

CAMBRIDGE LICENSE COMMISSION HEARING

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION GENERAL HEARING

LICENSE COMMISSION BOARD MEMBERS:

CHAIR ANDREA JACKSON

POLICE COMMISSIONER ROBERT C. HAAS

FIRE CHIEF GERALD REARDON

STAFF: EXECUTIVE DIRECTOR ELIZABETH LINT

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

DATE: March 18, 2014

TIME: 6:06 p.m.

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eight months from now we will look to you to come back and give us a report.

WITON SHOTITANA: Okay.

CHAIR ANDREA JACKSON: Thank you.

Good luck.

- - -

APPLICATION: UPPERWEST

EXECUTIVE DIRECTOR ELIZABETH LINT:

Application: Coffeeshop, LLC d/b/a Upperwest, Kimberly Courtney, Manager, has applied for a new all alcoholic beverages as a restaurant license at 1001 Mass Ave, basement level.

The proposed hours of operation are 8 a.m. to 1 a.m. Sunday through Wednesday and 8 a.m. to 2 a.m. Thursday through Saturday. The proposed seating capacity is 20.

CHAIR ANDREA JACKSON: Good evening.

KIMBERLY COURTNEY: Hi.

CHAIR ANDREA JACKSON: State your name for the record and spelling your last name.

KIMBERLY COURTNEY: Kimberly Courtney
C-O-U-R-T-N-E-Y.

XAVIER DIETRICH: Xavier Dietrich
D-I-E-T-R-I-C-H.

FIRE CHIEF GERALD REARDON: Your relationship to the applicant.

XAVIER DIETRICH: Co-owner.

CHAIR ANDREA JACKSON: Tell us what your plan is.

KIMBERLY COURTNEY: So the location is 1001 Mass. Ave, which is the old Orson Wells Theater Building, I'm sure you are familiar with.

This space is located on the basement level where Looney Tune Records was not too long

ago. It is a pretty small space. Just over 1,000 square feet.

And we are planning on 20 seats and we're currently under construction on the space.

We have done some due diligence looking for a license to purchase. Haven't found one available, to our knowledge, and from what I see of the history of sales, most likely it would be cost prohibitive for us to purchase.

Our concept is charcuterie cheese and small plates at reasonable prices. And we plan to make everything we can in-house and focus on local products. We have the space designed out with mostly bar seating, which we believe will foster a community, more community interaction.

It is sort've modeled after a European-stype bar when they are open from morning to evening. And you go there in for

breakfast and you interact with your neighbors.

We are trying to foster a community environment.

And we also are planning to have a large number of events. Cooking classes, food, and wine, spirits, beer tastings and a lot of networking and social events. So we are hoping to make this a nice space.

What else?

POLICE COMMISSIONER ROBERT HAAS: The events will be within the time period that you are specifying hours of operation?

KIMBERLY COURTNEY: And the space will be open to the public during those times. So anyone is welcome to attend most of these.

For example, if there's a wine tasting and there's ten people attending the wine tasting, most likely it would be in one section of the bar and that would be sectioned off and

anyone can participate if they want to sign up for that.

I also run a group called Foodbiz Network, which Xavier and I started last year, which has been quite interesting and successful.

We have just over 200 members. And this is focused on local food entrepreneurs, and we provide educational and networking events for them for free.

And it's been a wonderful experience. We have met some fantastic people in the local food community and hoping Upperwest will be a hub -- the restaurant will be a hub for those activities.

I will tell you about a little about our background. Xavier and I both live in Cambridge. We live a few blocks from the space. And so we spend most of our time in the Harvard Square

area.

We both are TIPS and ServeSafe alcohol certified. I also have the food manager ServeSafe certification allergin awareness. And I took it upon myself to do the crowd manager training. Even though we are very small, we are in the basement level and I wanted to go ahead and do that training.

I have been in the restaurant industry for seven years with two of those years as a bar manager at a very large in Washington, D.C., called LuLu's. This bar is now closed. But it was the largest bar in Washington, D.C. with over 800 capacity. So it was very large. It had a dance floor, three bars. It was open for 30 years, so it was a historic place.

POLICE COMMISSIONER ROBERT HAAS: The liquor license was in your name?

KIMBERLY COURTNEY: No. I was an assistant bar manager and I handled -- I was responsible for one of the three bars in that space.

FIRE CHIEF GERALD REARDON: Is that in the Dupont area?

KIMBERLY COURTNEY: Yes, close by. I went to undergrad at George Washington, so I was in D.C. at the time.

So let's see, what else?

So at that time I was obviously handling training new staff with checking ID policies, handling inventories, stocking and deliveries and I oversaw one the three bars at that.

I also happen to be an attorney. I have been a licensed attorneys for 11 years and I left the practice of law in 2009 to pursue my interest in food.

And I attended culinary school previously and I was offered a training position at a restaurant called West with Tom Valente (phonetic), a highly-regarded chef and decided to leave culinary school to train with him. I trained with him for six months, which was an incredible experience. I spent lot of time in Europe.

And this space is really modeled after the time I spent in Spain and Italy and France.

We are going to have Joshua Smith, who is a local maker of charcuterie products. He's, to my knowledge, the first HAPP certified person in Massachusetts making cured meats, so I'm excited to work with him to provide us with lot of our charcuterie. We'll be importing some of it, but for the most part we want to have everything as local as possible.

So I'm aware of the criteria for the license, and we certainly feel there's a need in this location for a new license. This building has been empty, for the most part, for a very long time. Our space has been empty for three years. And much of the building has been vacant.

It is now just being rejuvenated. And all the new businesses in the building are excited to see all the spaces filled up.

We live in the neighborhood and we are excited to see that happening. We also think, from what we hear from the businesses near us, they sound very positive about the idea of having this block be more of a designation space.

We would now have three restaurants on that block and also Simon's Coffee. This allows residents to come to a location where they have more than one option, which is a very positive

thing for a business.

