to
8 extend -- you know, build another -- I think it's
9 kind of too open-ended, the way the condition is
10 worded. That's all.

11 MR. GELLER: It's the language we typically
12 see because we want them to come back to us if they
13 propose any revisions.

14 MS. SCHNEIDER: I don't think that legally
15 we can add a condition that constrains the ability of
16 a future board -- their discretion to revisit --
17 revise a proposal.

18 MS. POVERMAN: But there are restrictions
19 as to whether or not something is a substantial
20 change to a plan. Then, yeah, there have to be a
21 whole bunch of hearings again. So it's not like we
22 could say, yeah go for it.

23 MR. BENNETT: I guess you addressed my
24 concern, then. Very good. Thank you.

1 MR. GELLER: Thank you.

2 Anybody else?

3 MR. SHAW: Hi. I'm Sloat Shaw. I live at
4 Thorndike Street -- 88 Thorndike.

5 And I just wanted to point out that
6 wonderful as Winston Flowers is -- I love Winston
7 Flowers -- we don't know how long Winston Flowers
8 would stay as a tenant, and we don't know how long
9 anybody would stay as tenants. So I think that
10 having these kinds of wonderful ideas is something to
11 just have with a grain of salt because it could very
12 well be a tenant that might not work out in the area.
13 So I wanted to put that in as a notice.

14 And I'm really concerned with the setback
15 on Harvard Street and the trees on Harvard Street and
16 also the setback with the neighbor that's on Fuller
17 Street. And I think that that setback seems a little
18 soft to me, so I want to put that concern on both
19 sides, and the trees there.

20 MR. GELLER: Thank you.

21 Anybody else?

22 (No audible response.)

23 MR. GELLER: No. Okay.

24 So I want to ask the board members to

1 take -- we did get an -- well, we have a couple of
2 copies of the conditions list, so, unfortunately, I
3 think what we're going to have to do is we're going
4 to have to go back and forth so -- I say that only
5 because I've made notes.

6 So there is -- there was circulated, in
7 addition, a red-lined -- for those of you who have
8 color --

9 MS. PALERMO: But dated --

10 MR. GELLER: Dated today's date, which
11 included the comments from the applicant.

12 MS. POVERMAN: Okay.

13 MR. GELLER: So that's why I say you've got
14 to look with both eyes.

15 So before we strictly get to the
16 conditions, I just want to make sure that if people
17 have comments to the content -- so procedural
18 history, references to the plans and schedules and
19 specs that have been replied upon, as well as the
20 factual information that is being laid out, and then
21 the findings, all of which precede the decision
22 component, does anybody have any comments?

23 MS. MORELLI: I have one comment regarding
24 the procedural history where there's specific square

1 footage. I just want to measure the plans in regard
2 to the retail and office space. That's why I'm
3 getting the full-sized plans. I probably will be
4 revisiting them.

5 MR. GELLER: Okay.

6 Maria, in terms of No. 12, "the board
7 relies, in part, on town staff technical review."

8 MS. MORELLI: I think we probably want to
9 say "considered and accepted."

10 MS. POVERMAN: I would rather just say
11 "considered."

12 MS. MORELLI: "Considered."

13 You wanted to add "in part"?

14 MR. GELLER: Uh-huh.

15 MS. SCHNEIDER: Well, if it's
16 "considered" --

17 MR. GELLER: Yeah. "Considered" means that
18 it's not exclusive.

19 MS. SCHNEIDER: Yeah.

20 MR. GELLER: 14, second line, "submitted
21 extensive oral and written testimony with respect to
22 the original project and the project."

23 MS. POVERMAN: Can I have another little
24 fill in that same paragraph? The last thing, in

1 addition to, "height, scale feasibility of the
2 parking plan," put "safety, traffic, and site
3 circulation."

4 MR. GELLER: Under findings, Finding 6,
5 this is referencing a distance from the
6 Boston/Brookline town line to Boylston Street. I
7 would suggest that a more accurate statement, and
8 particularly one that we would consider, would have
9 been Beacon Street.

10 MS. SCHNEIDER: But this is Cliff Boehmer's
11 testimony.

12 MR. GELLER: Was it to Boylston Street?

13 MS. SCHNEIDER: Yeah. Wasn't it?

14 MS. MORELLI: It was to Boylston Street. I
15 think even also when I gave a presentation on behalf
16 of the planning board, it was from the Boston line
17 all the way to Route 9.

18 MR. GELLER: Will you just double check
19 that?

20 MS. MORELLI: I'm positive he said -- yes.

21 MS. POVERMAN: Because he was discussing
22 the buildings in Brookline Village, past Beacon
23 Street.

24 MS. MORELLI: That's why he said "mostly."

1 I mean, there are some pockets where you might have a
2 four-story, like, dental building at 209 Harvard
3 Street. But that's why the word "mostly" --

4 MR. GELLER: And Brookline Village is also
5 entirely restrictions.

6 Okay. Finding 10, were there meetings with
7 anyone else? You've listed two buckets. Anybody
8 else?

9 MS. MORELLI: Well, staff does not
10 participate in community meetings where the applicant
11 is meeting with residents, so I'm just noting that
12 those took place.

13 MR. GELLER: This is a finding. Did the
14 applicant meet with anybody else?

15 MS. MORELLI: The applicant would have to
16 speak to that.

17 MR. GELLER: Did you just meet with the
18 Fuller Street residents and Coolidge Street
19 residents, or were you meeting with the neighbors?

20 MR. SHEEN: We were meeting with the
21 immediate neighbors, abutters as well as -- which
22 include The Butcherie, including several of the
23 businesses along Harvard Street.

24 MR. GELLER: Okay.

1 MS. MORELLI: But you might have also
2 attended a community meeting with more than just the
3 abutters. Is that true?

4 MR. SHEEN: Yes.

5 MS. MORELLI: We just want the findings to
6 be accurate because the applicant went above and
7 beyond the ZBA's charge in regard to modifying the
8 project, and that was due to meeting with neighbors.

9 MR. SHEEN: Yeah. We held a number of
10 meetings with abutters and as well as -- I believe
11 the first meeting was at Mike's house. I don't have
12 the sign-in sheet, so to my knowledge, there were
13 more than the immediate abutters that I recognized
14 through my communication, beyond my --

15 UNIDENTIFIED AUDIENCE MEMBER: I live in
16 that neighborhood, and it's the first time that I've
17 heard --

18 MR. SHEEN: We did not organize that
19 meeting. It was organized for us. But there were
20 residents beyond the immediate abutters of 44 Fuller
21 and 45 Coolidge and --

22 UNIDENTIFIED AUDIENCE MEMBER: It was
23 abutters plus one household.

24 MR. ENGLER: Doesn't matter.

1 MR. GELLER: Paragraph 13, "site control is
2 a matter solely within the purview of the subsidizing
3 agency." No?

4 MS. SCHNEIDER: It's not in our discretion.

5 MS. POVERMAN: But I think there were
6 questions about whether or not -- maybe it's not
7 worth addressing here, but there were questions
8 raised as to whether or not there was site control.

9 MS. SCHNEIDER: But these are findings.

10 MS. POVERMAN: Never mind.

11 MR. GELLER: Paragraph 17, "The applicant
12 testified that the project's two parcels would be
13 placed in common ownership after a building permit is
14 issued." Did they also testify that they would be
15 maintained in common ownership?

16 MS. MORELLI: I believe that is a
17 recommendation of the building commissioner. I don't
18 recall that. I would have to look at the transcript
19 to know if that was actually something the
20 applicant -- they didn't object to that condition
21 that it remain in common ownership in perpetuity.

22 MR. GELLER: Okay. Did the board make a
23 finding that the project is not conducive to
24 restaurant tenants? That's a large animal.

1 MS. MORELLI: Okay. So let's back up to
2 Condition 19, because the applicant has -- let me
3 just read it. "The applicant has stated that retail
4 space will not be used for food preparation or
5 production, including restaurants and cafes." And
6 the applicant change is, "including restaurants and
7 excluding cafes."

