

**City of Waltham
Zoning Board of Appeals
May 12, 2026**

The Zoning Board of Appeals held a public hearing at 7:01 P.M. on Tuesday, May 12, 2026 in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were John Sergi, Chair, and members Mark Hickernell, Matt Deveaux, Glenna Gelineau and Stephen Taranto.

Mr. Sergi: Tonight we have two continued cases.

The first order of business tonight is to approve the minutes of May 5, 2026. May I have a motion to approve the minutes of May 5, 2026.

On motion of Mr. Deveaux, seconded by Ms. Gelineau, the board voted to approve the minutes of May 5, 2027.

Mr. Sergi: So the minutes of May 5, 2026 have been approved.

Tonight we'll start with Case 2026-01, Petitioner Paul Yu. May we hear from the Petitioner or the Petitioner's representative, please?

Attorney Matthew Watsky, Watsky Law, 30 Eastbrook Road, Dedham, MA came forward.

Attorney Watsky: I am here as counsel for the applicant.

Paul why don't you go ahead and distribute to the members of the board the additional materials in hard copy.

(Mr. Yu submitted materials relating to zoning opinion in support of special permit to each member of the board. A copy is attached to the minutes noted as Exhibit A.)

Attorney Watsky: What's been just handed out to you and my understanding is that the materials were distributed to you electronically in advance and I've provided both the board with a letter dated May 8, 2026 with my analysis of the zoning ordinances as applied to this project as its been revised. Paul has just submitted to you revised plans that changed the number of units that are proposed within the building on the second and the third floors for a total of four units and the parking requirements that require 1.25 parking spaces per residential unit in the district. The site plan is now devised to show five parking spaces in compliance with that requirements for off street parking.

The analysis that I presented to you, I'll get to the conclusion first. The conclusion that I've reached and I would ask the board to rule is that no variance and no special permit from the zoning board is required for this project and that all the project will require will be a special permit from the city council for the permissible density of residential units in this district.

So, you have a residential use as the permitted use as of right within the district for zoning board purposes. You have an existing building on an existing lot that has two nonconformities, one is the rear yard setback and one is the side yard setback to the sidewalk. As such his modification of this building and the change of the interior use is governed by the rules in the ordinance that govern pre-existing non-conforming structures and it's not a nonconforming use because residential use is a permitted use as of right and

so we look at the provisions governing changes in a non-conforming building and what's being proposed is perfectly consistent with those standards.

If the board members have specific questions about the analysis that I provided, I would be glad to address them.

Mr. Sergi: Can you go over them just briefly?

Mr. Watsky: Sure. I won't get into the details of the dimensions of the building itself. The Business C Zoning District prime dimensional requirements are twenty feet (20) for the rear yard, ten feet (10) for the side yard with a maximum of FAR not to exceed one (1) that the lot was created by plan recorded in 1905 and modified in 1986. This was all before the Business C District was created and so you have a pre-existing nonconformity. So to the extent that any nonconformity with the dimensional limits of this existing building are therefore pre-existing legal nonconformities. Under the Zoning Code, Sec 3.7 "Existing Buildings, Structures and Uses" there are three subsections that are relevant here. There's Section 3.7222 where it provides that a nonconforming building may be altered or enlarged in that use to the extent not exceeding 10% of the ground floor area of the building or area of the land used at the time of the passage of this chapter.

And I can just jump to 7.3222, therefore, isn't applicable here because Paul is not proposing to increase the size of the nonconforming building. He's working entirely within the footprint of the building itself. He is proposing significant updates of the facade to improve the appearance and the new windows for the retail space on the ground floor, but the footprint of the building is not changing at all.

3.72223 provides that a nonconforming building may be changed to a similar use of not less restricted character, when a special permit has been granted by the Board of Appeals for such change. So that clause, I concluded, is not triggered here. A special permit

from the Zoning Board is not necessary because this is not being changed to a more restricted use, like industrial use, it's being changed to a less restricted use and so it doesn't trigger that special permit requirement.