The Indian restaurant above us, Harvest of India, they are excited about us and they continuously ask about our progress and our construction. They have been very kind and they are looking forward to us opening because they feel we'll help their business, which I think is very true.

In terms of the harm, potential harm, to the neighborhood, I don't see any potential for that. We are very small. The music, if we play any music, or a television, it would be below conversation level. You should not be able to hear that from the sidewalk or any abutters.

In terms of overwhelming support, we have been really amazed with the support we have with the community. Everybody has been incredibly positive.

We have 22 letters from Cambridge residents in support of us and 532 signatures on a petition, as well as numerous local businesses that we have spoken to that have been very positive us.

We have the support of the Harvard Square Business Association. And also I have spoken with Robin Lapitus (phonetic) at the Central Square Business Association since we are on the cusp in between and she was very excited about our concept.

So we definitely have a lot of great support and have a lot of incredible comments asking for certain events and certain types of products. So it is has been incredible.

We have discussed our alcohol policies, and we, in terms of underage drinking, know the two primary concerns are underage drinking and

overserving.

In terms of underage drinking we'll make sure of our staff is 21 Proof and TIPS trained. We'll have our own internal policies. We will go over with them and train them internally. We'll instruct them to card them who looks 40 years old or younger.

We have decided not to accept the general Massachusetts ID cards and require the liquor ID instead of that because those are a little bit easier to obtain. And, oh, yes, of course we'll have the ID checking manual always present and in terms of overserving. We are very strict on our measuring policies. Every alcohol will be measured including wine, beer and spirits. And also it is a good business decision in terms of consistency. We'll have the check in front of each patron so the bartender can easily count how

many drinks the people have had.

If they do shots, we limit that to one per hour.

I don't know if you have my updated resume. I have an extra copy if you don't have that.

CHAIR ANDREA JACKSON: I do.

So let me ask, in reviewing the file, I notice that your lease states it is a wine bar.

Why do you feel like you need an all alcohol license?

KIMBERLY COURTNEY: Well, spirits are a very important combination with food. And we do have a lot of people who request spirits in addition to beer and wine.

We have a lot of events planned and we do not want to exclude the possibility, the business options, of having events that might, for

example, have a whiskey tasting or just a general event that might be a party for someone and they might want to have liquor there.

Wine is quiet limiting and considering, also, our surrounding competitors, they all have a full liquor license. So it would be very important for us to have all alcohol.

CHAIR ANDREA JACKSON: India Harvest Restaurant, do they have full alcohol?

EXECUTIVE DIRECTOR ELIZABETH LINT: I don't believe so.

FIRE CHIEF GERALD REARDON: So you are going to build the kitchen area and you are going to cook in there and --

KIMBERLY COURTNEY: Yes.

So the kitchen that we're building is actually very simple. It is about the most simple you can build.

We are not doing any gas cooking. We are actually doing very little prepared foods since the focus is really on charcuterie and cheese. For the most part, most will be prepared and just needs to be plated. So we will have an electric convection oven. I have run everything by Fire and Health and I think that our kitchen will function well, but it will be simple. We don't have a ventilation system. We are doing very minimal.

We do actually have fire suppression. We have sprinklers already in the property. We are adding smoke detectors in.

FIRE CHIEF GERALD REARDON: So pretty much this is going to be a retrofitted area?

KIMBERLY COURTNEY: Yes.

CHAIR ANDREA JACKSON: And you are looking for a 2 a.m. license for Thursday through

Saturday?

KIMBERLY COURTNEY: That's correct.

CHAIR ANDREA JACKSON: We don't have 2
a.m. licenses, do we?

EXECUTIVE DIRECTOR ELIZABETH LINT: Not
in that area.

KIMBERLY COURTNEY: Three businesses
closest to us, The Cellar, the Plow and Stars and
The People's Republic, I believe, all of those
have 2 a.m. licenses on weekends.

EXECUTIVE DIRECTOR ELIZABETH LINT: The
Cellar is 11 a.m. on weekends.

CHAIR ANDREA JACKSON: 11 p.m.?

EXECUTIVE DIRECTOR ELIZABETH LINT: 11
p.m.

CHAIR ANDREA JACKSON: I had to stop and
think. The Cellar is also -- they have a for
value license?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes, they do.

And there are several licenses for sale as well.

POLICE COMMISSIONER ROBERT HAAS: So when you said you made an earnest attempt to purchase a license, is it more because you can't afford it, because of your business plan, you can't find buy one or --

KIMBERLY COURTNEY: At the time I didn't find any available. I believe it goes by zones, right, we are in the area 2.

EXECUTIVE DIRECTOR ELIZABETH LINT: You can move them.

KIMBERLY COURTNEY: Oh. But the ones I have seen -- I believe there's one in Central Square for \$800,000. There's another one I saw over \$300,000. Those numbers are just

unattainable for us. So it would be prohibitively expensive for us.

My understanding is this type of no value license was created for our type of business, a small business run by the individuals. We don't have big investors behind us. This is our endeavor we're doing on our own and passionate about and we think having a full alcohol license is critical to our concept.

CHAIR ANDREA JACKSON: I think for me, my concern, and I can only speak for myself, my concern would be putting a no value license next to someone who has probably paid a lot of money for their license and essentially devaluing their license.

KIMBERLY COURTNEY: The Harvest of India was issued a no value license in 2011. I'm not sure what happened to that license. I don't know

if they still have it. I know they were --

FIRE CHIEF GERALD REARDON: Are they beer and wine?

KIMBERLY COURTNEY: I believe they were beer and wine.

FIRE CHIEF GERALD REARDON: There's a difference between all alcohol and beer and wine.

CHAIR ANDREA JACKSON: Right.

POLICE COMMISSIONER ROBERT HAAS: Have you operated your own business before?

KIMBERLY COURTNEY: Yes. Not in the restaurant business, but yes, I have.

POLICE COMMISSIONER ROBERT HAAS: But not in the restaurant business?