8 I don't know if in our waivers list, if
9 there was any granting of waivers allowed for cafes.

10 MR. SHEEN: So just to sort of clarify
11 that, currently in the L district, restaurant and
12 cafe is allowed use. We're not asking waivers under
13 that condition.

14 MR. GELLER: Restaurants and cafe, okay.

15 MS. MORELLI: However, the -- I'm awaiting
16 the letter from the chief of environmental health
17 regarding the rubbish plan. And the reason why I
18 mention this is because there's no parking provided
19 for any retail customers. Okay? That could be an
20 issue for restaurant use.

21 Also, there were several comments where
22 some ZBA members were very concerned about there
23 being restaurants on-site.

24 In addition, if there were restaurants or

1 cafes, that would have some bearing on the trash
2 management plan, which I have not seen a letter.

3 MR. GELLER: I'm not sure we've made a
4 finding -- I understand they're not asking for a
5 waiver. I just don't know that we made that finding.

6 MS. MORELLI: Okay. I can look at past
7 transcripts and provide --

8 MR. SHEEN: So we did have a conversation
9 with Pat Maloney regarding the possible cafe use
10 on-site and are awaiting his formal submission of his
11 comments.

12 Our initial feedback up from him was that
13 there needs to be a separation of trash, so there
14 wouldn't be any combination of, you know, cafe trash
15 intermixed with residential trash. So trash
16 segregation was his requirement.

17 MR. GELLER: You've actually stumbled on
18 something I actually do know about. So, you know,
19 there are largely two kinds of what you'd call
20 restaurant/cafes: ones that need venting, so there's
21 cooking, and those that have no cooking, so there's
22 no venting requirements. And I assume that you mean
23 the latter.

24 And then the secondary issue is: What do

1 you do with all the trash? Because when you have
2 residential components with restaurant components,
3 the one thing you don't want to do is have shared
4 trash because of the intensity of restaurant trash
5 storage as well as pickup. And depending on the
6 nature of your space, what you frequently wind up
7 doing is, in particular within your lease, you
8 mandate that they have to maintain cold trash storage
9 within the premises. And then you also mandate the
10 methodology by which there's pickup. And, you know,
11 it's got to be short-lived and clean.

12 MR. SHEEN: To answer your first question,
13 our intention is not to have a high-intensive
14 professional kitchen. You know, we fully appreciate
15 the concern of ventilation as an issue, as well as
16 trash management in a high-intensive professional
17 kitchen. That's not our intention.

18 We do believe a small cafe, as part of the
19 retail space, is conducive to pedestrian traffic and
20 the activation of Harvard Street in general. And as
21 such, that we can imagine a cafe, not dissimilar to,
22 perhaps, Athens or 4A, that does the baking off-site,
23 but they do provide coffee and pastries to the extent
24 that you would heat it up. It wouldn't be heated up

1 in a professional kitchen, but it's thorough --

2 MR. GELLER: Microwaves.

3 MR. SHEEN: Yeah.

4 MS. POVERMAN: I'm still -- I mean, how
5 would we handle the trash? I mean, I do recall us
6 basically saying, you know, we don't want cafes there
7 based, in large part, on, in my recollection, the
8 neighbors' concerns. With food waste, there's also
9 the possibility for rats, etc., etc. And if we don't
10 deal with waste concerns now, when would we ever deal
11 with them?

12 MR. SHEEN: I think that's why we're
13 waiting on the comments from the waste management
14 staff, because we proposed that. And based on the
15 comments that we got back, it was a reasonable
16 condition in terms of the waste separation. There
17 may be other conditions that we have to provide,
18 but --

19 MS. POVERMAN: But then we also have to
20 see, you know, where it's going to go on the plan in
21 addition to, you know, where these -- the current
22 cubic foot whatever.

23 MR. SHEEN: Sure. So right now the trash
24 room is oversized for this intensity of residential

1 use, and we will address the cubic foot, you know,
2 trash bins that will be required in the event that a
3 small cafe were to be part of the program.

4 Currently, the proposed trash management
5 and recycling management is on a weekly basis, given
6 the small intensity of this project. In the event
7 that a cafe were to be included, you know, we'll work
8 with staff and increase -- potentially increase the
9 frequency of trash pickup.

10 MS. SCHNEIDER: And I think that's
11 something that we can put in a condition, that if a
12 cafe -- I mean, it's an allowed use by zoning, so
13 it's not really up to us to regulate what's an
14 allowed use.

15 But if we're worried about trash impact, I
16 think we could have them come back and run it through
17 the town in the event that there is --

18 MR. GELLER: And, frankly, it does get run
19 through licensing. And they're going to have to
20 establish to the satisfaction of the licensing board
21 adequate trash -- all of the conditions that
22 typically would be required is going to be reviewed.

23 MS. PALERMO: Even if it's an allowed use,
24 aren't we allowed to condition that use as part of

1 the comprehensive permit?

2 MR. GELLER: We are.

3 MS. PALERMO: So we could say that we are
4 conditioning it on a use that would not exceed the
5 cafe description and wouldn't require ventilation or
6 a full kitchen, what the developer has already said.

7 MS. SCHNEIDER: But I think what's
8 interesting -- I mean, I don't see -- and, you know,
9 I don't pretend to know every detail of the bylaw,
10 but I don't see a definition in there that
11 distinguishes between restaurant and cafe.

12 MS. PALERMO: There isn't, no. Was just
13 reading it. Which is why --

14 MS. SCHNEIDER: No. I'm agreeing with you,
15 that we should give some thought to whether or not we
16 want to make our own delineation so that -- because I
17 think we agree -- and I think the applicant is on the
18 same page here too -- that a cafe could be very
19 desirable in this location.

20 MR. SHEEN: I think it really comes down to
21 a professional kitchen versus nonprofessional
22 kitchen.

23 MS. PALERMO: And potentially the
24 ventilation.

1 MR. SHEEN: That's right.

2 MS. PALERMO: So if we find a way to define
3 that and we all agree, then we could condition it
4 that that not be the use.

5 MR. ENGLER: Mr. Chairman, it's almost
6 procedural, but there's always, in my mind, a blur
7 between findings and conditions, because findings are
8 not conditions. And if they're not consistent, then
9 what are they if they're not picked up in conditions?
10 But they shouldn't be conditions.

11 And I think you have two findings here,
12 Nos. 20 and 22, "Parking on the site will not be
13 provided to customers of commercial spaces." That's
14 not a finding. That's a condition. And Maria's
15 written pretty well in the other findings, the board
16 has found this, the applicant says that. But then
17 you turn into this language.

18 And it also says, "The board has determined
19 that the project is not conducive to restaurant
20 tenants." Well, that's going to be a condition, if
21 that's the case. It's blurry to me, what's a
22 finding, what's a condition. But certainly number
23 20, to me, sounds very much like a condition.

24 MS. POVERMAN: I have a question about that

1 one.

2 MS. MORELLI: I worded it really
3 improperly. But the applicant -- I should just say
4 the applicant stated that parking on the site would
5 not be provided to -- or parking would not be
6 provided to customers of the commercial spaces
7 on-site.

8 MR. GELLER: I actually would say that as
9 someone who's interested in the enforcement of this
10 thing, I would want to have conditions. I don't want
11 any ambiguity.

12 MS. MORELLI: So take it out of findings?

13 MS. SCHNEIDER: I think we can have it in
14 both places. The applicant made a statement -- and
15 Mr. Engler, thank you for pointing out we probably
16 need it in both places. We'll add it as a condition.

17 MS. POVERMAN: Is that 22?

18 MR. GELLER: Yeah. Well, first of all, I
19 think that 22 should just come out because I don't
20 think we made that finding. If we're going to add a
21 condition --

22 MS. POVERMAN: Yeah, I agree.

23 MR. GELLER: 20, on the other hand, Johanna
24 is correct.

1 Okay. Now we can actually review
2 conditions. What I'd like to do is -- obviously,
3 let's take them in order. If people do not have
4 comments, let's just keep going, just continue.
5 Let's skip anything to which there are not comments.
6 If you have comments as we go, yell them out.