Mr. Sergi: Initially, he was looking for seven units, now he's looking for four.

Attorney Watsky: That's right. And if he had been looking for seven units then the math for doing the parking you would need 1.25 times the seven and there simply isn't space on the property to fit that number of units which then would have triggered a requirement for a variance from you folks as well as for the special permit from the city council. So by reducing the density to four and providing five parking spaces on the property where there are none now, he's meeting the off street parking requirements of the board.

And 3.72251 Provides that an existing nonconforming structure for commercial and industrial purposes may be altered or rehabilitated as a matter of right if the alteration and rehabilitation do not exceed the floor area ratio of the existing structure and has some other criteria. That's the clause that I conclude makes what Paul is proposing here as of right. He has a pre-existing nonconforming structure. He's not changing the size of the structure. He's not increasing the FAR and by doing it in a way that's complying with the parking requirements, it's a use that is permitted as of right with, again, the requirement that there's a special permit from the city council for the increase in the residential use.

And I give the analysis, if you want me to go through that but the Table of Uses in 3.4 and the calculation of how many units are permissible - - -

Mr. Sergi: Ya, I think so because that was kind of key in the memo that we received from our legal counsel. So you're saying that the formula that was calculated that recalculated was not accurate. This is - - -

Attorney Watsky: Well, there are two responses that I would have to the legal counsel's letter. First legal counsel was doing an analysis based on a proposal for seven units rather than four and counsel did not focus on the specific provisions related to pre-existing legal nonconforming structures. So counsel concluded that it was an undersized lot and that because it was an undersized lot and it doesn't have the room for seven times 1.25 parking spaces that a variance would be required and it's not eligible for a variance. What counsel didn't focus on was that as a pre-existing legal nonconforming structure on a lot that it would be treated differently. I could have argued that even with seven units proposed that a variance is not actually triggered because you'd look at from the perspective of an pre-existing legal nonconforming structure and the decision that the board would have to make is whether this change in the use is substantially more detrimental to the neighborhood in the existing structure which would be assuming it were used fully in compliance with its existing approvals the entire building would be filled with offices and you could have ten, twenty, thirty or forty people in the building there all day long and a question for the board if Paul were proposing the seven units it would be is converting the second and the third floor from offices with all of those people being there during the day potentially into four, five, six or seven residential units is that more or less detrimental to the neighborhood. But by changing the project from seven units to four has eliminated that issue from the board altogether. So we are presenting something that is actually complying with the 1.25 off-street parking requirement.

Mr. Sergi: I didn't look at the plan. Where are you proposing to put the parking spaces?

Attorney Watsky: There are two sheets to the plan, one just shows the proposed layouts of the units on the second and third floor and one of them is a site plan. So they are proposed in the back. They are removing a concrete pad and other outdoor equipment

back there and just putting the spaces in. The reason he is not proposing six parking spaces which could fit in there is that there's a rear door that would be blocked by one of the vehicles if he were to put a vehicle in that other space.

Mr. Sergi: Oh, I see it. And those would be assigned to residential units?

Attorney Watsky: They would be specifically assigned for the residents.

Mr. Sergi: That's all the questions that I have. I'll open it up to the board.

Steve, do you have any questions?

Mr. Taranto: No, I don't.

Mr. Sergi: Glenna?

Ms. Gelineau: What exactly is what you are asking us to do? I mean, why didn't you just withdraw and go to the counsel?

Attorney Watsky: Let's say out of an abundance of caution rather than just withdraw it without any decision since we are this far along it seems more prudent to have the board go ahead and issue a decision that says, yes, we agree that this is a compliant project and you just needs to proceed to the city council to seek his special permit.

Mr. Sergi: Is that part of your - - -

Attorney Watsky: Yes, that's part of what I request at the conclusion of the letter.