KIMBERLY COURTNEY: Yes. I have worked in many restaurants both the front and back of the house.

CHAIR ANDREA JACKSON: So you haven't an

owned one before?

KIMBERLY COURTNEY: Not a restaurant.

POLICE COMMISSIONER ROBERT HAAS: Have you had held an alcohol license in your name before?

KIMBERLY COURTNEY: No.

FIRE CHIEF GERALD REARDON: So you believe the business model would not survive without a full alcohol license?

KIMBERLY COURTNEY: I believe so. We are focused on business networking, and social events and I think it would limit them to the point -- it would just be incredibly limiting for that.

Right now we are holding most of our events at Grafton Street. It's been very welcoming and positive and wonderful but they do have a full license.

CHAIR ANDREA JACKSON: How does that work

in terms of your lease that even notes that it is a cafe wine bar?

KIMBERLY COURTNEY: I believe our lease is very broad. It says more than that, does it not?

CHAIR ANDREA JACKSON: The section that I'm looking at says "The premises will be used for a cafe wine bar and/or co-working a business development service."

KIMBERLY COURTNEY: Right.

So we are focused on the co-working of the business development as well. It's a really big focus. So, correct.

I mean, our owner is aware we are seeking a full alcohol license. I would be happy to get a letter from him if you are concerned about that aspect.

CHAIR ANDREA JACKSON: Anything else?

POLICE COMMISSIONER ROBERT HAAS: I'm just -- your LLC is Coffeeshop.

KIMBERLY COURTNEY: Coffeeshop, LLC. We were originally calling it Coffeeshop.

POLICE COMMISSIONER ROBERT HAAS: And serve alcohol?

KIMBERLY COURTNEY: Yes.

It is a Coffeeshop that is a European-style coffee bar by day and wine bar, food establishment by night. That was the -- that's the concept. We decided to go with Upperwest.

CHAIR ANDREA JACKSON: Do we have any members the public that wish to be heard on this matter?

KIMBERLY COURTNEY: We have a number of people here.

CHAIR ANDREA JACKSON: So we can go ahead

and -- we are going to take other testimony and then we'll have follow-up questions for you.

Do you want to come forward first.

State your name for the record and spell it, please.

SIDNEY DEPAULO: Hi my name is Sidney Depaulo, D-E-P-A-U-L-O. Currently I'm a realtor here in Cambridge on Mass. Ave. Also former assessor in the City of Somerville. And I'm also a taxpayer here.

As a former assessor, I have seen what bars will do to property values. It is a death mill. It is never a good thing to the surrounding neighborhood and property owners.

As a realtor, I have also seen the negative impact on values of properties in the area.

But most importantly, as a parent, I live

in Davis Square for many years and I have seen what is happening there.

I still see what is happening there. There are bars opening up everywhere and you hear stories of people rolling out of bars being loud causing trouble. I don't want to raise my daughter in this neighborhood with that happening here. As a concerned taxpayer, resident, I oppose this.

CHAIR ANDREA JACKSON: Thank you.

Denise, did you wanted to speak?

DENISE JILLSON: Eventually. Thank you.

CHAIR ANDREA JACKSON: I'm going to ask if you guys could move back here there for right now so I can everybody come over.

Please have a seat. State your name for the record spelling your last name and if you could please speak up.

ATTY. LISA BELANGER: My names is
Attorney Lisa Siegel Belanger. S-I-E-G-E-L
B-E-L-A-N-G-E-R.

I've been retained as counsel for a few
abutters, residential and businesses, I have been
asked to represent their objections to having
this license be granted.

I would like to be able to -- I made
copies to submit, some memorandum, as to the
concerns.

The top copy I got last minute,
unfortunately, it is one copy of that.

KIMBERLY COURTNEY: Can you state who you
represent?

ATTY. LISA BELANGER: My clients do not
wish to have their identities disclosed at this
time.

There are substantial concerns my clients

have.

I guess the first one that I would like to raise, I understand -- I tried to obtain the lease prior but it wasn't available.

And from what I heard now it says that the lease says that it is wine bar. I guess the first thing I would like to bring out is, on the application for this particular license there's nothing stating that they are looking to become a wine bar. It is based on being a restaurant serving, lunch, breakfast and dinner. And nowhere in that application does it reference that.

The other representations that I'm concerned about is that Ms. Courtney had represented about having functions there and she stated today that the restaurant would be staying open, however, I've provided you with a copy of

her website pertaining to her -- it says private functions, where she says that it will be closing. That the -- that it can be -- that it can be reserved and the entire restaurant will be closed.

The other issue is, this is in capped zone area. Specifically in cap 2. So basically the standard of whether this license is granted is not per se would do no harm, but the standard is whether, according to regulations from the Commission, is that whether this particular business would fulfill an extraordinary need, public need.

Based on it being in a capped zone, it is my understanding from the regulations is that the business has to be operating for six months before the business can apply for the alcohol license. And from seeing the premises, there's a

lot of concerns in terms of the safety and condition of the premises.

And I guess the biggest concern from the photographs is that there's a chair lift that's right at the bottom at the basement stairs. And definitely this is an issue as far as with the Architectural Access Board and accessibility.

From my understanding in consulting with experts in the Building Inspection Services is that the chair itself cannot be used -- be repaired.

As you can see, there's a posting that says it is an unsafe hazard. So handicap accessibility would have to be updated to the code now.

I'm not sure whose responsibility that falls under but it definitely presents a hindrance in having a restaurant be established.

I think there's a big concern what was represented to the Building Inspection Services. The permit, the building permits shows that the contractor said there was no change of use.

However, as already discussed tonight, it is a change of use because it was incorrectly selected as a retail. However, in the architectural plans submitted with the application shows that person who did the designs correctly noted that it is actually in assembly A2, which is a completely different set of standards, more rigorous, and a lot of issues pertaining to the safety for the public.

So that greatly effects whether -- the viability of being able to obtain proper, you know, certificate of inspection.