7 MS. POVERMAN: Jesse, I have a question.
8 If we're going to add conditions, do we do that at
9 the end of the discussion?

10 MR. GELLER: Yes.

11 MS. SCHNEIDER: Do you mean beyonds those
12 that we've already discussed?

13 MR. GELLER: Yes. I simply have a
14 question. In No. 2, Maria, so you've got two
15 buildings here. How are the affordable units
16 addressed on a building-to-building basis?

17 MS. MORELLI: In terms of the distribution
18 across the unit size?

19 MR. GELLER: Yes.

20 MS. MORELLI: We have a condition --

21 MR. GELLER: Well, I know across the unit
22 size, but you've got two properties. Are you -- for
23 instance, let's say we were a clever developer, would
24 we put all of the affordable housing at 49 Coolidge?

1 MS. STEINFELD: That's ultimately a
2 determination by DHCD or the subsidizing agency.
3 It's not within your purview or the developer's.

4 MR. GELLER: Okay.
5 Anybody have any comments?

6 MS. PALERMO: I actually have -- on the
7 description at 49 Coolidge, unless I'm mistaken, I
8 think he said that there was 1 two-bedroom unit on
9 the first floor. Is that right?

10 MR. SHEEN: So there are two residential
11 units in 49 Coolidge. It would include a two-bedroom
12 duplex and a three-bedroom.

13 MS. PALERMO: Right. That's what I thought
14 you said. So in other words, the total bedroom per
15 unit type should be two on the one that's two
16 bedrooms and three on the one that's got three
17 bedrooms; is that right?

18 MR. SHEEN: That's correct.

19 MS. PALERMO: Okay. Thank you.

20 MR. SHEEN: You're talking about No. 3?

21 MS. PALERMO: I am. The chart.

22 MR. GELLER: Right.

23 MS. POVERMAN: Do we have any more
24 specificity as to dens, bed numbers, etc.?

1 MR. SHEEN: Sure. I think we went through
2 the one-bedroom dens. The dens are sized below the
3 qualification of the bedrooms, so they would actually
4 not --

5 MS. MORELLI: So the dens -- if there's a
6 room that is at least 100 square feet, our bylaws
7 classify it as a bedroom. That's why the full-sized
8 plans, I just need to measure it myself and that's
9 why I'm just going to leave a -- I'm sure the
10 applicant is correct but, just to be thorough, I'd
11 like to just review that.

12 MS. POVERMAN: How many square feet do you
13 say they are?

14 MR. SHEEN: 95.

15 MR. BROWN: We did size them.

16 MS. POVERMAN: And that's inside wall to
17 inside wall?

18 MS. MORELLI: Actually, it's the center.

19 MR. GELLER: It has to have a closet to be
20 a bedroom.

21 MS. MORELLI: I know the building code has
22 a specification, and sometimes our local regs differ
23 a little bit from the state regs, so I'm just going
24 with how we treated it in past 40Bs.

1 MS. PALERMO: Okay.

2 MR. GELLER: Next, 11A and B.

3 MR. ENGLER: Chairman, could I back up back
4 to a general issue? From six to eleven -- which I
5 know Maria's not going to be happy to hear this, but
6 this is a question I have generally, and I'm looking
7 for simplicity. And you have five or six conditions
8 that the applicant is supposed to go to all these
9 different people in the city. And let's say we're
10 tied up in court. Mike Jacobs has tied us up for
11 nine years, and we come back and all these positions
12 have changed. There's no assistant director of this
13 or that. And who do you go to see?

14 My 40B experience says the applicant turns
15 in the completed drawings to the building
16 commissioner who can go to anybody he wants to review
17 the landscape, the transportation, everything, and
18 issue a building permit. And to identify six or
19 seven different people in the community that the
20 applicant has to go to, it seems to me it could cause
21 confusion in future years. Who are you really
22 supposed to see? The building commissioner looks at
23 the codes, the consistency of the plans on file, and
24 asks staff about reviewing all the details.

1 So I'm only raising that almost as a
2 procedural issue, not to have all these separately
3 identified that way.

4 MR. GELLER: It's an interesting question.
5 Nobody's asked that before.

6 MR. ENGLER: I think it's true for all the
7 applications that you're facing, because it says the
8 same thing in all of them.

9 MR. GELLER: Right. Because it is
10 consistent with what we've put into all the
11 decisions, as far as I know.

12 MS. MORELLI: So the building commissioner
13 doesn't look at the site plan review that DPW has the
14 expertise. So there are -- the town has processes.
15 Okay? This isn't about going to the transportation
16 board or other boards. This is going to --

17 MR. GELLER: He's asking a different
18 question. He's actually asking an interesting
19 question, which is: What if he gets tied up for 10
20 years in litigation, and at the point at which he
21 prevails, he goes to pull his permits but he's got
22 these conditions where he has to go to a specified
23 department head? And what if the town, in its
24 infinite wisdom, has changed the roles? Where does

1 he go?

2 MS. MORELLI: So we address roles somewhere
3 under "General," and we can probably just expand on
4 that. Like, 52, "Any reference to town staff shall
5 be read to include a designee either other staff
6 members -- "

7 MS. PALERMO: Also, revisions can be made
8 if need be, so if a position is eliminated, it could
9 come --

10 MR. GELLER: It's no different where, in
11 contracts, where you specifically refer to some
12 regulatory or statutory scheme and you put in a
13 catchall that if that scheme is replaced, the
14 alternative will stay. So it's a similar concept.

15 MS. POVERMAN: The real issue is that all
16 the staff is going to quit because all the
17 comprehensive permits are being filed.

18 MR. ENGLER: It'll be 10 years out. Don't
19 worry about it.

20 MS. MORELLI: I just want to keep track of
21 anything where we don't have -- just keep in mind, if
22 we don't have something on the plans, there either
23 has to be conditions or there really has to be a
24 provision where the responsible staff person has not

1 only review privileges but also approval privileges.

2 MR. GELLER: Agreed. We all agree.

3 MS. MORELLI: So that is going to be under
4 six. It's not merely subject to the review of the
5 assistant director, but subject to the review and
6 approval.

7 MR. GELLER: Right.

8 MS. SCHNEIDER: That's a great point,
9 Maria.

10 MR. GELLER: And, yes, we think of you as
11 Pete Best. I know that's before your time.

12 MS. SCHNEIDER: I actually have a question
13 about 10B. This is on traffic mitigation, and I'm
14 looking, actually, at the applicant's red line.

15 MS. POVERMAN: 10B?

16 MS. SCHNEIDER: 10B, which is where the
17 applicant has suggested that it be rephrased to "The
18 applicant shall contribute to the cost of audible
19 pedestrian signal equipment up to \$10,000 for the
20 installation of audible pedestrian signals at the
21 traffic signal at Harvard and Fuller Street."

22 Obviously, the condition as drafted was
23 more open-ended, and it did not have a financial cap
24 on it. I'm wondering if we have some sense as to

1 what the cost actually is.

2 MS. MORELLI: So prior to the hearing, I
3 did ask Peter Ditto if he could estimate a cost, and
4 he did not get back to me in time. I think one of
5 the confusing things is that if there is a
6 contribution and the balance is, you know, \$90,000,
7 that's obviously the town's --

8 MS. SCHNEIDER: Right.

9 MS. MORELLI: So we will need to revisit
10 this based on information that we get from Peter
11 Ditto to see if the town would be even able to
12 contribute the balance.

13 MS. POVERMAN: Can we just say no, we don't
14 accept the change?

15 MS. MORELLI: Well, I think, again, it
16 would be helpful to know what the cap would be, if
17 it's like \$100,000, \$200,000.