Mr. Sergi: That would be your proposed decision?

When you say if the board so chooses, it could condition such a permit to require that the new residential units to provide spaces, do you want to rewrite that or use that as a decision or, anyway, let me finish with questions.

Matt?

Mr. Deveaux: I just and I can't find it right now, the code. I thought we weren't allowing tandem spots to come.

Attorney Watsky: Okay, I'm glad to address that. So the design of the parking spaces, and, yes, we have tandem spaces, the key on that and we have reviewed this with the building inspector is that the clause that prohibits the tandem spaces is specific that it's only when the spaces are required by a specific subsection of the ordinance, and the spaces that are required for this building in this zone are not required under that section.

Mr. Deveaux: That answers my question. So no questions.

Attorney Watsky: So we concluded that it's not applicable.

Mr. Deveaux: And that was Inspector Bower's determination to do directly?

Attorney Watsky: We met in his office and I pointed out the detail and he goes, huh, nobody has ever pointed that out to me before.

Mr. Deveaux: Okay. No more questions.

Mr. Sergi: Mark?

Mr. Hickernell: So we had previously I think a Proposed Findings of Fact and a Proposed Decision as part of our Regs, we require that. But here, you're essentially just seeking a determination that no variance is required and no special permit is required from this body so in terms of any proposed decision it would essentially be a sentence that you saying that.

Attorney Watsky: Correct.

Mr. Hickernell: That's all I have. You would then withdraw the initial request for any variances or any permits from this body?

Attorney Watsky: Yes. If we get the ruling from this board that no special permits or variances are required, then we would withdraw that request for that and then we would go straight to the city council to request a special permit.

Mr. Hickernell: I understand. That's all I have.

Mr. Sergi: I don't have any further questions. How does the board feel? Do you want to get it just previewed by the legal department.

Mr. Deveau: I think we are good.

Mr. Hickernell: I'm good. I reveal that there were a number of letters in support received along with the revised plans and analysis. They have been submitted and are part of the record.

Mr. Sergi: I'll open it up to the audience. Is there anyone in the audience that would like to speak?

Fred Kimberk, 681 Main Street, Waltham: I am the largest abutter to this project and have been for the last 25 years. I have all the parking around it and I believe I wrote the board a letter when the appeal first presented itself about the issues that have been around parking.

I mean I own literally all the buildings around it so I am very much party to it and I've known the previous owner so I am very involved in this project. I know Paul. We didn't receive this and I would really like to have a chance to look at it. I mean straightaway there are a number of issues that I see. It's Business C, so anything under 10,000 square feet, it's a 5000 square foot lot with a 12,000 sq. ft building on it. Anything under 10,000 sq. ft. Is not eligible for a special permit, so I don't know that the city council will accept it and I am also in the process of doing a development, a two and a half acre development that abuts this project, so I am very familiar with the zoning code. I'm an architect as well as Paul. I'm very familiar with the Waltham Zoning Code and from my understanding a Business C is required a one and a quarter parking spaces per unit. You're allowed to have thirty units per acre. He has 5000 square feet which is a tenth of an acre basically, so he's allowed three units as of right, so I don't know where the five is coming from.

Mr. Sergi: He's presenting four.

Mr. Kimberk: Yes, okay. I guess the parking spaces are five. I'm not sure how he is getting five parking spaces in there. It also states in the parking requirements for Business C that tandem spaces are not allowed unless two of the spaces are for one unit. So I suppose if he has five spaces he could have two and a half units at most if two tandem spaces are part of one. I mean there are a lot of issues that I hear around this and I would really like to have a chance to review it before the board makes a decision. But I agree if he is withdrawing his case with the board then there's nothing really further to say but for the

board to state unilaterally that no variances are required for this project I think is not correct.

Mr. Hickernell: Unilaterally is how we issue all of our our decisions.