As noted on the application, the occupancy is stated to be 20. On the sheet from

the Board of State Examiners of Plumbers and Gas Fitters, that was the single sheet, I'm sorry, it shows when there's an occupancy that is less than 19 that the unisex bathroom is inapplicable and separate bathrooms would be required in addition to the employee bathroom.

There's definitely a lot of concerns. As to, from my understanding, from the rules and regulations, in order for the applicant to be given the license, the premises have to be in certifiable working, safe conditions which these premises are not.

The building permit that is posted and I obtained and provided a copy, that is just a -- for demolition.

They haven't been given the ability to move on and build what they planned.

Also, because of the discrepancy in the

change in use, there's a huge concern in terms, especially with the change of use, as to the ventilation that's required for the kitchen, fire sprinklers, fire suppression that needs to be on there. All that is lacking.

And I provided -- in the memorandum I provided, the specific codes from the IEBC for reference to the specific requirements.

Also the issue becomes as to -- I guess there was a question as to really what is the Board being asked to have a license for.

As I said, on the application presented to this Commission, it was a restaurant. However, in other avenues, it is being represented as a wine bar.

(Holding up large diagram) What I have done, here is the floor plan that was provided with this application.

And based on what is the Commission is being asked, it was being asked to run a restaurant. And you will notice there are only two tables, though, that would be serving meals. Overwhelmingly there's an oversized bar, and essentially, I guess, that is exactly what it -- it appears, from what I have researched, and what I've seen, that in reality, instead of being a restaurant, what you are asking to be approving is really a bar.

My understanding it is European. But it is also classic with the Ninety-Nine and a lot of the American bars.

As she stated on her website, she is talking about having wine classes, cheese classes and, in fact, she has advertised she's, in fact, opening up April 5.

POLICE COMMISSIONER ROBERT HAAS: I

didn't get that last part.

ATTY. LISA BELANGER: She is opening April 5 on that same website.

This is the description that she uses on the website. "Upperwest is a small casual wine bar specializing in charcuterie, cheese, and small plates. In support of the local food businesses, we'll feature rotating products from small local food businesses."

So I suggest that the application that has been asked to be reviewed is not what it is. The fact is that my clients are in the special capped zone. And the very reason for the capped zone, as stated in the rules and regulations, is to protect the public and to protect the established business owners there.

It is my understanding in that capped area there's at least eight food and drink

establishments.

The Plow and Stars, which I believe was established in 1969.

The Dolphin, which I believe was established in the '70s.

The Cellar is in the early 1980s.

And then you have India Castle and The People's Republic, who -- approximately ten years, but their predecessors had the liquor licenses, from my understanding, dating back at least 50 years.

I believe you have Veritas, Zoe's and Sushi Cafe, which have been in existence for several years.

These businesses would definitely be effected should another food and drink establishment be allowed.

I think it is also important to point out

that the Commission has set forth there's already a presumption in these zones that no new licenses will be given. However, you have the rare exceptions. But, again, the Commission had stated that the reason they -- the Commission stated in 1986 that they had already determined that there was a detriment to the residents in terms of parking and noise and so forth, as well as the existing businesses in hard economic times, and I suggest that that still applies today.

It is my understanding as well that the Parking and Traffic would need to sign off for the parking before the application could be approved.

My understanding is that hasn't happened.

That Zoning would have to authorize and approve the off-parking situation.

So there are really a number of issues that were asked to be here and a lot of the issues haven't been addressed before a pretty substantial thing like giving a full alcohol license can be grand or considered.

CHAIR ANDREA JACKSON: Thank you.

Anyone else here that would be liked to be heard on this matter?

Please come forward.

MARTIN GREENUP: Hello. My name is Martin Greenup, G-R, double E, N-U-P. Green with U-P on the end. I'm a member of the Harvard English Department and I've lived in Harvard Square for eight years.

And I would like to basically say a few words in support of the application. I feel that the business that's being proposed is -- will be catering to a kind of niche in the market.

I eat out a lot, and of the businesses just mentioned, I know the owners of some of those businesses, because I eat there, I drink there. And I go The Cellar, The Dolphin, the Plow and Stars and I go to Zoe's. I live in the neighborhood.

I don't feel those neighbors would suffer by this business opening. Just the size of it and the fact that it is catering to what I feel is a niche market.

At Harvard we have a lot of meetings of academics and other people and typically we'll go to a bar after a meeting maybe at 8 p.m. for a drink a bite to eat.

Some of us are genuinely excited about this business that's being proposed.

I would like to say a few words in response to the first objector. I feel that

the -- to say the property prices would be devalued by opening this business in this area, that seems to be me rather baseless.

I think property prices are high and a good business would not depress those prices. There aren't really that many children living in this immediate area.

I live in a building of over 70 apartments that has one baby and no children. And all the people I have known in this area when they have children, they move out because they can't afford to get a bigger place in the Harvard Square area.

I feel there should be no concerns here that it would somehow effect the youth of Cambridge by opening another bar.

I feel for me personally it would be a really welcomed addition.

CHAIR ANDREA JACKSON: Thank you.

The gentleman in the blue sweater.

MARK FINLAYSON: My name is Mark Finlayson, F-I-N-L-A-Y-S-O-N. I'm a resident at 1010 Mass. Ave, which is directly across the street from the proposed site.

I have been a resident in Cambridge for 13 years now. I'm an avid goer of eater of food and drinker of wine and spirits in the Harvard Square area.

As the previous speaker, I know I go to many of the other establishments around including Grafton, The Cellar, Plow and Stars, so forth. I know many of the owners. And I have to agree with the previous speaker as well that I think the other businesses in the area will only be lifted by the starting of this business not depressed.

I think the Upperwest as a business is treating, as he said, a niche, as a need. I've lived across the street from this building 13 years and I always kind've wondered why the block has been abandoned and depressed, and now I learn about this 1986 capped zone, which seems to me such an almost, I don't want to say, ridiculous thing, because maybe you guys were the ones that put it in place.