18 MS. SCHNEIDER: Right. And I think, you
19 know, again -- Mr. Engler, I'm going to steal your
20 thunder here.

21 I think in the context of 40B, we can't
22 saddle this project with an expense, you know, of --
23 let's call it -- it's not going to be \$500,000, but
24 let's say hypothetically it's \$500,000. That's a

1 condition that renders this project uneconomic.

2 MS. POVERMAN: I was actually surprised to
3 see this as a condition in here. How did that come
4 to be?

5 MR. ENGLER: That's a good question.

6 MS. MORELLI: Right. It wasn't
7 recommended -- it was recommended by traffic peer
8 review. James Fitzgerald had recommended that in one
9 of his reports.

10 MR. ENGLER: Can I speak to that,
11 Mr. Chairman?

12 MR. GELLER: Sure.

13 MR. ENGLER: It's very clear on the Housing
14 Appeals Committee decisions and 40B law that the
15 applicant is responsible to mitigate their percentage
16 of those things that are considered to be off-site
17 issues. Our 25 residents are going to contribute
18 negligibly to what's going on with foot traffic on
19 that corner. We're happy to contribute, but
20 contribute proportionate to what we're doing.

21 I'm not saying we ought to be statistically
22 minded about how many people we're going to have
23 during the peak hours, but we ought to contribute a
24 minor amount to that and not -- certainly not all,

1 because we never even agreed to that. And whether
2 you want to tie it to a percentage or let us pick a
3 number when Maria gets a handle of what it might be,
4 maybe we mutually agree with a number and get rid of
5 it, because it certainly shouldn't be a significant
6 amount relative to what we're contributing.

7 MS. PALERMO: Well, I think we need to know
8 the number, and then we'll decide what's appropriate.

9 MR. GELLER: Right.

10 MS. STEINFELD: And you also can't require
11 the town to pay for the remainder. I mean, it's part
12 of the budgetary process.

13 MR. ENGLER: That's why we would only put
14 it in escrow to be used if the town contributed and
15 sit on our money for 25 years not doing anything.

16 MS. POVERMAN: As to 10A, is there already
17 a no-parking sign on both sides of -- this just
18 specifies one direction.

19 MS. MORELLI: Yeah. Now, there is -- we
20 don't have the site plan, but if you could just pull
21 that up Victor -- Mr. Sheen.

22 There is an existing utility pole that's on
23 Fuller Street a little past where the property line
24 is, past the driveway, and it currently has a "no

1 parking this side." Now, that utility is very likely
2 going to be put underground, so we are going to need
3 a sign. And it's better to have that sign before
4 that driveway where typical behavior is going to be
5 to just really stop, and that could be very close to
6 the Fuller/Harvard intersection. So both the police
7 department and DPW recommends just putting that sign,
8 especially if existing signage is going to be
9 removed.

10 MS. POVERMAN: Do we want to say "No
11 standing or parking"?

12 MS. PALERMO: I think we need the traffic
13 department to tell us that.

14 MS. MORELLI: There is going to be private
15 trash pickup, and that's probably not going to pull
16 into the lot. So garbage trucks -- I had discussed,
17 you know, should the vehicles for the private trash
18 management actually be prohibited from parking, and
19 Mr. Ditto did not feel comfortable with that.

20 MS. SCHNEIDER: We also do have a letter on
21 record, which was read into the record earlier, from
22 the deputy superintendent from the traffic division
23 saying "no parking this side" signage is what they
24 were asking for.

1 MS. POVERMAN: Yes. But that may not have
2 considered the other issue, but I understand the
3 issue pertaining to the trash pickup.

4 MR. GELLER: Okay. Next?

5 MS. POVERMAN: I have a very small -- I
6 think it's a typo. 11F, it says that "Rubbish
7 receptacles and recycling containers shall not be
8 stored in the public way on Harvard and Fuller" -- I
9 think it should be "or Fuller" -- at any time."

10 MS. MORELLI: I don't understand. I mean,
11 don't you want to restrict it --

12 MS. POVERMAN: On both streets.

13 MS. MORELLI: -- the trash -- "Harvard
14 Street and Fuller Street," not "or."

15 I guess I'm not a lawyer, obviously, so I'm
16 not sure why you --

17 MS. POVERMAN: I don't know. Harvard and
18 Fuller, the conjunction --

19 MR. GELLER: Harvard and/or Fuller.

20 MS. MORELLI: And/or.

21 And just to remind you that, again, those
22 conditions do needs to be reviewed by Pat Maloney
23 under 11.

24 MR. GELLER: Okay. Next?

1 15, will one or two COs be issued? And if
2 two, how will you -- we need to address it.

3 MS. MORELLI: So I think that we probably
4 need to -- there is a provision -- there is a
5 condition here later, and it's under prebuilding
6 permit review. And I apologize that this is
7 redundant, but later there is a condition
8 regarding -- there is a certificate of occupancy for
9 the affordable units after, say, maybe, like, six or
10 eight. I'm not sure if that's your question.

11 MS. PALERMO: No. I think the issue is
12 there's two buildings: 49 and the Harvard Street
13 building. And there would have to be -- I would
14 assume -- a certificate of occupancy for each. But I
15 also think this is an interesting point because what
16 if all the work is completed on 49 and it hasn't even
17 been started on 420 Harvard?

18 MR. GELLER: And then there's another
19 overlay, which is with a building -- forgetting 49,
20 but with a building like 420, frequently what you
21 have is a core building C of O, and then there will
22 be C of Os -- you've got commercial space, you've got
23 residential space, so there will be multiple C of
24 Os, so you have to be careful about the timing need.

1 The trigger is critical here.

2 MS. MORELLI: The trigger is for issuing.
3 What I'll do is I'll revisit that with Mr. Bennett.

4 MS. PALERMO: Yeah, because it says for the
5 project, "prior to issuance of the final certificate
6 for project." We could say, you know, including both
7 buildings: 49 and 420.

8 MR. GELLER: Well, in different conditions
9 your meaning may sometimes be the first C of O to
10 issue, in others it will be each C of O to issue for
11 the respective buildings, and then sometimes where
12 you're working off of contributions, like \$10,000
13 payments, you're working off of the last. So it
14 depends on which condition -- or what it is you're
15 hoping to achieve. But I think Commissioner Bennett
16 really needs to look at that and figure out what is
17 intended.

18 MS. SCHNEIDER: I did have a question about
19 18, about the temporary signage. Do we have
20 something somewhere else in there about permanent
21 signage?

22 MR. GELLER: You know, the interesting
23 thing is -- right, he hasn't asked for a waiver from
24 design review to --

1 MS. MORELLI: But that's important to double
2 check that.

3 MR. GELLER: 22.

4 MS. POVERMAN: Actually, can we go back to
5 20? I don't -- it says "after the issuance of the
6 building permit, the applicant shall submit proof of
7 common ownership."

8 Why do we want to wait until after the
9 building permit is issued for the --

10 MS. MORELLI: The applicant stated that
11 he -- after a building permit is issued, he would put
12 the two lots in common ownership, but we just need
13 proof of that.

14 MS. POVERMAN: Right. But I can't find --
15 I understood the -- you know, for the PEL you have to
16 have -- just the P&S will do. But I can't find
17 anything in Section 23 or, you know, under 40B, the
18 comprehensive permit, having to show proof of
19 ownership. But it doesn't make much sense to me that
20 we issue a comprehensive permit without showing the
21 person actually owns the property.

22 MS. SCHNEIDER: But this is not tied to the
23 comprehensive permit.

24 MS. MORELLI: It's not tied to the PEL,

1 it's not tied to site control. It's a different
2 matter because it really has to do with the waivers.

3 MS. POVERMAN: But this is part --

4 MS. MORELLI: No. The reason -- when you
5 have, like, the two lots that are under common
6 ownership that are merged -- we just wanted to be
7 sure that we are clear about the waivers that were
8 granted -- are granted for certain conditions so
9 that -- because --

10 MS. POVERMAN: Okay. I understand that.
11 But then somewhere else don't we want to say that the
12 applicant will show that he owns 49 Coolidge?