Mr. Kimberk: I mean if you state that no variances are required and then it goes before the city council and they would get that saying no variances are required, I think that would be hard to say. I think clearly there are variances required.

Mr. Sergi: I don't think he presented the case in a nonconforming situation that there is nothing that he is seeking from us. He's not seeking a special permit. He's not seeking a variance from us.

Mr. Kimberk: He's seeking an opinion from you which I think is going to carry weight with the city council. And I think the law department had an opinion which does not agree with what he's saying is the case. It disagrees quite dramatically as a matter of fact. So, there you have it.

Mr. Sergi: Okay. Thank you. I see Michelle our legal counsel in the audience. Michelle would you like to comment?

Attorney Learned (from the audience): If you have any questions you can certainly put them in writing and ask them.

Mr. Sergi: I've already asked the board and the board is satisfied with what is presented.

Is there anyone in the audience seeking information?

Seeing none. Is there anyone in the audience that is in favor of this?

Seeing none. Before we go forward, could you just reply to his commentary?

Attorney Watsky: Sure. The abutter in his prior submittal focussed it seemed to me on his sense of unfairness of some approval he made for old use property while he is going through a detailed permitting process for his own much, much, much larger development. Key difference is that his project would be viewed as a redevelopment where he lacks the pre-existing legal nonconformities. He's proposing a whole new project. And so, he needs to comply in all respects with the zoning ordinance. Mr. Yu's project as I have explained is just a reuse within exactly the same footprint of a pre-existing building without changing the FAR governed by the provisions of the code relating to a change in the use or change in the characteristics of a pre-existing legal nonconforming structure. So I provided you the legal analysis for that.

My conclusion is that no special permit and no variances required from this board but that a special permit will be required from the city council.

Mr. Sergi: When you calculated the four units vs. three you did it on an acreage?

Attorney Watsky: That's right. So the analysis that we did with that, it's under Section 4.11 of the code. A multi family is permitted as of right up to thirty dwelling units per acre, the lot size is 5,382 square feet times the 0.1235 acre times thirty units equals 3.75 dwelling units. So that's only three units are permitted as of right, that's a permit that the city council has the authority to issue.

Under Section 4.12, footnote 12, the city council has authority to grant a special permit for additional density up to 60 dwelling units per acre and density is 60 units per acre, this property would be eligible for approval for up to seven units of residential use.

Mr. Yu has changed his proposal so he's only seeking the one additional unit to make it four. That still is a special permit by the city council by reducing the density from seven down to four he's able to comply with the dimensional requirements for the number of parking spaces on the property so he doesn't need relief from this board.

Mr. Sergi: So you want a statement from our board stating that - - -

Attorney Watsky: Stating that you agree that there's no special permit and no variance required from the Zoning Board of Appeals while the project will require a special permit from the city council for the number of units for per acre under Sections 4.11 and 4.12.

Mr. Sergi: So you want us to agree to that subject to the city council?

Attorney Watsky: Yes.

Mr. Hickernell: It seems to me that you get where you're client needs to go just by approving the withdrawal of the request for a special permit and a variance without prejudice and sending you on your way to the city council for a special permit which if, under these plans, if you had done that in the first place nobody would have ever asked us if they needed to be here or not and it seems that it kind of puts you in the same position. Doesn't it?

Attorney Watsky: That could. Since this was already scheduled with the board had already been involved we didn't want to just pull the rug out.

Mr. Hickernell: No, I get it.

Attorney Watsky: We provide you with the analysis and wanted you to say, yes, we looked at it and we're satisfied.

Mr. Deveau: I think we should let him respectfully without prejudice given the additional thoughts. I can't see us voting and making a statement. I am not comfortable making this move.

Mr. Sergi: That's what I'm struggling at. I think if you make a motion that you want to withdraw without prejudice based on the attached analysis and subject to city council approval for a special permit. It makes sense.

Mr. Hickernell: It doesn't have to be subject to anything. He can do whatever he wants.

