

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, MAY 30, 2019

7:00 p.m.

In

Senior Center

806 Massachusetts Avenue

First Floor

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Janet Green, Member

Slater W. Anderson, Associate Member

Laura Wernick, Associate Member

Jim Monteverde, Associate Member

Maria Pacheco, Zoning Secretary

1 (7:40 p.m.)

2 Sitting Members: Brendan Sullivan, Janet Green, Jim
3 Monteverde, Slater Anderson, Laura
4 Wernick, Alison Hammer

5 BRENDAN SULLIVAN: The Board will hear Case Number
6 017113-2019, 2046 Massachusetts Avenue. Okay, before we get
7 into -- just as a little housekeeping matter, you submitted
8 this this evening?

9 KIM COURTNEY: Yes.

10 BRENDAN SULLIVAN: Yes. Let me distribute that to
11 the Board.

12 KIM COURTNEY: I did give five copies.

13 BRENDAN SULLIVAN: Yeah, I have them.

14 KIM COURTNEY: Kim Courtney, C-o-u-r-t-n-e-y. I'm
15 the for McCabe's Porter, LLC, the appellant.

16 (Microphone adjustment)

17 BRENDAN SULLIVAN: Kim, do you have Ranjit's to
18 the Board, a copy of that?

19 KIM COURTNEY: I just received that. It was not
20 sent to me as for the appellant. I heard from a third party
21 that there was a letter in the file, and I requested it
22 before this hearing.

1 BRENDAN SULLIVAN: Okay. I just -- again, let me
2 distribute that to members of the Board. It was in the
3 file, though. Just so they can follow along. Okay.

4 KIM COURTNEY: Good evening. Kim Courtney, for
5 appellant McCabe's Porter, LLC, doing business as Shine
6 Square Pub located at 2046 Massachusetts Avenue. This is a
7 business A2 zone. The --

8 JANET GREEN: Can't hear.

9 KIM COURTNEY: We have to figure out something.

10 JANET GREEN: You got to get rock star close.

11 KIM COURTNEY: I also have to be able to use my
12 papers.

13 JANET GREEN: Take it out of the --

14 KIM COURTNEY: I need both hands to operate so
15 it's not ideal. We need to figure out something better than
16 this. So this is a BA2 zone --

17 JANET GREEN: You're just going to have to figure
18 out how to get closer to the --

19 KIM COURTNEY: It's unfortunate that I have to
20 hold this in order to present. So this is a BA2 zone.
21 Appellant McCabe's Porter, LLC was granted a license for
22 entertainment at its location by the License Commission.

1 After that was granted, the zone -- the commissioner of
2 Inspectional Services Department kicked back the application
3 denying it. So we have two decisions here. We have the
4 decision of the ISD commissioner and we have the refusal to
5 issue the entertainment license by the License Commission,
6 both of which I believe are appealable here today under
7 Chapter 48A, Sections 8 and 13.

8 So the decision that was issued by the ISD
9 commissioner was merely a note in the Viewpoint system. So
10 when you apply for an entertainment license to the License
11 Commission, the process is to submit it through the License
12 Commission. You do not submit anything to the Zoning
13 Department. Submit it to the License Commission. Your
14 application gets forwarded to the Zoning Department through
15 the internal online system which is a relatively new system
16 which has many quirks. So this -- for some reason, the
17 zoning approval is supposed to happen before the hearing.
18 So my client paid the fee, they hired an attorney, they had
19 a hearing, and their license for entertainment was granted
20 by the License Commission. Thereafter, they purchased the
21 equipment, and then they were informed that the Zoning
22 Department had refused to allow the License Commission to

1 print the license. So this is where we are.

2 So the note in the Viewpoint system was not very
3 detailed. It simply stated entertainment is not allowed in
4 a BA2 zone. I don't believe that's correct. That's
5 certainly not the practice. So I requested numerous times
6 from Ranjit to provide a formal notice, some sort of letter
7 or formal denial of the application, and he refused to do
8 so. There is no provision in the note regarding what
9 section of the Cambridge zoning ordinance he relied upon for
10 that denial. So I came before you here blind, not even
11 knowing what I'm here to appeal. There is a letter here
12 from Ranjit which now supplies a section of the code. I'm
13 not sure why he refused to provide that previously. So I
14 will be able to address his letter even though I just
15 received it because it's quite short.

16 So there was no reference to the code. The table
17 of use regulations, Section 4.3(5)(f)(1) of which I'm sure
18 the Board is well versed, has this type of use for a
19 restaurant which allows establishments where alcoholic
20 beverages are sold and consumed and where no dancing or
21 entertainment is provided. This dancing and entertainment,
22 as far as I understand, refers to performances, dance --

1 live dance or music type performances, the type you would
2 see at the Lizard Lounge, for example, in the same zone.

3 So the code itself does not actually define
4 dancing and entertainment, but if you look at the following
5 section to which the commissioner refers in his letter which
6 is 4.3(5)(g), it actually does define dancing and
7 entertainment as, quote, dance hall or similar place of
8 entertainment. So that's a separate category. If you were
9 a dance hall or a place of entertainment and that's your
10 primary use, your primary purpose of your business, then,
11 under that section, it is correct that, in a BA2 zone, it
12 would not be allowed. Again, there are establishments that
13 do fit within that category that are in the BA2 zone.

14 So this is a restaurant use. This is not a
15 business that's focused on the provision of dancing or
16 entertainment. There are a few entertainment devices as I
17 believe all establishments in the BA2 zone that have food
18 and drink, they do have music, background music, they do
19 have televisions. That's entertainment. They have a
20 license for that. So the commissioner's statement that no
21 entertainment is allowed in the BA2 zone is very confusing
22 since I believe all food and drink establishments in the BA2

1 zone which -- of which there are many, do actually have
2 entertainment. So nevertheless, this is an accessory use.
3 So under the use regulations, Article 4.2(1)(a), an
4 accessory use shall be permitted where there's not more than
5 25 percent of the gross floor area.