13 MS. MORELLI: Site control is the sole
14 purview of the subsidizing agency.

15 MS. SCHNEIDER: I thought that these two
16 conditions were tied to the conversation we had at
17 the last hearing about how to calculate zoning
18 compliance because of the two lots versus one lot.
19 And I think what the commissioner suggested --

20 MS. PALERMO: And I think what you can rest
21 assured is that if the developer fails to submit
22 evidence that the lots are commonly owned, he won't
23 get a certificate of occupancy for either building,
24 so he's going to do it. But he's trying to preserve,

1 as are we, the decisions that were made in connection
2 with which waivers to give this project, because we
3 made them based on two lots. And a purchase and
4 sales agreement is absolutely sufficient for site
5 control. I think we're protected.

6 MS. POVERMAN: I just, you know, want to
7 state that I think it's ridiculous to issue a
8 comprehensive permit where there's no evidence that
9 the applicant owns the property. But if you guys
10 are --

11 MR. GELLER: The evidence is site control.

12 MR. ENGLER: You wouldn't finance a project
13 if you didn't own the land. You wouldn't have a
14 project.

15 MS. MORELLI: They're providing the
16 financing, and I'm sure that we'll probably hear from
17 the subsidizing agency.

18 MS. POVERMAN: Okay.

19 MS. MORELLI: Perhaps with 20 we can add a
20 better milestone: "Prior to the issuance of a C of
21 O" or "first C of O."

22 MS. PALERMO: Well, you could say after --
23 you know, after the issuance of a building permit
24 and, you know --

1 MS. MORELLI: I think we just need to say
2 that he won't get anything else --

3 MS. PALERMO: Right.

4 MS. SCHNEIDER: I don't think we need to.

5 MS. MORELLI: Okay.

6 MR. GELLER: Just a question on 22.

7 Mr. Sheen, the mechanicals are going on the fourth
8 floor; is that correct?

9 MR. SHEEN: Yes. So as indicated, on the
10 roof of the fourth floor, the mechanicals -- the
11 condensers are screened. And to the extent that we
12 need to meet the town noise bylaws, it would --

13 MR. GELLER: My issue is: I just want to
14 make sure there is no ambiguity, that there are no
15 mechanicals going on the fifth floor.

16 MR. SHEEN: As noted, there are no
17 equipment or egress on the fifth floor.

18 MR. GELLER: Okay.

19 27, consistent with my inappropriate
20 question about the allocation of the affordable
21 housing units, is there an allocation of parking as
22 between affordable and nonaffordable?

23 MS. POVERMAN: Actually, that's the issue I
24 wanted to address, which is that I think that all the

1 affordables -- yeah, I know parking. I think all of
2 the affordable housing has to have parking, because
3 otherwise you're requiring the people who cannot
4 afford it to go out and pay \$250 --

5 MR. ENGLER: We've been through that
6 before, and that's the call of MassHousing, not your
7 call. That's the call of the subsidizing agency
8 because it's tied to their rent. And if it's tied to
9 their rent, that's their call. So I just want to say
10 that that's --

11 MS. POVERMAN: I don't see how.

12 MS. PALERMO: It actually is the case.
13 It's not within our purview, and it really is the
14 subsidizing agency that decides --

15 MS. POVERMAN: I know it's something that
16 Judi brought up, so I don't see how the question has
17 been answered.

18 MS. STEINFELD: She brought it up in the
19 context, if I recall, that it was unfortunate that
20 the states didn't recognize the inequity. She felt
21 strongly that the state should, but they don't.

22 MS. POVERMAN: It's five spots. And I
23 think we should make it a condition.

24 MS. SCHNEIDER: We can't legally do it.

1 MR. GELLER: We legally can't do it.

2 MS. POVERMAN: And that's stopping us?

3 MS. SCHNEIDER: The law? Yeah.

4 MS. POVERMAN: I'm joking.

5 MS. PALERMO: Can I back up to another,
6 much more mundane question? Number 24. We have
7 "Prior to commencement of construction," and do we
8 really need, "Prior to the issuance of the building
9 permit"? I don't know why we picked "commencement of
10 construction."

11 MR. SHEEN: I think, actually, we have some
12 sort of additional comments regarding that after
13 consulting with our construction group; that any
14 preconstruction survey of the above- and below-grade
15 structure among properties sharing the line, we
16 actually need permission from the abutting owners.
17 So if the condition is worded such that -- and we
18 don't get permission from the abutting owners for the
19 survey, then we cannot actually meet the survey
20 requirement because we actually need to access their
21 site.

22 MS. PALERMO: And so the abutting property
23 owners are which properties?

24 MR. SHEEN: So it will be 428 Harvard,

1 which is The Butcherie, 45 Coolidge, and 44 Fuller.

2 MS. MORELLI: So I like your -- I think
3 it's probably better to say "prior to the issuance of
4 the building permit," and then to add, somehow, that
5 phrase, that qualifier.

6 MR. GELLER: Is it separate, building
7 permit from the demolition permit?

8 MS. MORELLI: The demolition permit is
9 separate.

10 MR. GELLER: I mean, in some ways, that's
11 why I like the phrase "prior to commencement of
12 construction," because it catches the earliest point.

13 MS. PALERMO: Well, but it could say,
14 "Prior to the issuance of a demolition permit."

15 MS. SCHNEIDER: And I guess the question
16 is: Do we want to cast it in terms the developer
17 being required to use best efforts to secure the
18 permission to perform the surveys?

19 MR. GELLER: It behoves the neighbors to
20 let him go in and audit --

21 MS. SCHNEIDER: Absolutely. But not
22 everybody -- we've all been there where you try to
23 get into somebody's --

24 MR. GELLER: I understand. I understand.

1 Okay. 29, "living rooms or dining rooms or
2 dens as bedrooms."

3 MS. STEINFELD: May I just say that we have
4 to run 29 by town counsel to make sure it doesn't
5 violate fair housing.

6 MR. GELLER: Okay.

7 MS. STEINFELD: The first sentence of 29.

8 MS. POVERMAN: Do we want to include
9 something in addition to nightly rentals? I guess we
10 can't rule out Airbnb things, can we, or rentals,
11 whatever?

12 MS. MORELLI: There is something in there
13 that should be capturing -- and I believe the
14 applicants might have changed the term. We said
15 something that -- no leases shorter than six months.

16 MS. PALERMO: Yes. They changed it to
17 three, and I'm more comfortable with six.

18 MR. GELLER: Right. Conventionally, what
19 you see, whether it's in condo documents or leases,
20 is if you don't want short-term leases, six months.

21 MS. PALERMO: Correct.

22 MS. POVERMAN: So let's keep it at six?

23 MS. PALERMO: I think so.

24 MS. SCHNEIDER: What number is --

1 MS. POVERMAN: That's still 29.

2 MR. SHEEN: In our experience dealing with
3 rental properties, often times not all the leases
4 fall on the same termination date. So a lot of
5 times, what we ask the property managers to do is
6 actually -- is to rent to tenants, perhaps, in a
7 shorter duration in order to align all the leases
8 onto a more, you know, preferable schedule. So a lot
9 of times that's -- in our experience, some of them
10 may be a three-month lease to a group of doctors who
11 are, you know, coming to the medical center for a
12 residency, and that's at three months.

13 MS. PALERMO: Wouldn't they be able to
14 sublet from whoever is the tenant? And in the
15 case -- I see your issue in the case of your first
16 leases, but if you then have a policy that all leases
17 commence on September 1st from that point forward,
18 the short-term --

19 MR. SHEEN: Right. So our problem is --
20 let's say we start the lease in February, for
21 example, and it terminates in February the next year,
22 and we would like to align it to September, or if it
23 terminates in May and we'd like align it to
24 September --

1 MS. PALERMO: But you could always require
2 it to terminate in August.

3 MR. SHEEN: A lot of times, those leases
4 wouldn't be a twelve-month lease.

5 MS. PALERMO: Right.

6 MS. POVERMAN: But we're saying six months,
7 not twelve.

8 MR. SHEEN: No. What I'm trying to
9 illustrate is if we were to lease an apartment, let's
10 say, in April, for example, and it terminates -- it's
11 a twelve-month lease. I mean, it terminates in
12 twelve months. That particular tenant would not
13 likely do a twelve months plus another three months
14 or four months in order to get to our preferred
15 leasing schedule.