I am going to make a motion that we allow the petitioner to withdraw its request for variances and a special permit in view of their revised plans.

Mr. Taranto seconded the motion and the roll being called:

Mr. Taranto, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

Mr. Sergi: Good luck!

Okay the next case on the docket is a Comprehensive Permit for 245-265 Winter Street, Waltham. May we hear from the petitioner or the petitioner's representative, please.

Attorney Philip B. McCourt, Jr., 272 Bacon Street, Waltham came forward.

Attorney McCourt: I believe Michelle just wanted to speak to you first.

Mr. Sergi: Okay. We'll hear from our legal counsel.

Attorney Learned, Assistant City Solicitor, City of Waltham: When we were here last, we had asked for the applicant to provide a red lined draft that was compared to the 455 Totten Pond Road matter, that Comprehensive Permit that was recently vetted through this board and they did so early this week. We have been speaking back and forth with respect to some provisions. I will provide the Law Department's requested edits thereto to that proposed draft, hopefully by the end of tomorrow and that will be a public document that is in the Zoning Board of Appeals records that the public would be able to have access to so that they could see what the last proposed draft from the applicant was and what the requested changes are that have been requested by the City Law Department.

There is also a request from the fire department for the applicant to make an appointment to discuss a couple issues with them with respect to the size of the access road. As you know in the two comment letters that you received from the fire department, they had requested twenty-four foot fire access road and at this juncture it looks as if what is being offered is a twenty-two foot wide access road specifically to assist, I am told by the applicant, with positioning the buildings with respect to where they're going to have the setbacks from the property lines and so there doesn't need to be additional discussion with the fire department on that particular issue. And in light of the fact that we are still discussing some of the specific terms here in the proposed document, it makes more sense for us if the board is able to just have this continued out a week and we would all come back next week and be able to share with you what the city law department views should be the final document. That would be at that point ready for the board's vote, well, certainly the close of the public hearing would be available. We shouldn't close that tonight. We should wait until the final date so that in the event something does have to come in or be

changed, a notation on a plan and whatnot, you need to leave this public hearing still open. But we are inching towards having a decision that would be ready to be looked at by the board. I'd walk everybody through all of its terms before the board would close the hearing and then start their deliberations and perhaps even vote on that day or one more continued out hearing.

Mr. Sergi: Okay. Are there any questions of the board from Michelle?

Mr. Taranto: Just the understanding that the petitioner believes that a conversation with the fire department is not needed. Is that what you said?

Attorney Learned: No. We actually spoke in the hall and they were amenable to, um- - -

Mr. Taranto: Thank you. I'm glad I asked.

Mr. Sergi: So they are going to comply with the 24 foot - - -

Attorney Learned: We don't quite know that yet. They are going to have a discussion with the fire department to see if it's something where the dimensions are on the current plan with providing the requisite number of parking spaces, providing the waivers that are currently asked for for how many feet to be from the property lines at various points with a goal of - I certainly know that the fire department's goal is to iron out something that would produce a twenty-four foot fire access road and I do point out that this has been offered and complied with. It is a city fire department rule. It's four feet beyond what the state requires for fire access roads but I do point out that in the City of Waltham all of our 40B's have complied with that twenty-four foot fire access road request. In my conversations with the Deputy Fire Chief as well as the Fire Chief himself, we look at the size of our particular fire trucks even the fleet and in their words to open the doors and

be able to stand next to the fire apparatus sometimes they have to put the stands to make sure nothing tips over. They are very clear that that is something that they have requested by correspondence to the board and they do still believe adamantly is required and we'll continue to do that request. And so it really is trying to get all the parties in the room and try to see if there is a way to satisfy that requirement as well as some of the other issues with respect to how many parking spaces need to be on the lot and how many feet they need to be away from lot lines to assist with some of the abutting neighbors' requests for some type of buffer.

Mr. Sergi: Thank you Michelle, I really appreciate that.