6 This -- there is also, I must note, currently an
7 entertainment license on these premises for this business.
8 So there was issued an entertainment license by the Zoning
9 Board, by the License Commission for one pinball machine,
10 one video game, and two dart boards as well as music and
11 televisions. They are seeking to add one pinball machine,
12 one foosball, and one jukebox. The square footage, the
13 total square footage, of what is sought is only 83 square
14 feet. So for a premises that is 1,652 square feet, that is
15 only about five percent of their gross floor area which
16 would meet the requirements of accessory use even if
17 Ranjit's argument were successful regarding the use
18 category.

19 So as I noted, this decision is grossly
20 inconsistent with the practices of Inspectional Services and
21 the License Commission. The License Commission actually
22 currently issues entertainment licenses as a right without

1 an application. For any common victualer alcohol
2 establishment or non-alcohol establishment in BA2 zones,
3 they are automatically granted TVs and background music.
4 I'm not sure if you're aware of that, but that is something
5 that is happening on a regular basis. And attached to my
6 memorandum, the final page, there is a map.

7 So I took the zoning districts from the Cambridge
8 zoning map, and you can see that there are numerous
9 establishments. There are various BA2 zones throughout the
10 city of Cambridge, but I'm focusing here just on the span
11 just south of Porter Square and just north of Porter Square.
12 We have -- for example, starting from the north, we have The
13 Table which is a restaurant which would have background
14 music. We have Frank's Steakhouse. They have televisions
15 and music. I'm not sure if they have a jukebox. I wasn't
16 able to receive my public records response in time to verify
17 for sure whether they have a jukebox. Gustazo which is new,
18 and my understanding is that they are also in the zone and
19 they have recently been granted live music. We have The
20 Abbey. They have televisions and music. We have Changsho.
21 They also have televisions and music. Temple Bar, same. I
22 can do down the list. They go on and on and on. The Lizard

1 Lounge in Cambridge Commons are in the BA2 zone. The Lizard
2 Lounge is a full-time entertainment venue, live music,
3 spoken word, etc.

4 So I'm just confused why we're here. I'm confused
5 why the zoning -- why the ISD commissioner took this action.
6 I don't see that it's grounded in any legal basis
7 whatsoever. He refused to provide the legal basis. I think
8 that the language in the zoning code is clear that this is a
9 restaurant use that has some entertainment and that that's
10 allowed. I also think that the accessory use Article
11 4.2(1)(a) is also very clear.

12 I'd like to just address Ranjit's letter briefly
13 which is dated today. His argument is that this
14 establishment operates under the second section that I read
15 actually, Section 4.3(5)(g) calling it a bar or other
16 establishment -- this establishment does have a restaurant
17 license. This does not have a tavern license. Where
18 dancing and entertainment is provided. So there is no
19 provision of dancing or any performances. This is a
20 restaurant that has a couple of entertainment devices.
21 What's also confusing is that he says the existing
22 entertainment can remain.

1 The entertainment that's being asked for is
2 basically identical to what it already has, increasing to
3 one more pinball machine and a foosball, machine which are
4 in the same category of entertainment, and a jukebox which,
5 the jukebox, I understand from speaking with my client who
6 spoke with his landlord, that the jukebox was issued a
7 license previously, prior to him purchasing the business.
8 So it was approved on this premises in -- for this use
9 previously. I believe the statement in this letter is
10 incorrect that says that the License Commission denied
11 McCabe Porter's application to amend its entertainment
12 license. That was actually granted. It was Ranjit who
13 denied it.

14 And then even more confusing, the last sentence in
15 the second paragraph, "To the extent there may be other
16 establishments within the district which have entertainment,
17 such entertainment is allowed only as an accessory use up to
18 two days per week, not on a full-time basis." He does not
19 cite any legal authority for this statement. I have no idea
20 where this comes from. I have the accessory use language
21 right in front of me. I don't see anything in there that
22 says that. You know, if he really does plan to take away

1 the entertainment licenses of all of these establishments, I
2 only named a few. There's -- there are many. I can see
3 that this would be quite an upheaval for the business
4 community in Cambridge. So I'm really confused why this is
5 happening, why this argument is being made. Two days per
6 week, there's nothing in the laws that I can see, and he has
7 provided no basis for that statement that an accessory use
8 can only be used two days per week. I don't know where that
9 comes from.

10 He also states here that there was no request from
11 McCabe's. You know, one of my complaints is that there was
12 no formal notice issued here. It's required to have your
13 appeal rights in it. It's required to tell you what --
14 under what section of the statute they make their decision,
15 and we did not receive that. I asked numerous times in
16 writing for a decision, refused -- both Ranjit and Sisia, I
17 believe, refused to provide that. And he states that there
18 was no request from McCabe's to me requesting an answer so
19 that's just incorrect. I have numerous written requests for
20 that.

21 BRENDAN SULLIVAN: Do you have those with you,
22 those requests?

1 KIM COURTNEY: No, but I can provide them.

2 They're email --

3 BRENDAN SULLIVAN: I would have thought that would
4 have been part of the record and part of your submissions.

5 KIM COURTNEY: Those are in the public record.

6 BRENDAN SULLIVAN: As part of your application. I
7 guess --

8 KIM COURTNEY: I only received this letter today
9 so I didn't know that Ranjit made this argument until today.
10 So I wouldn't be able to respond to an argument that I
11 haven't been provided before having --

12 BRENDAN SULLIVAN: I guess, you know, in my past
13 reviewing the case for a start, the zoning district that
14 it's in went to the table of uses, and 4.3(5)(g) which is --
15 that was cited in your letter as 4.3(5), the Commission has
16 ruled that it is governed by G, and you follow that over and
17 it says business A1, A2, A3. And it says, no, the
18 entertainment is not allowed.

19 KIM COURTNEY: It does not say entertainment is
20 not allowed. It says that under category G that type of
21 business is not allowed in a BA2 zone. It does not mention
22 anything about entertainment not being allowed.

1 BRENDAN SULLIVAN: It says where entertainment is
2 provided, dance halls and --

3 KIM COURTNEY: Right, right.

4 BRENDAN SULLIVAN: -- entertainment. But I think
5 that -- and you can interpret that for us, but that
6 entertainment, where it is provided and in the form it says
7 no, then it's not by as of right.