16 MS. PALERMO: Well, again, they can do it
17 the other way around. They can rent the apartment in
18 May with a lease that terminates August 31st, and
19 then they can choose to either enter into a
20 twelve-month lease with you or not.

21 MR. ENGLER: I'd like to know why this is a
22 health and safety issue and a concern to the town at
23 all, because, to me, it's the way you manage your
24 property. I don't see how that has any impact on

1 anybody at the town, whether it's three months or six
2 months.

3 MS. PALERMO: Again, I think it's the
4 convention of whether this is being leased as a long-
5 term residential unit as opposed to a short-term
6 temporary unit.

7 MR. ENGLER: I understand daily -- nightly
8 because we had the same problem. I have a condo in
9 Brighton, and Airbnb is killing the situation, so
10 some people are trying to avoid renting bedrooms on
11 an overnight basis. 100 percent for that.

12 But the difference between six and three
13 months ought to be something that the applicant, as
14 the property manager, can control. I don't see how
15 the town stands to gain any control over the health
16 and safety of the residents by that situation.

17 MS. SCHNEIDER: I think the legitimate
18 concern may be it's just the question of who moves
19 in, who moves out, the congestion on the street that
20 results from, you know, the turnover, you know, the
21 rapid-fire succession of turnover.

22 MR. GELLER: I think it's a variety of
23 things. I think that's a question. So now you've
24 added more, right, move in, move out.

1 But I think it's also -- the underlying
2 concern for that provision is that people who -- and
3 you'll forgive the use of the term -- are more
4 transient are less inclined to maintain the property
5 and are less responsible.

6 Now, I haven't done the statistical review
7 as to whether that's accurate or not. I'm simply
8 saying that it's not like this is a standard that we
9 have simply picked out of the air. This is the
10 prevailing standard.

11 MR. ENGLER: No, I realize that. But it
12 doesn't have to be. Doesn't have to be six months.
13 That's a prevailing standard, but we're just
14 saying -- Victor just mentioned several ways you can
15 deal with a three-month transition rather than six.
16 It's your call. I don't even know it's your call,
17 frankly, but it's -- you could put it in there. I'm
18 just trying to say that it's not a critical issue.

19 MR. SHEEN: Yeah. Our intention,
20 obviously, is not to do the nightly rental as hotels.

21 MR. GELLER: No. I understand.

22 MR. SHEEN: It gives us the flexibility
23 from a financial standpoint and the better management
24 of the property.

1 MR. GELLER: I understand. Frankly, if the
2 issue were simply that it was to enable you to have a
3 stub period to get back onto the customary cycle of
4 September 1st to August 30th -- right?

5 MR. SHEEN: Right.

6 MR. GELLER: -- then that would be -- I
7 think I'd be okay with that.

8 The problem is that, you know, a year and a
9 half from now, somebody else owns the property and
10 they can exploit this for more nefarious purposes.
11 And that's a concern to me, that's a concern to me.

12 MR. SHEEN: Let's revisit that. I'll
13 revisit that with our property manager.

14 MR. GELLER: Okay.

15 This is sort of a parallel comment to one
16 that Mr. Engler raised. Interesting, we're thinking
17 alike. Paragraph 40, I know that NFPA 13 is a
18 paradox, so that's not my question.

19 My question is really: So what if that's
20 replaced by NFPA 28?

21 MS. MORELLI: Right.

22 MR. GELLER: So I think what you mean, "or
23 whatever the prevailing" --

24 MS. MORELLI: Yup, exactly.

1 MS. PALERMO: Current sprinkler system --
2 yeah.

3 MS. POVERMAN: There was a deletion -- a
4 comment made relating to 31 about the town needing to
5 request to the DHCD -- the applicant's not
6 responsible -- according to the local preference for
7 Brookline residents, etc. So is there anything we
8 want to or need to do to that paragraph?

9 MS. MORELLI: So I think the applicant is
10 requesting that we delete 31.

11 MR. ENGLER: No, no. We're just saying
12 it's very clear that it's the responsibility of the
13 town to get local preference, not the applicant. A
14 lot of towns turn to the applicant and say, will you
15 please give us some data and help us convince DHCD
16 there's a need, that we can get local preference.
17 And we can assist, but it's not our burden to write
18 that -- get that in, because that's --

19 MS. MORELLI: I think we're just saying the
20 applicant shall work with the director --

21 MR. ENGLER: Right. And we weren't clear
22 that that was the language that was clear or not,
23 "shall work with the director." Well, who's
24 ultimately responsible? It's the director, it's not

1 the applicant, for getting DHCD to approve that.

2 That's why we're looking for clarity.

3 MR. GELLER: Okay. And the language about
4 approval on review goes to 44 too.

5 MS. MORELLI: Yes.

6 MR. GELLER: I don't have anything else.

7 MS. POVERMAN: On 50, go back --
8 relating -- oh, no, no. Actually, it would be a
9 separate one. Sorry.

10 MR. GELLER: Okay. So anybody have any
11 other comments to the conditions proposed?

12 MS. SCHNEIDER: No.

13 MR. GELLER: Okay. So now conditions,
14 Kate.

15 MS. POVERMAN: You took care of my parking
16 one.

17 MR. GELLER: Well, let's do low-hanging
18 fruit. So we're going to add a condition that
19 pertains to the things we mentioned, which you have,
20 so let's just knock that out. Right?

21 MS. MORELLI: Right. So that's going to be
22 the conditions -- waivers C.1 and C.2, and that
23 pertains to -- just -- you sent it to clarify in the
24 conditions regarding the parking area. One is that

1 parking shall not be offered to or provided to
2 customers of the retail and office space, that's one.

3 MS. SCHNEIDER: Did you want to add
4 something about the parking will not be released to
5 nontenants?

6 MS. MORELLI: Yes.

7 MS. PALERMO: Also, that the parking at
8 49 Coolidge is exclusively for the employees of the
9 leasing office, the surface parking at 49 Coolidge.

10 MS. SCHNEIDER: Is that correct?

11 MS. PALERMO: That's what the developer --

12 MS. SCHNEIDER: That all four spaces --

13 MR. SHEEN: They're commercial spaces.

14 MS. SCHNEIDER: But you don't mean that to
15 be restricted to the leasing office. I can't imagine
16 that you're going to have a four-person leasing --

17 MR. GELLER: He means any of the commercial
18 spaces.

19 MS. SCHNEIDER: Okay. That would be a lot
20 of spaces, I imagine, for, like, one person.

21 MS. PALERMO: Maybe two.

22 MR. GELLER: Okay. Maria?

23 MS. MORELLI: So you don't want -- so for
24 49 Coolidge, you don't want to say that it's

1 exclusively for the employees of the leasing office?

2 MR. GELLER: It's exclusive to the
3 commercial space.

4 MS. PALERMO: Exclusively for the employees
5 in the commercial spaces, because we're not -- I
6 mean, it clarifies that it's not for customers.

7 MS. MORELLI: Other conditions to add
8 regarding Waiver D, D.2 specifically, you wanted to
9 provide some distinction between restaurants and
10 cafes. Namely -- I got a whole bunch of stuff from
11 you. You'll have to have Dr. Maloney deal with the
12 trash -- separation of trash. There were some other
13 matters like venting versus no venting.