Is there anyone in the audience that would like to speak on the project? If you could hold it down to new information.

Mr. Steven Zieff, 255 Winter Street, #401, Waltham: As you deliberate this out as you have so well, so far, we just wanted to relay that the folks at our condominium would appreciate the setback discussion that you were having as far as it relates to the roadway, etc. We'd like to see the buildings be located no further south than the existing buildings are on the site. And that's our request.

Mr. Sergi: You've had that logged with the petitioner on this issue?

Mr. Zieff: Yes, we have.

Mr. Sergi: I suppose, right? And have you come to a conclusion yet on that?

Mr. Zieff: No, there's been no grant of that by the petitioner.

Mr. Sergi: Okay. I can ask and see if there's any updates to it.

Mr. Zieff: Thank you sir.

Mr. Sergi: If you would like to come to the podium. State your name and address. Can you just centralize it to new items?

Sima Zaslavsky, 255 Winter Street, Waltham came forward and read her written comments into the record. This is attached to the minutes noted as Exhibit B.

Mr. Sergi: Thank you. I know we have addressed a number of these issues but if we just could speak to Mr. Zieff's issues and any other issues that you have heard tonight.

Mark Baranski, Trammel Crow Residential, 40 Washington Street, Wellesley: So with regard to Mr. Zieff's question or comment, you know we are dealing with a rather tight site and and we are dealing with meaningful constraints one being the fire access that was already discussed. The buildings were moved in response to feedback from both parties to the north Dobbins and Weir and the South Barrington Condos. Building A was moved approximately, I'm using approximate, because I don't know the exact distances, approximately three foot to the north from its prior iteration; Building B was moved approximately two foot to the north from the original proposal. I'd add that the retaining wall which was more or less on our lot line on our property was moved between four and six feet north to accommodate some of the feedback from Barrington Condos. So I would say that we've gone to fairly meaningful lengths to move the buildings away from their building. That being said we physically cannot create the buildings within the footprints of the existing office buildings. It just won't work. But we certainly to the extent that we are able to have moved the buildings again dimensionally to the north and from the north dimensionally down from the south. We are learning this evening that we are aware of the fire department's comments with regard to the twenty-four foot wide drive isle. As Counselor Learned mentioned, the State Code is 20 and I believe we drew 21 or 22. We

thought that was pretty reasonable exceeding by two feet. We are perfectly willing and looking forward to sitting down with Deputy Grant and other members to figure out probably if the buildings are locked and the lot lines are locked the thing that comes to mind and I'm not a civil engineer but I would say it's compressing the parking spaces from twenty to nineteen to comply which then would require waivers so and just fyi. I would be perfectly comfortable with that. I think the parking spaces are quite large. So that would allow us to I think to respond favorably to the fire department's request. But again, with regard to moving the buildings to where the original floor plates were and these office structures, that's something we cannot do but we certainly have accommodated in moving the buildings and also removing the retaining wall which was, as I said, on our property on the lot line and now has been moved between four and six feet to the north dimensionally and I will add which is in meetings with Ms. Zaslofsky and I don't remember seeing Peter there, in the winter looking at supplemental landscaping to accommodate view lines and trying to really create a vegetation buffer. We also by moving the retaining wall dimensionally to the north we are able to maintain the existing vegetation that would otherwise been removed had we done that. So, you know, I think we have gone to great reasonable lengths to accommodate, certainly not all, but many of the requests of the Barrington Condos homeowners.

Mr. Sergi: And I know the other issues that Ms. Zaslofsky brought up, we've addressed every single one of them.

Mr. Baranski: I believe that that would be the case, yes.

Mr. Sergi: Any further questions of board members before we have him sit down?

(There were no questions from board members.)

Mr. Sergi: All right. Thank you for clarifying. So we are going to talk about a continuance until next week.

Attorney McCourt: If you could.