8 KIM COURTNEY: This is a restaurant. This is not
9 a dance hall, and there are no performances being provided.

10 BRENDAN SULLIVAN: Well, again, so in other words,
11 you would differ on your classification of --

12 KIM COURTNEY: It is not classified under G. It
13 is under F.

14 BRENDAN SULLIVAN: All right, well, so then --

15 KIM COURTNEY: I mean, this is how it is --

16 BRENDAN SULLIVAN: My point, after the start --
17 stop, at the licensing and your client was notified by way
18 of licensing that their request was denied, what was the
19 next communication to the building department to -- as to
20 why was this denied?

21 KIM COURTNEY: I asked for a formal notice and an
22 explanation.

1 BRENDAN SULLIVAN: I mean, again, in writing or
2 just a --

3 KIM COURTNEY: In writing. In writing.

4 BRENDAN SULLIVAN: All right, but you don't have a
5 copy there with you?

6 KIM COURTNEY: I can get a copy of that for you.
7 Again, I wasn't provided with this argument until today that
8 he made -- that he falsely states that I did not make a
9 request so -- there's no question that this business
10 operates under (f) (1) and not under G. And Ranjit has not
11 made any presentation that he's arguing to change the use of
12 this establishment.

13 BRENDAN SULLIVAN: Okay. That's it for your
14 initial presentation?

15 KIM COURTNEY: Yes.

16 BRENDAN SULLIVAN: Any questions for the Board at
17 all? Let me read into the record the -- we've all reviewed
18 the application, memorandum of a letter from the
19 commissioner dated May 30. "Dear Members of the Board of
20 Zoning Appeal, I am writing about the appeal filed by
21 McCabe's Porter with the Board on April 26, 2019 appealing a
22 March 26, 2019 decision by me concerning McCabe's December

1 26, 2018 amended application with the Cambridge Board of
2 Licensing Commissions seeking to amend its entertainment
3 license by adding additional entertainment devices at 2046
4 Massachusetts Avenue. I am attaching a copy of the amended
5 application for your convenience. The 2046 Massachusetts
6 Avenue property falls in zone business A2 under Article 4,
7 Section 4.3(5)(g) of the Cambridge zoning ordinance, a bar
8 or other establishment where alcoholic beverages are sold
9 and consumed and where dancing and entertainment is provided
10 and a dance hall or similar place of entertainment are not
11 allowed in the zone business A2.

12 "As a result I added a note in the Inspectional
13 Services Department Viewpoint system on March 26, 2019
14 stating that existing entertainment can remain at McCabe's
15 Porter but additional devices are not permitted. On March
16 29, 2019 the License Commission denied the McCabe's Porter's
17 application to amend its entertainment license by adding
18 additional entertainment. To the extent there may be other
19 establishments within the district which have entertainment,
20 such entertainment is allowed only as an accessory use up to
21 two days per week, not on a full-time basis. McCabe's
22 states in the appeal to the Board that I am required to

1 issue a formal decision on this matter.

2 "However, no existing violation by McCabe's is at
3 issue here, and I am not required to issue an enforcement
4 decision in writing under Section 7 of Chapter 48 where
5 there is no violation and I am merely informing another city
6 department as to whether an activity is allowed in the
7 district. There was no request from McCabe to me requesting
8 an answer as to whether full-time entertainment is allowed
9 within zone business A2, and, therefore, I did not write
10 such a letter to McCabe's. Please let me know if you have
11 any questions. Very truly, Ranjit Singayagam, Commissioner
12 of Inspectional Services."

13 KIM COURTNEY: And for the record, I have noted a
14 number of inaccuracies in that letter previously.

15 BRENDAN SULLIVAN: Hence the disagreement, I
16 guess.

17 KIM COURTNEY: No, this is new. We disagree with
18 --

19 BRENDAN SULLIVAN: Well, both the submissions are
20 new. Yours is new. His is new. I mean, what -- you know,
21 it puts us on the --

22 KIM COURTNEY: My arguments are not new.

1 BRENDAN SULLIVAN: Well, I did not interrupt you,
2 Kim. Please don't interrupt me. Let me complete my
3 statement. And when we get a late submission from you with
4 points of law and so on and so forth, it's difficult for us
5 to digest it on the fly and within a few minutes.

6 KIM COURTNEY: Right. I presented all the points
7 that are in my memorandum. That's just there for
8 convenience, but I presented my verbal presentation.

9 BRENDAN SULLIVAN: Got it. Mr. Commissioner,
10 would you like to respond to any of the points raised?

11 RANJIT SINGAYAGAM: Sure. Thank you, Mr. Chair.
12 Yes, usually when I sign, when the business appearing by the
13 License Commission that requires zoning approval, we grant
14 approval first. I'm not sure why the License Commission
15 granted the license for entertainment. I don't know. But
16 when I came to know that there were --

17 UNIDENTIFIED: We can't hear.

18 UNIDENTIFIED: I'm sorry, Ranjit, we can't hear
19 you.

20 RANJIT SINGAYAGAM: Can't hear. Can you?

21 UNIDENTIFIED: That's better.

22 RANJIT SINGAYAGAM: As I said, usually in the

1 Viewpoint system when somebody is applying for a license, a
2 licensed institution, they need zoning approval. So we sign
3 zoning and then they go ahead with the hearing. I'm not
4 sure how this happened, the approval landed in with five
5 days of full-time entertainment without by zoning. When I
6 came in the morning, I signed and said you cannot have full-
7 time entertainment.

8 The last 30 years I've been doing this and then
9 CDD and I decided that only accessory entertainment allow --
10 zone there doesn't allow full-time entertainments. That's
11 why we allow business this, like two-man, folk music we
12 allowed in the past 30 years. So it's a practice that we
13 used as accessory use, not a full-time use, for a zone -- in
14 a zone where there is no entertainment allowed.

15 In this particular case, they had some -- it's a
16 game, it's entertainment in my view. So they had that game,
17 or so many machines, one of, I'm not sure. But they wanted
18 to increase that. That's why I call the owner of McCabe
19 restaurant, and I didn't know that there was an attorney at
20 that time. So I saw the number on the Viewpoint and called
21 him and said this is the trouble. That's what happened. So
22 this is the practice they are doing for a long time.

1 BRENDAN SULLIVAN: Okay. Could you address the
2 issue that counsel is claiming that it's governed under
3 Section F? You're claiming that it's governed under Section
4 G. Could you address that issue?