But it's something that almost flies in the face of reason. I have been desperate for something like this to come in the neighborhood for so long, and it is finally coming in, and to find out there's this longstanding, almost ancient, rule against it. So I speak in support of the application.

I've known Kim and Xavier since they moved to Cambridge. I think they are fine,

upstanding people. I think they will be an asset to the community and neighborhood.

What else do I want to say?

Yeah, I think the building needs a lift. A wine bar fills a need in that area. There's no place to go in the area where you can get good wine and like a good cocktail. Grafton Street sort of.

Can't get a cocktail at Zoe's.

Cafe Sushi is a sushi bar, and that's not their main thing. You can get saki there but not good wine.

The Cellar is a little bit of a dive bar. They have real good food but the drinks aren't that good.

The same with Plow and Stars, and The People's Republic. I feel there's a real need for very good wine list that's reasonably priced

and a small low-impact thing. I think it will be quiet. I can't image there's any sort of noise impact on the neighborhood.

So I would voice my support for the application.

CHAIR ANDREA JACKSON: Thank you.

Is there anyone else here that wishes to be heard?

STEPHEN KAPSALIS: I want to speak.

Good evening, ladies and gentlemen.

CHAIR ANDREA JACKSON: Could you speak up.

STEPHEN KAPSALIS: My name is Stephen Kapsalis.

CHAIR ANDREA JACKSON: Can you spell your last name for the record.

STEPHEN KAPSALIS: Stephen
K-A-P-S-A-L-I-S.

I own 991 Mass. Ave. I've lived there since 1980. I own The Cellar. I own The Cellar Wine and Spirits and we are definitely not a dive bar, sir.

CHAIR ANDREA JACKSON: If you can please address me.

STEPHEN KAPSALIS: Well, I want to make sure they hear me in the back.

We were listed as one of the most under-rated restaurants of Cambridge and Boston.

We have a renowned chef that works there. Previous to that, we had another renowned chef that worked there. We are not upper class. But we serve the public, and like the old Ivory soap commercial said, We -- 99 and nine-tenths percent of our customers come from the neighborhood and the surrounding little areas, and they walk there. We are not having events other than if

there's somebody that comes in that wants to have a little birthday party that lives in the neighborhood. And that is what we specialize in. To be good to our neighbors.

We are not a bar per se. We have a full kitchen. And I just saw the lady back there, I don't know who she is, I saw that -- a low-key kitchen? Excuse me. A kitchen is a kitchen. It has a stove. It has prep areas. It has refrigeration area.

This is disguised as a restaurant. It is not a restaurant. It is a bar. I don't want a bar in my neighborhood. I had no problem -- I supported Paneno (phonetic) when they came in for their beer and wine license.

I have supported other people in the area on the beer and wine licenses because they are restaurants. They have skin in the game. And

for the city to be the biggest investor in this restaurant is mind boggling to me.

It is a capped area. You would be directly hurting me. Directly hurting me. Not only me, the Plow and Stars. They are struggling right now. There are other businesses that are struggling. We are saturated with alcohol licenses in that area from Grafton Street to The People's. You can walk in either direction and in two minutes and get all the drink and food you want.

If you want the upper type of place, you can go to Grafton Street. We to appeal all kinds of people. We have Ph.D.s, we have Noble laureates that have been our customers there.

So I can't tell you that -- it would definitely would be effecting me. And I certainly hope that the Board will give this

serious consideration.

I didn't realize I lived in a blighted area. This is what these new licenses were for.

Blighted areas.

I'm surprised to know I live in a blighted area. And I should go back any look at my building to see I'm not living in the slum.

I understand why these non-value licenses were issued. They were issued to bring up areas because there was nothing there and you needed to somehow get that business kicked off. There were a lot of people offering free rent to go there. And even my chef Will Gilson (phonetic), he went to an area and he put skin in the game. They put in a kitchen. They spent a lot of time there developing the food.

This is not food. This is -- they are bringing in things from outside. Charcuterie?

You know what that is? Salami and baloney.

That's what that is.

There's no kitchen. There's no skin in the game. An oven? Please.

We have fryolators. We have ventilation systems. We have fire suppression systems. We have all that.

Plus, we have 20 employees that depend on making a living there. And every little business that comes in, especially to create a new license where there's no need, there's no big need for that. The public outcry? Plus, I read some of these things. Everybody thinks they are signing -- that were signing on those petitions were thinking that they were signing on for a coffee shop.

Plus, the fact they say they live in Cambridge. But their application says they live

in Allison. There's deceptive practices going on here.

And I'm not here to create animosity. They are lovely people. I know they want to go to open a business. Go to a depressed place and get your free license there.

We spent a lot of money. And we work very, very hard and every one of my employees is loyal to the business and they all work very hard. They can't afford to lose their job.

They make way above minimum wage, and I would like to keep it that way. I'm the owner. I don't draw a salary. I only take a rent from the place. I'm loyal to the people that work there, from the manager, to the bartenders, to the wait staff and to our very loyal chef, who is absolutely wonderful and he is renowned.

We had Ferran Adria. Do you know who he

is? He's the most famous chef in the world. He came to our place to have dinner after he did a talk in Harvard. So if these people back here that claim that they need a great place to come to, then maybe they should come to the Cellar more often.

MARTIN GREENUP: Excuse me. I --

CHAIR ANDREA JACKSON: Excuse me.

STEPHEN KAPSALIS: Ferran Adria chose to come here. He has been on the Travel Channel. His restaurant in Spain is touted to be one of the best restaurants in the world.

Those are the type of people we have that come in here. And our chef, Brandon, is wonderful. He's a creator. He creates beautiful things. And his sous chef, Jason, and everybody that works in the kitchen is wonderful.

And I would like to keep it that way. We

have skin in the game. A lot of skin. It costs a lot of money to operate a place like this. And we're not slicing salami.

We are cooking. And we have a kitchen to prove it with walk-in boxes and human beings working there.