Mr. Sergi: Let me just find if everyone on the board is available. Mark is not available next Tuesday. We do have three cases on that night.

Mr. Deveaux: Can we move forward with four on this piece or does it - - -

Mr. McCourt: We want the full board. Now, of course, we could come on Thursday, if that works, or as soon as you possibly can. So we would like to see if you could move right along.

Mr. Sergi: Is everybody agreeable on June 2nd?

(Board members stated they would be available on June 2nd.)

Mr. Sergi: May I have a motion to continue Case 2025-23 to June 2nd.

On motion of Mr. Taranto, seconded by Mr. Hickernell, the board voted to continue this case to June 2, 2026.

Roll call: Mr. Taranto, yes; Ms. Gelineau, yes; Mr. Deveaux, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

Attorney McCourt: Now, what I don't know and member Deveaux could tell us, are we still within the date?

For the record, my name is Attorney Philip McCourt and here tonight is Ian Urquhart from Nutter McClennan. I would just note that Mark Baranski is the Petitioner.

Mr. Deveau: We went out to May 30th. We need another extension. I am going to extend it out to June 15, 2026.

On motion of Mr. Deveau, seconded by Mr. Taranto, the board voted to extend the Maple Multi Family Land East Coast, Case No. 2025-23 to June 15, 2026.

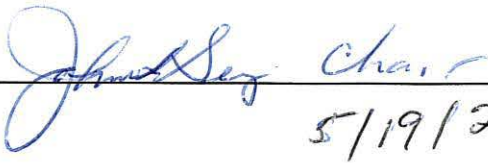
Roll call: Mr. Taranto, yes; Ms. Gelineau, yes; Mr. Deveau, yes; Mr. Hickernell, yes and Mr. Sergi, yes.

Attorney Learned, for the City of Waltham Zoning Board: So, just to make sure that the record is complete, the city engineer provided correspondence this day to the board that included the photographs from the sewer manholes and the cost estimate for the estimated repair work that may have to be completed in Totten Pond Road. He realized that he had appeared live in the other place on 455 Totten Pond Road and submitted them live that day but that this particular case had yet to receive it into the record and so upon my advice he put together this written communication to the board that attached the same photographs and the same analysis. I also did want to just briefly address the abutter's concern about that the water pressure might not be sufficient for the fire fighting. That is a concern that the fire department takes very seriously and that an occupancy permit cannot be issued to a applicant should the water pressure not be sufficient for the fire fighting. So we make sure that this has to be done. The hoses are all hooked up there are times that the test runs are done. They have a separate fire dedicated line to our city water main that is different from the domestic lines so that it is set up in a way that there will absolutely be fire pressure water pressure to suppress any fires. So I just wanted to clear anybody's fear about that.

Mr. Sergi: Thank you for that clarification. So you can share that with him if you want. That's fine with me.

One more motion is in order.

On motion of Mr. Deveau, seconded by Mr. Hickernell, the board voted to adjourn at 7:59 P.M.


5/19/26

Good evening. My name is Sima Zaslavsky, and I live at 255 Winter Street unit 402, condominium, directly adjacent to this proposed development. I am also trustee of mentioned condominium.

My concern tonight is not a single project in isolation. My concern is the cumulative impact of nearly 1,000 residential units being added to the Winter Street and Totten Pond Road corridor within a Limited Commercial District that was never designed for this level of residential density.

The school capacity issue is especially concerning. Previous school analyses already confirmed that additional funding and additional school support would be required even before including the proposed 245–265 Winter Street project. This means the current school impact analysis is already incomplete and outdated.

Before approving another major residential development, the City must answer a basic question: where will the additional funding come from for classrooms, transportation, staffing, and long-term school expansion?

Traffic and public safety concerns also remain unresolved.

The proposed traffic mitigation relies on traffic signal modifications and roadway operational changes. However, has the developer received all required approvals from the appropriate traffic authorities to implement these mitigation measures? If those approvals have not been secured, then the mitigation plan remains theoretical and cannot be relied upon as a guaranteed solution.