5 RANJIT SINGAYAGAM: Entertainment is only
6 mentioned in Section G.

7 BRENDAN SULLIVAN: Okay. The -- did you receive a
8 formal request in writing for an interpretation as to your
9 action?

10 RANJIT SINGAYAGAM: Yes, I think it happened
11 during the end of March which I was -- I was also on
12 vacation from March, I think, 18 to the tenth -- I can't
13 remember the date. Twenty-ninth of March to the tenth of
14 April. But I was not there to answer, started working -- I
15 think Sisia responded back to her.

16 BRENDAN SULLIVAN: Okay. In the normal procedure
17 as far as the allowing of gaming devices, entertainment, in
18 this particular zone we had a case -- have a case previous
19 where they asked for live entertainment and it was denied by
20 this Board. My understanding is that it sort of stops at
21 the corner across from McCabe's unfortunately, and I think
22 that might have been as a courtesy to the elderly housing

1 which is their neighbor. Did you sort of understand it that
2 way?

3 RANJIT SINGAYAGAM: What do you mean by that?

4 BRENDAN SULLIVAN: Well, that the allowing of the
5 entertainment, sort of that that zone ends at the opposite
6 corner from where McCabe's is?

7 RANJIT SINGAYAGAM: I think it's a different zone,
8 if I'm not mistaken.

9 BRENDAN SULLIVAN: On the opposite corner.

10 RANJIT SINGAYAGAM: Porter Square is a business C
11 zone, this is the nature of that zone, B2.

12 BRENDAN SULLIVAN: Okay. And as the accessory use
13 which counsel has raised which is permitted, is that a --
14 found in the code or was that a policy that has been --

15 RANJIT SINGAYAGAM: It's a policy that has been
16 since Mr. Barber was in Community Development when we
17 started that --

18 KIM COURTNEY: I'm sorry, since when?

19 RANJIT SINGAYAGAM: Since Lester Barber who used
20 to work for the community development --

21 KIM COURTNEY: Lester Barber?

22 RANJIT SINGAYAGAM: Yeah. It was almost 35 years

1 ago.

2 BRENDAN SULLIVAN: Yeah, okay.

3 KIM COURTNEY: Shall I hold my questions --

4 BRENDAN SULLIVAN: Yeah, why don't you, Kim, yeah,
5 just? Any questions by the Board at this time?

6 LAURA WERNICK: So I still don't understand why
7 there are TVs and recorded music allowed at these other
8 establishments but not at McCabe's. For instance, you know,
9 at the Cambridge Commons. What's the difference between the
10 two?

11 RANJIT SINGAYAGAM: Well, you're asking me about
12 background radio music and a game?

13 LAURA WERNICK: Yeah.

14 RANJIT SINGAYAGAM: I think games is an
15 entertainment.

16 LAURA WERNICK: And that is not entertainment?

17 RANJIT SINGAYAGAM: That's background music.

18 LAURA WERNICK: And TVs?

19 RANJIT SINGAYAGAM: That's issued by the License
20 Commission. So I'm not sure --

21 LAURA WERNICK: It is -- it does seem like a
22 pretty fine --

1 RANJIT SINGAYAGAM: Yeah, because it's -- when you
2 have entertainment that you're performing, you're working or
3 singing or playing a game or something.

4 LAURA WERNICK: But, like, the music downstairs at
5 the Cambridge Common, at the Lizard Lounge.

6 RANJIT SINGAYAGAM: I'm not sure how that was
7 approved. Cambridge Common. That must be background music.

8 BRENDAN SULLIVAN: Slater, any questions?

9 SLATER ANDERSON: No.

10 JIM MONTEVERDE: Ranjit, this is for you. Just --
11 I'm just looking at the chart. I'm just trying to see the
12 different categories. So -- and if you could just explain.
13 McCabe's Porter is -- serves food, serves drinks?

14 KIM COURTNEY: Correct, it's a restaurant.

15 JIM MONTEVERDE: Restaurant, bar?

16 KIM COURTNEY: It's licensed as a restaurant. It
17 is a restaurant.

18 JIM MONTEVERDE: I understand that. I'm asking
19 what the function is. So --

20 KIM COURTNEY: It's a restaurant.

21 JIM MONTEVERDE: -- does it have a bar, sit-down
22 bar with detached dining --

1 KIM COURTNEY: I'm confused. Your line of
2 questioning -- what's the purpose of your question?

3 JIM MONTEVERDE: Just answer the question. Is
4 there a bar that I can sit at and have a drink?

5 KIM COURTNEY: Is there a bar?

6 JIM MONTEVERDE: Yes.

7 KIM COURTNEY: I'm not aware of any aspect of the
8 zoning law that has anything to do with whether there's a
9 physical bar structure if that's your question.

10 JIM MONTEVERDE: Well, in the category of lunch
11 room, restaurant, cafeteria, it doesn't say bar.

12 KIM COURTNEY: Bar in the zoning does not --

13 JIM MONTEVERDE: Or have --

14 KIM COURTNEY: -- mean a physical bar that you sit
15 at that's an elevated dining surface. That's not what the
16 bar means in the zoning code. In the zoning code, it's
17 referring to a tavern. It would be a tavern license --

18 JIM MONTEVERDE: Whether you --

19 KIM COURTNEY: -- Cambridge.

20 JIM MONTEVERDE: Just explain to me as I walk into
21 the door at McCabe's Porter, if you would, please --

22 KIM COURTNEY: That does not make it fall under

1 Section G if it has a bar.

2 JIM MONTEVERDE: What do I see when I walk in the
3 door?

4 KIM COURTNEY: There is an elevated surface that
5 people can sit at and consume food and drink. That does not
6 make the establishment a legal bar.

7 JIM MONTEVERDE: But otherwise, there are tables?
8 There's a kitchen for serving food?

9 KIM COURTNEY: Yes.

10 JIM MONTEVERDE: Thank you. Ranjit, so the
11 categories we have here under E, lunch room, restaurant,
12 cafeteria, it's a restaurant. F, establishments where
13 alcoholic beverages are sold and consumed where no dancing
14 or entertainment is provided. Your description is the
15 couple devices that are there amount to entertainment.