I want to thank you very much for listening to me. I'm very passionate about this. I hope the Board denies this application. We are saturated. We don't need it. In three minutes in either direction you can hit five places. I thank you so very much. Please help us out.

CHAIR ANDREA JACKSON: Thank you.

Is there anyone else who wishes to speak?

DENISE JILLSON: Good evening. Denise Jillson, Director of the Harvard Square Business Association.

We are speaking in support of this

application. I met with Kim several times. The Upperwest joined The Association and I think the most important thing I think about is because it -- you wouldn't think that such a small place would create so much controversy because it is only 20 seats.

When we examined the beer and wine, the no value, non-transferable beer and wine and all alcohol licenses a few years ago was the fact that there were so few licenses available, and the ones available were so expensive and prohibitive for small uninvested moms and pops and local independents.

And we really felt as though we were losing, and we know that we were just losing out on the restaurant scene to other communities, particularly in Boston.

So, you know, when we opened up, when the

city opened up and made available these licenses for locally-owned independent moms and pops to come and pursue their dream, things changed. And we can take a look at Kendall Square and what's happening there.

Certainly not a blighted area. But one that needed a boost. And many of the licenses that have been issued have been issued to restaurants in that area.

If you think about competition, Harvard Square has over 100 eateries, and you could sort've stand in the middle of Winthrop Street and within 30 seconds, I think I counted the other day, within 30 seconds you could be at 25 different eateries. And 70 to 80 percent of those are licensed.

So that part doesn't scare us. And, in fact, most of the restaurants welcome it because

it becomes a destination. And there's lots of choices.

So if all of these other -- certainly counsel that was representing the unnamed people earlier mentioned all of these other issues, and if those issues can be taken care of, certainly I think a small, little restaurant that serves 20 people and you know, with -- I have traveled to Europe, and have been to these little places that have these small bars and they serve the tapas, and they are quiet lovely and pretty harmless, and I don't think that they impact, severely impact, things like transportation, people coming in and parking cars.

It is just too small to have that kind of an impact.

But anyway, I think if we can solve some of those issues. Certainly a little place like

this seems pretty sweet, and something that, again, it is just outside of The Square, but they have become members, and to the extent that the license is issued in the spirit in which the license was intended, which is, I believe, all along when we examined -- the eight months we sat in this room studying the various policy changes to the liquor licenses, it was, in fact, to support mom-and-pop operations like the one that's being proposed tonight.

Thank you.

CHAIR ANDREA JACKSON: Thank you.

KATHY NELSON: Hi. My name is Kathy Nelson, N-E-L-S-O-N. I have two daughters that live in Cambridge. Mass Ave area, 991 Mass. Ave. I'm in opposition of the issuance of this type of license.

Just being in the area and walking

through the whole Harvard Square, it seems like there's plenty of establishments with full liquor licenses. And this is just another redundancy.

And listening to the owner here, she seems very scattered and she doesn't have a solid business plan. She has been all over the place. And it leads me to wonder what kind of business owner she will be. Will she be responsible with that type of license. Will she do all the screenings necessary to prevent underage drinking and the like.

And I have done a little bit of homework on what those no value licenses are. From what I can see they are issued in areas that needed a boost. They needed businesses to come in. That the city had put in -- made improvements and they needed people to come in and really elevate the whole area with restaurants and have it be a

draw, which worked out great in Kendall Square. And it is wonderful for all the businesses down there, but it seems like this area has that already and all the establishments around there bought their licenses or obtained them by traditional means.

And while I can fully appreciate that the licenses are very expensive, that shouldn't be a reason for you, the Board, to just issue her a no value license just because she simply doesn't have the financial capital to purchase it herself. That's it.

CHAIR ANDREA JACKSON: Thank you.

Anyone else that has not spoken yet that wishes to be heard?

Do you have something you wanted to add that hasn't been said already?

MARTIN GREENUP: I --

CHAIR ANDREA JACKSON: No. No.

You need to address me.

You need to come to the front.

FIRE CHIEF GERALD REARDON: And you are not going to address someone else. You address us.

MARTIN GREENUP: I live in the area and my neighborhood bar The Cellar. I'm a regular there and I know Greg and Quinton the barmen just because I go in there a lot.

And as a customer there, I mean there's a lot of loyal customers, I don't foresee myself going there any less by going to a new place if it opened up. I just couldn't see that happening.

CHAIR ANDREA JACKSON: Thank you.

Counsel, you may add -- you have one minute to add whatever it is you want to add.

ATTY. LISA BELANGER: I just wanted to respond to the comment about the mom-and-pop operations.

The rules and regulations when it refers to the mom-and-pop operations, it specifically wasn't talking about new people coming in.

It was talking about who have been already existing in the establishment for years and needed to get beer and wine licenses or full alcohol licenses to be able to survive and compete with already existing businesses. To me, that's apples and oranges. And that moms and pops was made for existing businesses, not new people coming in.

Thank you.

CHAIR ANDREA JACKSON: Anyone else?

You can come back to the table.

EXECUTIVE DIRECTOR ELIZABETH LINT: I

think Ms. Jillson touched on some of the changes that we made in the cap policy back in 2008 when in the policy was significantly relaxed.

I don't think Kendall Square is a good example because it is not a capped area.

The idea in 2008 when the policy was changed, and I think it was a longer than eight months we met, and it was people from all walks of the community. It allowed cap-to-cap transfers. It allowed new no value licenses to be approved after an applicant has proved there was a diligent search and there was no possible means of purchasing a license.

But the idea was very much to give new start-ups an opportunity where they might not have otherwise. So it was a significant change from the 1986 policy.

CHAIR ANDREA JACKSON: So as such,

there's nothing, in terms of the capped zone,
that would prohibit us in terms of the cap, is
that what you are saying?

EXECUTIVE DIRECTOR ELIZABETH LINT: It
wouldn't prohibit you unless you found they
didn't do an exhaustive search and still you to
have to show there's a need for another license
in that particular location.