14 MS. PALERMO: But we would allow the use of
15 the property for restaurant purposes provided it did
16 not require --

17 MS. SCHNEIDER: -- a professional
18 kitchen --

19 MS. PALERMO: -- or ventilation.

20 MR. SHEEN: So there will be some
21 ventilation from the building.

22 MS. SCHNEIDER: And if you have some more
23 precise terminology that you want to suggest -- you
24 understand where we're going with this. You know,

1 it's really -- if you don't have a restaurant, you're
2 not going to be building a big ventilation.

3 MR. GELLER: Not restaurant cooking
4 ventilation.

5 MS. POVERMAN: We can just say that they
6 comply with the appropriate code. I mean -- or is
7 that ventilation a way of defining it?

8 MS. PALERMO: It's a way. You could
9 always --

10 MR. GELLER: A way of defining a more
11 soft --

12 MS. POVERMAN: Okay. Perfect.

13 MS. MORELLI: This would be pertinent to
14 Waiver D.2. This is regarding the use of that
15 courtyard space on the 420 Harvard lot. I think you
16 said something like it would be for the enjoyment of
17 the residents of the project.

18 MS. PALERMO: It's restricted to the use by
19 the residents and employees of the commercial tenants
20 for their quiet enjoyment.

21 MS. POVERMAN: I mean, let a kid play ball
22 out there. Let's not put "quiet."

23 MR. ENGLER: No talking allowed.

24 MS. POVERMAN: Yeah. I think "quiet

1 enjoyment" gets a little too fussy.

2 MS. PALERMO: It avoids loud parties, it
3 avoids cookouts.

4 KAREN: It avoids my neighborhood.

5 MS. PALERMO: I think quiet enjoyment is a
6 very reasonable standard. It's what tenants -- no
7 loud music, no parties. It's a legal term that
8 works, I think.

9 MS. POVERMAN: A bouncing ball would be
10 allowed, but no loud parties.

11 MR. SHEEN: I think there's actually a
12 noise ordinance. Right? It would just be governed
13 by the noise ordinance.

14 MS. PALERMO: Well, again, but what we're
15 trying to do is govern the behavior of the people in
16 the courtyard. And, again, quiet enjoyment is a good
17 legal term that talks about what tenants are entitled
18 to. And the residential tenants in the building
19 would be entitled to quiet enjoyment regardless, but
20 we're sort of extending that to the neighborhood. I
21 think it's realistic. I mean, we can revisit it if
22 people don't --

23 MS. SCHNEIDER: I mean, another way we --
24 we don't need to decide on this right now -- we can,

1 you know, draw a distinction between passive
2 recreation and active recreation.

3 MS. PALERMO: We can do that too.

4 MR. GELLER: Okay.

5 MS. MORELLI: I think there might also be
6 another condition related to any displays on the
7 sidewalk to Harvard.

8 MS. SCHNEIDER: I think we decided not to
9 do that one.

10 MS. MORELLI: Okay. Great.

11 MR. GELLER: Kate, do you want to run
12 through your additional ones?

13 MS. POVERMAN: I actually think I only have
14 one. We went through all the others.

15 MR. GELLER: I will remind you there's a
16 football game.

17 MS. POVERMAN: So, again, not surprising, I
18 have concerns about traffic still, and I brought --
19 in case we need convincing -- some pictures from
20 Mr. Gunning. My favorite one from Mr. Gunning is
21 where somebody was turning left from the 420 -- the
22 funeral home property onto Fuller Street. Since he
23 couldn't cut into that lane of traffic, he just went
24 into the oncoming traffic and sort of made it two

1 lanes so that he could get through, because it's so
2 hard to cut in sometimes.

3 But -- so I'm wondering if it makes sense
4 to have a period where, for example, there is a right
5 turn only, say, for an hour and a half in the morning
6 and an hour and a half in the afternoon to prevent
7 there being a lineup of traffic during that period.

8 MS. MORELLI: So that is a bigger issue
9 than just that area outside the driveway. Keep in
10 mind -- this is in discussions with Peter Ditto,
11 DPW -- Fuller/Harvard has a traffic signal. So if
12 you don't want people taking lefts onto Fuller toward
13 the traffic signal, they'll be taking rights. If
14 they want to go onto Harvard, maybe take a left onto
15 Harvard. Where are you sending them? You're sending
16 them to an intersection that doesn't have a traffic
17 signal, which could create another -- you're
18 interrupting the traffic pattern, so you have to
19 be -- it's not just like, you know, you make
20 everything -- there's a domino effect.

21 MS. POVERMAN: But as we've established,
22 there's very little traffic coming out of that --

23 MS. MORELLI: There's very little traffic
24 coming out of the residence, and there was no

1 comments from DPW, police, or the traffic peer
2 reviewer regarding left-hand turns onto Fuller being
3 problematic.

4 You know, we have to be careful about
5 snapshots. You know, I appreciate that people live
6 there and observe this every day. I do respect and
7 put a lot of credence into what people are observing
8 in their neighborhoods. But a snapshot doesn't
9 really say that there is a problem. It's just one
10 snapshot in time.

11 MS. POVERMAN: Well, no. I think we have a
12 series of snapshots, and I think Mr. Gunning gave us
13 multiple snapshots. I think --

14 MS. PALERMO: I think Maria's point is well
15 taken. The traffic department actually, as I recall,
16 almost specifically said there is no problem with
17 left-hand turns, and their job is the safety of
18 everyone in Brookline. And as Maria has said, if you
19 only allow right-hand turns at particular times, then
20 people are going to take a right on Fuller, and then
21 they're going to take a right on Centre, and then
22 they're going to go down Coolidge Street.

23 MR. GELLER: Left on Centre.

24 MS. POVERMAN: Or Winchester. If you take

1 a left on Centre --

2 MS. PALERMO: And so you're just
3 redirecting the traffic in a way without
4 understanding the consequences, so you will have
5 unintended consequences. Whereas this way we know
6 what the consequences are, which is a little more
7 traffic on Fuller Street. And clearly, if it becomes
8 a major problem, I'm sure the traffic department will
9 come up with a a different solution.

10 MR. GELLER: But, frankly, we've had peer
11 review, and peer review has indicated that in their
12 opinion they don't -- that it empties out on a cycle,
13 that there is no failure at that intersection, so --

14 MS. SCHNEIDER: And it's not going to be
15 made any -- whatever the existing conditions are are
16 not going to be made any worse by the addition of the
17 negligible number of vehicle trips that are going to
18 be generated by this project.

19 MS. POVERMAN: Well, the issue I have is
20 that -- with all due respect to the peer review --
21 they saw it emptying in one cycle. And we have
22 evidence from residents showing that, no, it doesn't
23 empty with one cycle. So one of the issues I have is
24 that we say we take information from multiple

1 sources, but we always seem to underestimate the
2 importance of what we get from the neighborhood.

3 MS. MORELLI: So the traffic peer
4 reviewers, they saw those photos. They did not find
5 them compelling.

6 MS. POVERMAN: Okay.

7 MS. SCHNEIDER: And I think, you know,
8 again, sort of the bottom line is, without any
9 recommendations from anybody, the traffic department,
10 the peer reviewers, the applicant's traffic engineer,
11 who obviously gets the least amount of, you know,
12 credence, I'm very uncomfortable with the idea of
13 changing a traffic pattern in the neighborhood
14 without anybody providing --

15 MR. GELLER: Without having any idea what
16 the ramification is.

17 MS. SCHNEIDER: Exactly, the unintended
18 consequences. It's not for this board to start
19 monkeying with the traffic patterns of the
20 neighborhood. That's totally outside of our
21 jurisdiction. Particularly, no one has articulated
22 the health or safety reasons why we should be
23 restricting the in and out of the traffic from this
24 development.

1 MS. POVERMAN: Okay. I'm done.

2 MR. GELLER: That's it?

3 MS. MORELLI: There was actually a comment
4 regarding the fact that the applicant is working with
5 abutters -- two abutters that share a lot line,
6 regarding the landscaping, and we don't have
7 developed landscaping plans.