16 RANJIT SINGAYAGAM: Yes.

17 JIM MONTEVERDE: Correct?

18 RANJIT SINGAYAGAM: Yes.

19 JIM MONTEVERDE: Which is what drives you down to
20 Section G, and unfortunately G ends by saying dance hall or
21 similar place of entertainment which it is not. Correct,
22 counsel?

1 KIM COURTNEY: Correct.

2 JIM MONTEVERDE: Thanks.

3 BRENDAN SULLIVAN: I'm going to open it up to
4 public comment.

5 KIM COURTNEY: Am I allowed to ask my questions
6 and respond --

7 BRENDAN SULLIVAN: No, it'll be opened up to
8 public comment, close public comment, then you can comment.
9 Opening it up to public comment, and the issue before us is
10 really quite narrow. It's not whether or not additional
11 entertainment devices is a good idea, maybe not a good idea,
12 or whatever. It's whether or not the commissioner has
13 correctly ruled that this establishment is governed by
14 Section G and in the 9(b) application before the Licensing
15 Commission. That's the issue before us. It's not whether
16 it's a good idea or not. It's really his decision and his
17 ruling. Let me open it to public comment. If you'd please
18 come forward, identify yourself for the record with your
19 name and address.

20 RUTH RYALS: I'm Ruth Ryals, and I'm here because
21 I am in the neighborhood.

22 UNIDENTIFIED: Your address.

1 UNIDENTIFIED: Get closer.

2 RUTH RYALS: I live in the neighborhood. I --

3 UNIDENTIFIED: Ruth, why don't you just --

4 RUTH RYALS: 115 Upland Road, and it's R-y-a-l-s.

5 And I am probably unusual in my age range in that we are
6 probably out for live music a couple nights a week. It's
7 not McCabe's. It is the Lizard Lounge. It is a lot of --
8 you know, it's Passim's, it's a lot of places in Cambridge.

9 We are also out to eat up and down this section.

10 It's a map. And I also served on the advisory committee for
11 Envision Cambridge and on the economic section of the work
12 group, and I want to read to you one of the goals from
13 Envision Cambridge. "Great commercial districts, preserve
14 and enhance the distinctive character of Cambridge
15 commercial districts, especially its major squares and
16 mixed-use corridors." That's exactly what this is here.
17 I'm also president of Porter Square Neighbors Association,
18 but I'm here personally, not as the organization, but just
19 to tell you I do love this section of Mass. Ave. and spend a
20 lot of time using it, working around it.

21 And I strongly disagree that a game of foosball is
22 entertainment. Entertainment is what happens at Lizard

1 Lounge or in Passim's or Sinclair. That's live music.
2 They're in no way a dance hall or even a bar. They're a
3 place to come like a pub and get food and talk to your
4 neighbors and play -- I don't know what's the difference
5 with having a dart board or foosball. I don't think any of
6 that matters. I find the TVs which you can find in almost
7 any of these restaurants up and down the avenue to be much
8 more abrasive when you're trying to dine than somebody over
9 in the corner playing a game. So I think it's a misreading.
10 I'm not a lawyer. I've spent my life working with lawyers
11 and actuaries and reading the code. Tax partner at one
12 point. It's a mistake to say they fall under G.

13 BRENDAN SULLIVAN: Thank you.

14 RUTH RYALS: Thank you very much.

15 BRENDAN SULLIVAN: Anybody else who would like --

16 RUTH RYALS: It's also a mistake to not send these
17 two people in the room off in another room and come to an
18 agreement that lets us have a nice place to go eat and drink
19 and have a little fun and not bother anybody. Thank you
20 very much.

21 BRENDAN SULLIVAN: Thank you. Anybody else like
22 to speak? Yes?

1 HEATHER HOFFMAN: Hi. Heather Hoffman, 213 Hurley
2 Street. And I'm here as a lawyer who thought that I could
3 read words in an ordinance, and I am baffled that this is
4 licensed under Section F. And where did Section G come
5 from? And how does it suddenly become Section G if you add
6 one more of something that's already there? I am
7 tremendously confused, and this makes no sense to me. So I
8 hope that this Board will come to a decision that actually
9 does make sense because, as you know, there -- the city of
10 Cambridge wants to have eating and drinking establishments
11 all over the place, and so this is not just a decision that
12 applies to one establishment. It will apply all over the
13 city in people figuring out what they can and can't do in
14 all of these establishments. So I hope that your decision
15 will make it clear and will make sense and will make the
16 ordinance make sense. Thank you.

17 BRENDAN SULLIVAN: Thank you. Anybody else who
18 wishes to speak on the matter? All right, we'll close this
19 public comment. Ms. Courtney?

20 KIM COURTNEY: Ranjit --

21 BRENDAN SULLIVAN: Kim, let me just throw this out
22 and you can say yay or nay.

1 KIM COURTNEY: Sure.

2 BRENDAN SULLIVAN: Because you just received
3 Ranjit's letter today. We just received your comments
4 today, your legal analysis. Would it be of any value -- I'm
5 not taking -- just getting your comments here -- for us to
6 step back tonight, let the Board digest both correspondence
7 to us, and then reassemble on another night --

8 KIM COURTNEY: After the hearing is finished, if
9 you decide to continue the matter, that would be your
10 choice. I would prefer to have a decision.

11 BRENDAN SULLIVAN: Tonight? Okay.

12 KIM COURTNEY: Yes, but I would like to continue
13 with the hearing --

14 BRENDAN SULLIVAN: Yeah, yeah, no, that's fine,
15 that's fine. Okay, all right. I just -- throw that out as
16 an option, that's all.

17 KIM COURTNEY: Okay. Commissioner, you stated
18 that usually the zoning is approved first through Viewpoint
19 before a hearing is scheduled on a License Commission
20 application. Correct?

21 RANJIT SINGAYAGAM: Yes.

22 KIM COURTNEY: And did you not receive any request

1 from the Viewpoint system prior to the hearing to approve
2 this matter?

3 RANJIT SINGAYAGAM: As soon as I got the the
4 Viewpoint system requesting review of the denial of this
5 use, I took it up right away. I don't know how the
6 Licensing Commission had a hearing prior to that.