No harm to the area.

And overwhelming neighborhood short.

CHAIR ANDREA JACKSON: And there are
other licenses out there?

EXECUTIVE DIRECTOR ELIZABETH LINT: There
certainly are.

And I would like to know who is offering
a license for \$800,000 because one never sold in
the City for that price.

CHAIR ANDREA JACKSON: Thank you.

Anything you would like to add?

KIMBERLY COURTNEY: Sure. In regards to the one I saw for \$800,000, that was through a broker and it was including the -- they were selling it with the space, so I'm sure that was for the built-out.

CHAIR ANDREA JACKSON: So the amount you stated wasn't just for the license?

KIMBERLY COURTNEY: Most of the licenses I see are attached to locations. They are not available floating around for you to just take anywhere.

So the one I saw, that really expensive one I saw was associated with a very large commercial space and then you would take over the lease, which is also why I find it quite difficult -- I mean, I found it very difficult to find licenses available that are not tied to the

location that they are currently at.

EXECUTIVE DIRECTOR ELIZABETH LINT: Any of our licenses can be moved to any location.

KIMBERLY COURTNEY: I believe the owner would have to be willing to do that, though.

EXECUTIVE DIRECTOR ELIZABETH LINT: No.

The landlord cannot control a license, by statute. The person who owns the license controls the license.

KIMBERLY COURTNEY: That's what I meant. I'm sorry. Yes.

So that was part of my difficulty in my search was seeing licenses associated with specific spaces.

So I would like to respond to some of the comments. I don't want to keep you too long. I will be brief.

In regards to the first gentleman, Mr.

Depaulo, we intend this to be a very classy establishment. This is not going to be a dive bar. This is not going to place where young kids hang out and get drink. This is a place that serves good food and is focused on the community.

So I'm not concerned at all about any negative impact on the community. In fact, we are residents, and it is the type of place that I think this neighborhood desperately needs.

In regards to Attorney Belanger, I'm unclear --

CHAIR ANDREA JACKSON: If you could make your comments, not necessarily tie them to people. Just make your point, please.

KIMBERLY COURTNEY: Okay.

A number of points were made regarding topics with the building permits and the

wheelchair lift and sprinklers and the kitchen facilities. All of those things.

We have all of those things already established. We have our -- the drawing that you have with this application is not the full architectural plans we submitted to the city and already have approved. Those are extensive, as you know. We have here the image of the general layout you requested.

But we have everything approved by Zoning. Everything -- the permit that's on the space is actually a full building permit. It is not a demo permit. We do have a building permit issued, which means it has gone through Zoning, Fire, the Architectural Access Board already approved our plans and we are fully accessibility.

The issue with the wheelchair lift is

being resolved by the building because that's not a part our space we are renting. They are aware it is in violation.

It has been sitting there for a number years and it hasn't been operating. So they are in the process of replacing that wheelchair lift. That needs to be done probably in order for us to open and I'm pushing them to get them as quickly as possible. So that's definitely something that is a high priority.

And as I said, our space is fully accessible. Our bathrooms are in compliance. Everything is fully in compliance with the AAB.

The kitchen is a fully functional kitchen. The only difference is we won't have gas equipment and we are not going to be slinging hamburgers and french fries.

We have the ability to boil water and

make pasta and make baked goods and do all sorts of cooking. It is just limited in terms of grease vapors. And I understand the implications of that. We are doing that for financial reasons. But that doesn't mean it is not a serious restaurant focused on food.

I have been dedicated to food ever since I left the practice of law in 2009 and I think my resume shows that. And the food is a very important aspect of this. This is not a bar. In fact, a bar would not be allowed in this zoning area. So this is a restaurant.

Something was alluded to the deceptive practice about an address in Allston. Xavier does own a property in Allston, for the record. So there is an address in Allston.

I do believe -- I wanted to point out we do have full support from the head chef at The

Cellar. I understand that Steve seems concerned that we will impact his business negatively. I have a different opinion that. I think adding new businesses to this area is a positive thing for everybody. And Brendon Arms, who, I believe, is a co-owner there as well, signed our petition. And he's in support of our project 100 percent.

In terms of the need for this, this building has been vacant for a long time. And if we don't open up an establishment in this space, someone else will try to do that. There's a building that's been sitting vacant that neighbors have commented brings down the neighborhood. We are trying to do something positive. We are trying to involve the community.

In terms of the events, I'm not expecting numbers of people to be coming into the area and

parking. I don't think that's really an issue.

I'm trying to engage the community. The local community.

So if we were to have a wine and food pairing event, I'm expecting our local neighbors to be signing up for that event.

This is the type of thing I'm trying to focus on. And the layout of the bar, again, I think is a wonderful communal way of designing a restaurant. It is a design I have had in mind for many, many years as I have been looking for a commercial space. I was looking for a space in New York City for a long time. And I lived there for a number of years. The name of the restaurant was inspired by the Upperwest side of Manhattan where there are a number of little wine bars that have European themes and they are small little nooks where you go in and it's cozy and

they don't have a fully ventilated kitchen, and they make amazing foods and incredible salads. There are so many things you can do without a ventilation system. You can make really incredible foods. It's not as limiting as it sounds.

CHAIR ANDREA JACKSON: But you keep mentioning wine bar. But yet, you are here applying for a full alcohol licenses.

KIMBERLY COURTNEY: The focus of the wine is clearly because it pairs so well with the charcuterie and the cheese and the food.

But in terms of the business model that we have, I think it would be very limiting if we didn't have a full license.

And we really don't want to exclude customers because one person likes wine and the other person doesn't drink wine and the other

person doesn't want to go into this establishment because they can't get a beer or whiskey or a cocktail or something.

I mean in the same regard, we are going to cater to our vegan and gluten-free customers. We will indicate that on our menu as well, so someone who is vegan can come in with a meat eater and be able to partake in our restaurant. So it goes along the same lines as that.