8 MR. GELLER: Yeah. All due respect, I
9 think that is a private discussion between this
10 applicant and two private residents, and I don't
11 think it is appropriate to go into this decision in
12 the conditions section. So with all due respect to
13 the neighbors, I don't think it belongs in this
14 document.

15 MS. POVERMAN: What happened in
16 Crowninshield? I know that there were huge divides,
17 with neighbors, not me. But that one condition was
18 put in relating to --

19 MR. GELLER: -- the street across the way
20 that was --

21 MS. POVERMAN: -- the property next to the
22 development was right up against it. There was a lot
23 of discussion about what foliage there might be.

24 MS. MORELLI: I actually have that decision

1 here. I know that -- I don't think we had anything.
2 We didn't, because we figured that was a private
3 matter.

4 MS. POVERMAN: Okay.

5 MR. GELLER: Yeah. We wouldn't typically
6 do it, whether it was a 40A decision or a 40B
7 decision, for the same reasons.

8 MS. POVERMAN: Okay.

9 MR. GELLER: What about -- did we make sure
10 to pick up the recommendations by Mr. Fitzgerald on
11 the driveway and sidewalk running flush and all of
12 those --

13 MS. SCHNEIDER: Aren't those reflected in
14 the plans?

15 MR. GELLER: I just want to make sure.

16 MS. MORELLI: Yes, they are.

17 MR. GELLER: I believe they are, but I want
18 to make sure.

19 MS. MORELLI: They are on the plans.

20 MR. GELLER: Okay.

21 MS. MORELLI: The reason -- another reason
22 why I want the full-sized plans is I can better look
23 at those plans and see if they're accurately
24 represented.

1 MR. GELLER: Good. Okay, that's great. So
2 I think we've made good progress. I think,
3 obviously, what we need to get in addition to the
4 amended waivers, that will no doubt be in my inbox by
5 the time I get home tonight, would be a cleaned-up
6 discussion for circulation for people. And
7 obviously, all of these materials will be posted so
8 everybody in the public can take a look at them. If
9 you do have any further comments, please submit them.
10 We always look at them.

11 And our next hearing -- the continued
12 hearing date is February 28th --

13 MS. MORELLI: December 28th.

14 MR. GELLER: -- December 28th at 7:00.

15 Timing, and what will we need? Do we need
16 an ask? Where are we?

17 MS. MORELLI: So you have 40 days to
18 deliberate after the close, and that means that you
19 won't be accepting any public testimony. And just
20 keep in mind for the next hearing, we still need to
21 get a letter from Dr. Maloney regarding the trash, so
22 we can accept any public comments then. We do have
23 some follow-up regarding, I think, two waivers and
24 some conditions from the building commissioner, so I

1 think that can be handled at the next hearing. And
2 you probably could better decide at that hearing if
3 you want to extend the public --

4 MR. GELLER: Yeah. I think we made very
5 good progress this evening. I want to thank the
6 members of the ZBA for being efficient. I appreciate
7 it, because I think we did get through a lot of
8 stuff, and it looks like --

9 MS. MORELLI: I have no doubt that I will
10 get what I need from the applicant. I just say as a
11 general caveat, you know, if I don't get it in good
12 time and I'm not able to do my proper checking, we
13 will ask for an extension. I just want to put that
14 out there to be fair.

15 MS. PALERMO: Well, and I also think that
16 we need to thank town staff. This is the first time
17 I've been sitting on a 40B panel, and I have --

18 MR. GELLER: Well, the good news is there's
19 lots more.

20 MS. PALERMO: I know that. But I have been
21 so impressed with their professionalism. Even though
22 the delivery of documents may be slightly late, they
23 come in with a lot of thought and demonstrate a lot
24 of careful work with the community and the developer.

1 MR. GELLER: Let me affirmatively state
2 that we would be in a very bad position were it not
3 for the fifth and sixth people, so we thank you.

4 Goodnight, everyone. Thank you. We will
5 see you on the 28th.

6 (Proceedings adjourned at 9:25 p.m.)

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1 I, Kristen C. Krakofsky, court reporter and
2 notary public in and for the Commonwealth of
3 Massachusetts, certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth and
6 that the foregoing is a true and correct transcript
7 of my shorthand notes so taken.

8 I further certify that I am not a relative
9 or employee of any of the parties, nor am I
10 financially interested in the action.

11 I declare under penalty of perjury that the
12 foregoing is true and correct.

13 Dated this 22nd day of December, 2016.

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19 _____
Kristen Krakofsky, Notary Public

20 My commission expires November 3, 2017.

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<hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$10,000 70:19 77:12</p> <p>\$100,000 71:17</p> <p>\$200,000 71:17</p> <p>\$250 82:4</p> <p>\$500,000 71:23,24</p> <p>\$90,000 71:6</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 65:8</p> <p>1,040 38:17</p> <p>1,045 39:2</p> <p>1,400 25:1 27:11 38:16</p> <p>1,516 38:24</p> <p>10 20:2,3 53:6 68:19 69:18</p> <p>10,851 38:24</p> <p>100 66:6 88:11</p> <p>107 18:12,14</p> <p>10A 73:16</p> <p>10B 70:13,15,16</p> <p>11 75:23</p> <p>11:05 9:8</p>	<p>11A 67:2</p> <p>11F 75:6</p> <p>12 9:8 12:7,20 51:6</p> <p>12th 21:3 23:14 35:1</p> <p>13 55:1 90:17</p> <p>14 51:20</p> <p>15 76:1</p> <p>16 20:3</p> <p>17 22:7,8,15 55:11</p> <p>18 20:7 77:19</p> <p>19 56:2</p> <p>1st 86:17 90:4</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 31:5 34:9 41:20 64:14</p> <p>20 9:16,17 23:11 36:18 62:12,23 63:23 78:5 80:19</p> <p>2016 9:8 12:7,21 13:3</p> <p>209 53:2</p> <p>21 23:6,11,13,17</p> <p>22 23:23,24 24:23 25:22 26:6,12 27:21 28:13,15, 24 29:23 62:12 63:17, 19 78:3 81:6</p> <p>23 9:16,18 23:23 25:12</p>	<p>26:8 27:18,21 28:12,15, 16,20 78:17</p> <p>24 14:16 83:6</p> <p>25 41:17 72:17 73:15</p> <p>25-year 13:11,23 14:10</p> <p>27 81:19</p> <p>28 29:24 90:20</p> <p>28th 4:13 104:12,13,14 106:5</p> <p>29 85:1,4,7 86:1</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 65:20</p> <p>3,105 38:14</p> <p>30 38:20</p> <p>30th 42:2 90:4</p> <p>31 91:4,10</p> <p>31st 87:18</p> <p>32 47:4</p> <p>384 12:5</p> <p>38C 29:18,20 43:1</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4.07 7:8 8:18</p> <p>40 12:18 90:17 104:17</p>	<p>40A 22:4,20 103:6</p> <p>40B 4:14 6:19,21 9:7,11,15, 17 12:11,17 16:11 67:14 71:21 72:14 78:17 103:6 105:17</p> <p>40bs 66:24</p> <p>420 3:5 5:11 6:5,13 10:6 12:4,18,21,24 16:3,8,23 18:1 21:16 24:9 25:4,24 26:3 27:1 28:2 35:8 38:23 76:17,20 77:7 95:15 97:21</p> <p>428 83:24</p> <p>44 19:22 40:24 54:20 84:1 92:4</p> <p>45 39:4 40:22,24 46:5 54:21 84:1</p> <p>49 5:7,12,16 6:3,12,15,16 7:3,15,21 10:8 16:8,19, 23,24 17:8 18:6,15 23:6,22,24 24:3 25:4 26:3,19,24 27:5 28:4,8, 12,14 29:8 36:2,5,12 38:14 39:3 41:13,15 64:24 65:7,11 76:12,16, 19 77:7 79:12 93:8,9,24</p> <p>4A 58:22</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 19:24</p> <p>50 92:7</p> <p>52 69:4</p> <p>57 47:5,22</p> <p>5:00</p>
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