7 KIM COURTNEY: So you think it was the same day --
8 your response was the same day that you received the notice
9 through the Viewpoint system?

10 RANJIT SINGAYAGAM: I think yes.

11 KIM COURTNEY: And you stated that in conjunction
12 with CDD you made a determination of a (sic) unwritten
13 policy regarding accessory uses, correct?

14 RANJIT SINGAYAGAM: Yes.

15 KIM COURTNEY: And so you confirm that that's not
16 in writing anywhere in the zoning ordinance or anywhere
17 else, correct?

18 RANJIT SINGAYAGAM: Yes.

19 KIM COURTNEY: And the individual's name was
20 Lester Barber?

21 RANJIT SINGAYAGAM: Yes.

22 BRENDAN SULLIVAN: Okay, I'm going to let you ask

1 -- come to the Chair if you would.

2 KIM COURTNEY: I'm sorry.

3 BRENDAN SULLIVAN: Yeah.

4 KIM COURTNEY: Okay. It may be difficult if I
5 can't interview the --

6 BRENDAN SULLIVAN: Well, I know, but, you know,
7 again, this is a -- zoning board is not court of law.

8 KIM COURTNEY: Right, it's an informal hearing,
9 and I have to ask -- I can ask you and you can say it again.
10 Is that what you would like to do?

11 BRENDAN SULLIVAN: If you would raise the points.
12 Raise the points that you wish to be --

13 KIM COURTNEY: Are you cutting me off from
14 questioning the commissioner?

15 BRENDAN SULLIVAN: I'm just stating --

16 KIM COURTNEY: That's what it sounds like.
17 Because I have --

18 BRENDAN SULLIVAN: I --

19 KIM COURTNEY: -- a number of points and you asked
20 him a number of questions, and I have a number of questions
21 --

22 BRENDAN SULLIVAN: On direct, yes.

1 KIM COURTNEY: -- about his responses --

2 BRENDAN SULLIVAN: Yes.

3 KIM COURTNEY: -- that are relevant.

4 BRENDAN SULLIVAN: The answer is yes.

5 KIM COURTNEY: Yes what?

6 BRENDAN SULLIVAN: I am asking you to direct your
7 comments to me.

8 KIM COURTNEY: My comments or my questions for the
9 commissioner?

10 BRENDAN SULLIVAN: You direct them to me, Kim.

11 KIM COURTNEY: I have questions for the
12 commissioner. May I ask them?

13 BRENDAN SULLIVAN: Direct them to me. We're not
14 going to keep around, around, and around in circles here.
15 So if you ask --

16 KIM COURTNEY: You want me to ask my questions to
17 you -- I don't have a point. I have questions.

18 BRENDAN SULLIVAN: Then ask me --

19 KIM COURTNEY: I will have points after he answers
20 my questions.

21 BRENDAN SULLIVAN: Ask me the questions.

22 KIM COURTNEY: So the commissioner stated that

1 this unwritten policy that accessory uses -- he actually
2 didn't really articulate what that policy is, but he
3 mentioned something about policy regarding accessory uses.
4 I would like to know more about that policy, I would like to
5 know why it's not written, and I would like to know if it's
6 -- if it has existed for 35 years, why are there all these
7 establishments, every single one of them has entertainment.
8 How is that possible? Is he seriously claiming that all of
9 these businesses now can only operate with entertainment two
10 days a week? Entertainment is music below conversation
11 level, televisions. Those are granted as of right right now
12 by the License Commission. It's not just amusement devices
13 or darts. Entertainment is also live music. And I
14 understand that that may fall under -- may or may not fall
15 under a different category, but that's not what we're asking
16 for. So according to this letter, my reading is that all of
17 these businesses are going to have to stop playing
18 background music in their establishments. I'm really
19 confused. I don't understand.

20 And I also don't understand why I'm not allowed to
21 ask the commissioner questions. I'm an here. I'm
22 representing my client. There is a witness here to testify

1 on behalf of Inspectional Services. You asked him
2 questions, and you are blocking me from asking questions. I
3 would like an explanation for that.

4 BRENDAN SULLIVAN: I will run the meeting the way
5 I feel and that this is not a court of law. This is not --
6 he's not under deposition. And I'm going to ask that your
7 questions that you have, if they -- potentially you're
8 asking questions that really need to be in writing. A
9 formal request --

10 KIM COURTNEY: I made numerous requests for him to
11 explain himself.

12 BRENDAN SULLIVAN: And I asked you to produce that
13 and you have not.

14 KIM COURTNEY: I said I would produce it. You
15 just asked today.

16 BRENDAN SULLIVAN: But you have not.

17 KIM COURTNEY: You just asked for it today at this
18 hearing.

19 BRENDAN SULLIVAN: Well, I would have thought that
20 that would have been in your submissions because you're
21 asking -- in your application you weren't even exactly sure
22 what section you were asking relief under to appeal this

1 decision, and I would have thought that you would have sent
2 a formal request --

3 KIM COURTNEY: I told you I'd be happy to provide
4 you --

5 BRENDAN SULLIVAN: And, again, now we're just
6 point/counterpoint debating the issue.

7 KIM COURTNEY: -- documentation --

8 BRENDAN SULLIVAN: All right, if you could finish
9 up --

10 KIM COURTNEY: I'm very confused with your
11 approach. So, let's see, I have a number of questions here.
12 So it appears to me that the commissioner is trying to
13 change the zoning of my client. He's discussing Section G.
14 My client's operation does not operate under Section G. We
15 have received no notification from the Zoning Department
16 that the use is being changed for my client. So they do not
17 operate under Section G. There is nothing in this code that
18 says anything about two days a week, not full time. This is
19 something that is just coming from him verbally. I would
20 need documentation. You know, he can't make a verbal
21 decision to change someone's zoning on a case-by-case basis.