We don't want to limit our customer base because we only offer beer and wine. I think it would be incredibly limiting for us.

CHAIR ANDREA JACKSON: Any other questions?

POLICE COMMISSIONER ROBERT HAAS: I'm going back to your website, you identified some dates when you plan on opening. You are announcing your initial event and you haven't

even got your permits yet. I'm trying --

KIMBERLY COURTNEY: Any events that you see on there are held at Grafton Street presently.

The Foodbiz Network is very active and we have a free monthly networking event. Those events take place at Grafton Street. The website was up just to encourage people.

CHAIR ANDREA JACKSON: What is on your website doesn't say that.

This was pulled from your website, and it says, it has your address, and it notes that "We are looking forward to seeing you there.

Saturday, April 5, 2014, 7 to 9 p.m."

It doesn't say anything about another location.

KIMBERLY COURTNEY: I'm not sure what that is exactly.

CHAIR ANDREA JACKSON: I went to your website and printed this out. Maybe you should talk to your webmaster.

KIMBERLY COURTNEY: I'm the webmaster. I put in a sample. That was meant to be actually -- it doesn't say something about these are the types of events that we'll have and it has a list.

CHAIR ANDREA JACKSON: It says "Upperwest is planning to hold lots of fun and educational food and wine events. We expect to open in April of 2014."

KIMBERLY COURTNEY: That's not an event advertisement.

CHAIR ANDREA JACKSON: And then over here it says, it goes through your wine classes, etc., and it says Saturday, April 5, 2014, 7 p.m. to 9 p.m.

KIMBERLY COURTNEY: That was a mistake in terms of when you put one of those into the system. I have a server -- the system that I'm using has those events and it just inputs that date, but that wasn't an actual event. Obviously, we weren't -- we are not going to be open April.

That wasn't meant to be an actual event. That was meant to explain we are planning on holding events.

It is a format that, I think, it inserted a date on its own.

CHAIR ANDREA JACKSON: In two different places?

There's a date here that says April 5.

KIMBERLY COURTNEY: That one is the automatic one.

CHAIR ANDREA JACKSON: And a date on the

next page.

KIMBERLY COURTNEY: And the next date was?

CHAIR ANDREA JACKSON: The same date.

KIMBERLY COURTNEY: May I see that? It is hard to comment when I'm not looking at it.

I can testify we have not scheduled any events because we don't know when we are going to open, so ...

(Reading.)

Right. So this first page is talking about all the different types of events that we would like to have just to get people interested.

POLICE COMMISSIONER ROBERT HAAS: It says April 5, 7 p.m.

KIMBERLY COURTNEY: Right. That's a mistake. The system forces you to put a date in.

I probably did this three or four months

ago when we didn't know when we would open. And I just input it into the website as a hey, -this-is-what-we're-doing.

It placed this date here automatically. I didn't place the Saturday, April 5 at the bottom. And it placed this date on the side automatically.

I'm not really sure why this is relevant. But I didn't plan any events. I haven't planned any events because we don't know when we are opening, so I'm not sure what that is all about.

Except for the ones with the Foodbiz Network, which are ongoing and held at Grafton.

CHAIR ANDREA JACKSON: Any additional questions?

POLICE COMMISSIONER ROBERT HAAS: No.

FIRE CHIEF GERALD REARDON: I can't see myself voting for an all alcohol license at this

location.

You've got a lot of people around you that have paid a lot of money for these licenses and it devaluates their license.

I know I can see your need as a wine bar, beer and wine, I can see that.

I think whole your business model and your food lends it itself to that. But I don't see where the all alcohol comes in, in terms of the number people you have, especially in light of the type of food. It is very light food and stuff to have people in there drinking hard drinks versus beer and wine.

So ...

KIMBERLY COURTNEY: Okay. So I would be amenable to discussing changing our application to beer and wine if there's a strong opposition to the all alcohol.

FIRE CHIEF GERALD REARDON: I'm speaking for myself right now.

CHAIR ANDREA JACKSON: I tend to agree.

I'm not necessarily in favor of an all alcohol license at this location. Again, as the Chief just stated, the menu, food menu, seems light in terms of serving hard liquor and people are going to be eating light, light fare.

KIMBERLY COURTNEY: The good thing about charcuterie is, as just reinforced in my TIPS and ServeSafe alcohol training, is that fatty foods, like cheese and meats, are actually very slowly digested, so it is the most appropriate food to eat with hard liquor.

POLICE COMMISSIONER ROBERT HAAS: I just think there's too many inconsistencies with what you are presenting to us.

I don't feel like an all alcohol license

for this establishment, given the size, and it seems you are back and forth in terms of what you are planning on doing, and it is not clear to me, so I'm not prepared to vote for an all alcohol license either.

CHAIR ANDREA JACKSON: Make a motion?

KIMBERLY COURTNEY: Is it possible to amend the application to beer and wine only verbally?

FIRE CHIEF GERALD REARDON: It is up to you legal people.

EXECUTIVE DIRECTOR ELIZABETH LINT: It is always possible to amend down.

CHAIR ANDREA JACKSON: So based on that, we've spent a lot of time discussing it, there are materials I would like to look through. I'm going to make a motion that we take the matter under advisement.

POLICE COMMISSIONER ROBERT HAAS: Second.

CHAIR ANDREA JACKSON: All in favor
signify by saying aye.

POLICE COMMISSIONER ROBERT HAAS: Aye.

FIRE CHIEF GERALD REARDON: Aye.

EXECUTIVE DIRECTOR ELIZABETH LINT: That
would be March 27 at 10 a.m.

CHAIR ANDREA JACKSON: Yes. And I will
not entertaining any additional testimony at that
time.

- - -

EXECUTIVE DIRECTOR ELIZABETH LINT: That
leaves ratifications.

Sale of and transfer of 130, financing of
152 and the refinance of 189, 124, 11 and 44.

All participate paperwork in order.

CHIEF GERALD REARDON: I make a motion to
approve.