22 There's a reason why we have a written zoning

1 code. We have the Cambridge zoning ordinance in writing for
2 a reason so that Cambridge businesses know what's expected
3 of them. And from what I've heard today, unfortunately I'm
4 not allowed to ask my questions. And I understand why
5 because it does not appear that the commissioner has an
6 understanding of this zoning code from what I've heard
7 today. So that's not fair --

8 JIM MONTEVERDE: Would you please ask a question?

9 KIM COURTNEY: He told me to make my points.

10 JIM MONTEVERDE: No, no, will you please ask a
11 question? Is there a question in your --

12 KIM COURTNEY: He won't let me ask my questions.

13 JIM MONTEVERDE: You're free to deliver a
14 question.

15 KIM COURTNEY: I was told not to ask my questions
16 and to make my comments and to make my points.

17 BRENDAN SULLIVAN: To the commissioner I said.
18 Ask your questions to the Chair, to the Board.

19 KIM COURTNEY: So I'm not allowed to make points
20 now?

21 BRENDAN SULLIVAN: Those are making points.

22 KIM COURTNEY: Okay. Can you please ask the

1 commissioner for me why background music is not
2 entertainment?

3 BRENDAN SULLIVAN: I think I will ask -- I will
4 answer for him and you can correct me. It is because it has
5 been the policy of the department. Also with -- in
6 consulting with licensing to deem it as such. Is that
7 correct?

8 RANJIT SINGAYAGAM: Yes.

9 KIM COURTNEY: I'm sorry, okay. Again, now I'm
10 confused by your testifying. So there's a policy that
11 background music is not entertainment. So then why do
12 businesses pay a fee to have background music and have to
13 get a license for entertainment?

14 BRENDAN SULLIVAN: Because that's the policy of
15 the licensing.

16 KIM COURTNEY: Okay, you understand that that
17 doesn't make sense, correct?

18 BRENDAN SULLIVAN: It may not.

19 KIM COURTNEY: Okay. The bottom line here is we
20 have a Cambridge zoning ordinance. You have to follow the
21 language of the ordinance. The commissioner isn't allowed
22 to just make things up as he goes along. He's not allowed

1 to make up his own zoning ordinance subsections or
2 definitions without the city council. And that -- it
3 appears that that's what he's trying to do.

4 BRENDAN SULLIVAN: All right. Let me close the
5 testimony part of the hearing. Any questions from members
6 of the Board? Laura?

7 LAURA WERNICK: It does -- along Mass. Avenue,
8 there's a lot of different types of entertainment along
9 Mass. Avenue. It does seem a subjective decision and not
10 appropriate way to make policy or to promote policy. The
11 unclarity about entertainment I think is something that
12 really needs to be addressed more carefully and clarity
13 around if it is -- the license is that -- under F, under --
14 as a restaurant, are there different -- than to the
15 entertainment aspects. It just seems so fuzzy what
16 entertainment is and where it can be allowed and that the
17 language of the ordinance really requires greater clarity
18 than it currently has. It seems that it does make it unfair
19 for businesses trying to pursue economic benefits if they
20 can't understand the ordinance.

21 JANET GREEN: And I --

22 BRENDAN SULLIVAN: Again, maybe just, again, my

1 own personal is that the ordinance says that it is not
2 allowed, but it's like anything else in the zoning
3 ordinance, you know, setbacks, three and a half feet. Even
4 my house is three and a half feet at one point.

5 KIM COURTNEY: I'm sorry, can you speak into the
6 microphone?

7 BRENDAN SULLIVAN: My house is three and a half
8 feet at one point. It's not allowed in the zone. Doesn't
9 mean that you can't apply then for relief. So anyhow, it's
10 not that --

11 KIM COURTNEY: I'm sorry, but --

12 LAURA WERNICK It's the entertainment --

13 KIM COURTNEY: -- may I interject?

14 BRENDAN SULLIVAN: Sorry, no.

15 KIM COURTNEY: I'm not here for a variance
16 application. This is as of right, he's entitled to have
17 this entertainment by the zoning code. This is not a
18 variance application.

19 JANET GREEN: I guess I'm feeling like there are a
20 lot of material that has come up tonight from a variety of
21 sources that we didn't have a chance to examine prior to
22 this meeting and that is being tossed back and forth. And

1 it seems to me that it would be better to have it -- all
2 those materials to look at before we come to a decision in
3 this case.

4 BRENDAN SULLIVAN: Slater?

5 SLATER ANDERSON: I tend to agree with the Chair.
6 I think there is more that I'd like to review out of respect
7 for the commissioner as well as the applicant and their
8 rights in this situation. And there's past files of Ms.
9 Roberty (phonetic) that I'd like to get a sense of, you
10 know, how the property's been interpreted from a use
11 standpoint historically under the zoning code. And there's
12 just -- you know, there's a lot of issues that have been
13 raised tonight. I'm not prepared to make a decision tonight
14 on this.

15 BRENDAN SULLIVAN: Jim?

16 JIM MONTEVERDE: No, I would agree, yes.

17 KIM COURTNEY: So may I in closing then --

18 BRENDAN SULLIVAN: I'm sorry?

19 KIM COURTNEY: -- in closing just make a final
20 closing -- just one sentence?

21 BRENDAN SULLIVAN: One sentence if you want.

22 KIM COURTNEY: Okay, thank you. So it's my

1 position that the commissioner's decision was arbitrary and
2 capricious, not based on substantial evidence, fails to
3 state the grounds for his determinations, I still believe
4 that even after this discussion, and is not supported by the
5 law and should be overturned.

6 BRENDAN SULLIVAN: Considering comments by the
7 members of the Board, considering the submission of
8 documents this evening, and the uncomfortableness of the
9 Board if that's -- any better word than that -- to render a
10 proper and informed decision, I would make a request that we
11 continue this matter to allow both parties, representative
12 of McCabe's counsel, and also the city to augment any
13 additional information, legal analysis, and basis for their
14 decisions to the Board for our review so that we may arrive
15 at a (sic) informed decision. Anything else I should add to
16 that?

17 JIM MONTEVERDE: No.

18 BRENDAN SULLIVAN: Okay, on that motion to
19 continue, all in favor? Now the question is timeframe.
20 Shall we do it --

21 KIM COURTNEY: The next possible meeting. My
22 client has purchased the equipment, and it's sitting there

1 with signs on it saying it can't be used.

2 SISIA DAGLIAN: Brendan, can I just -- I think
3 there are a few --

4 BRENDAN SULLIVAN: Well, we have to assemble the
5 same five people.

6 SISIA DAGLIAN: Yeah. Janet, are you away June 13
7 or --

8 JANET GREEN: I'm --

9 SISIA DAGLIAN: -- June 27? Laura, you're not
10 here and, Janet, you're away.

11 JANET GREEN: On June 13?

12 SISIA DAGLIAN: Correct, and June 27. June 27 is
13 a continued case with your name on it, but I'm not sure if
14 you're here that day.

15 KIM COURTNEY: Sorry, I'm not available June 13.

16 SLATER ANDERSON: Neither am I.

17 JANET GREEN: June 27 is what we're looking at
18 now.

19 SISIA DAGLIAN: And, Janet, you're not here.
20 Okay, and then so July 11, Janet, you're not here. And July
21 25, Jim, you're not here.

22 BRENDAN SULLIVAN: Two weeks from now we have a

1 full --

2 SISIA DAGLIAN: Janet and Laura are not here.

3 BRENDAN SULLIVAN: Are not here. Okay.

4 SISIA DAGLIAN: So August 15 I think is the next
5 date where this --

6 BRENDAN SULLIVAN: And I am not here on the
7 fifteenth.

8 SISIA DAGLIAN: I'm sorry, you're not here.

9 KIM COURTNEY: I'm sorry, I'm a little bit
10 confused. So you're saying that you -- it's your
11 understanding that you need all of the five same members
12 present?

13 BRENDAN SULLIVAN: We need to reassemble this
14 Board that heard this. You can go forward with four members
15 if you wish and not five. Going forward with four is you
16 would need four unanimous votes to support your position.
17 If you have a five-person Board, one member could dissent
18 from your position and you would still seek -- you would
19 still claim relief. You need four --

20 KIM COURTNEY: -- having a second actual hearing
21 or is this going to be merely a vote?

22 BRENDAN SULLIVAN: It would be a -- it's not a de

1 novo, no. It would be a hearing because we would then
2 dissect all the information, any information, any new
3 submittals that we would receive.

4 KIM COURTNEY: So it's May 30. In my opinion,
5 it's unreasonable for my client to have to wait till August
6 15 to have another hearing --

7 BRENDAN SULLIVAN: I understand that, Kim, but,
8 you know, we have to assemble the same five people. Or four
9 out of five people.

10 KIM COURTNEY: And it can't be voted on --

11 BRENDAN SULLIVAN: It cannot. No.

12 KIM COURTNEY: You're sure about that?

13 BRENDAN SULLIVAN: No, that -- so going back to
14 the calendar.

15 SISIA DAGLIAN: August 15 doesn't work.

16 BRENDAN SULLIVAN: I am not here.

17 SISIA DAGLIAN: And so you're not here. So then
18 September 12 is the next --

19 BRENDAN SULLIVAN: September 12?

20 JANET GREEN: I think we've got another on
21 September 12 --

22 KIM COURTNEY: I'm sorry, I think this matter is

1 simple enough we should be able to resolve this here and
2 now.

3 BRENDAN SULLIVAN: Laura, September 12?

4 LAURA WERNICK: September 12 is good.

5 BRENDAN SULLIVAN: September 12?

6 SLATER ANDERSON: Good. It's my wedding
7 anniversary, but I will be here.

8 JOHN HAWKINSON: Mr. Chair, would you think about
9 setting a deadline for submissions?

10 BRENDAN SULLIVAN: That's -- yeah, okay, September
11 12?

12 KIM COURTNEY: It's May 30. It's May 30.

13 BRENDAN SULLIVAN: So this matter will be heard on
14 September 12, 2019 at 7:00 p.m. as a case heard. I would
15 request that any new submissions from either the city
16 presenting their position and/or McCabe's representing their
17 position be submitted to the Board and received no later
18 than 5:00 p.m. on the Monday prior to the September 12
19 hearing and also on the condition that petitioner sign a
20 waiver to the statutory requirement for a decision to be
21 read thereof.

22 KIM COURTNEY: I'm not interested in waiving that

1 right. I would like a decision.

2 BRENDAN SULLIVAN: What is the date?

3 SISIA DAGLIAN: I don't have it with me, the date
4 that --

5 JANET GREEM: The next available?

6 SISIA DAGLIAN: Well, we could do it June 13.
7 There would be three of the five members.

8 (Crosstalk)

9 SISIA DAGLIAN: Okay, June 27? It's just Janet --

10 BRENDAN SULLIVAN: So a decision would have to be
11 read by June 27 without a waiver?

12 SISIA DAGLIAN: I'd have to count through from the
13 application date on onwards. So it's July 26.

14 BRENDAN SULLIVAN: You refuse to sign the waiver?

15 KIM COURTNEY: Well, I haven't seen the waiver,
16 but my understanding is you're trying to make me have a
17 hearing on September 12. And I think it's already

18 unreasonable that my client has had to come before you --

19 BRENDAN SULLIVAN: Sisia, could you provide the
20 waiver for counsel?

21 KIM COURTNEY: -- reasonable for the Board to make
22 a decision today. I think we should be able to have a

1 decision sooner than that. I see no reason why the Board
2 can't convene and make a decision --

3 BRENDAN SULLIVAN: So, again, are you refusing to
4 sign the waiver?

5 KIM COURTNEY: I'm not interested in delaying the
6 matter. I'd like to have --

7 BRENDAN SULLIVAN: It's a simple question, Kim.
8 Yes or no, will you sign --

9 KIM COURTNEY: No, I'm not signing the waiver.

10 BRENDAN SULLIVAN: Fine, that's a simple question.
11 Which brings us back to the Board rendering a decision this
12 evening. Shall I make a motion? Shall I make a motion? I
13 make a motion to approve the appeal of the commissioner's
14 decision regarding the applicant McCabe Porter, LLC. The
15 Board affirms the position of counsel for McCabe that the
16 commissioner ruled incorrectly in denying the granting of
17 additional entertainment devices at the said locus which is
18 2046 Massachusetts Avenue. On the motion to grant the
19 appeal, all those in favor? One in favor. The appeal is
20 denied, not receiving the necessary four affirmative votes.
21 The Board finds that the commissioner properly cited the
22 section pertaining to this particular locus and denying the

1 -- and state -- and the correspondence to the Licensing
2 Commission. The appeal is denied.

3 KIM COURTNEY: Thank you for your time.

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