Winter Street and Totten Pond Road are already heavily congested corridors with limited capacity. Residents are already experiencing delays, unsafe turning conditions, and increasing difficulty for vehicles, pedestrians, and emergency responders.

Stormwater drainage and flooding concerns are equally serious.

The cumulative impact of several large developments adding extensive new paved surfaces and concentrated residential density has not been fully evaluated on a corridor-wide basis. Existing drainage and sewer infrastructure were not designed to handle this scale of development.

Residents are concerned that overloaded drainage systems may increase roadway flooding, water accumulation near residential properties, drainage overflow, and dangerous icing conditions during winter months.

On a narrow and heavily traveled corridor such as Winter Street and Totten Pond Road, additional icing and stormwater runoff create serious public safety risks for drivers, pedestrians, school transportation, and emergency vehicles.

Emergency response capacity is another major unresolved concern.

Has the Fire Department provided written confirmation that emergency access, response times, water pressure, and fire protection capacity are sufficient to support the combined impact of all approved and proposed developments within this corridor?

These projects are being reviewed separately, but their impacts are no longer separate.

The combined burden on schools, traffic, drainage systems, sewer infrastructure, emergency services, and public safety is becoming too great without a comprehensive cumulative analysis for the entire corridor.

I respectfully ask the Board not to approve this project until full cumulative infrastructure, traffic, emergency response, stormwater, and school capacity analysis is completed for all approved and proposed developments along Winter Street and Totten Pond Road.

The public deserves to understand the full combined impact before additional density is approved.

Thank you.

Sima Zaslavsky

Exhibit A

WatskyLaw
ATTORNEYS AT LAW
East Brook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026

Matthew Watsky, Esq.

Rachel M. Watsky, Esq.

May 8, 2026

John Sergi, Chair
Waltham Zoning Board of Appeals
Waltham City Hall
610 Main Street
Waltham, MA 02452

Re: Paul Yu -- 719 -- 723 Main Street
ZBA Case 2026-1
Zoning Opinion In Support of Special Permit

Dear Chairman Sergi and Members of the Board:

On behalf of Paul Yu individually and as manager of Lion Rock Management, LLC, I have reviewed the City of Waltham Zoning Ordinances as applied to the current and proposed use of the property at 719 -- 723 Main Street. Paul Yu has applied for approval by Special Permit or Variance (as I express below, in my view only a Special Permit is required) to redevelop the property by completely renovating and updating the existing structure's second and third floors into residential apartment units, converting them from the existing, currently vacant office space. Though eligible for as many as 7 units, Mr. Yu proposes to create 4 new residential units out of the second and third floor space, seeking a City Council Special Permit for the approvable density. In conjunction with the proposed project, the building, including the first floor commercial space, will have updated electrical service, and a new fire alarm and fire sprinkler system, and the ground floor will have new storefront windows. The project will not modify the existing footprint of the structure. The work will renovate the interior of the existing structure on the property as well as the exterior façade of the building, provide landscaping of the limited open space, repave the existing paved surfaces and create 5 off-street parking spaces.

The property is an existing 5,382 sq ft lot, with an existing three story building, with 3,357 square feet of area on used for retail on the ground floor, and a total of 5,532 sq ft of space on the second and third floors that are currently vacant. The upper floors were previously used and are designed as office space. The building is a pre-existing nonconforming structure, with only 18' of rear yard setback, about 5 feet or less of side yard adjacent to the sidewalk, and an FAR of nearly 1.65. The Business C Zoning District's current dimensional requirements are 25 feet for rear yard and 10 feet for side yard setbacks and a maximum FAR not to exceed 1. The lot was created by plan recorded in 1905 (Plan and Profile of Spring Street, dated October 1905; with subsequent plans recorded in 1986 (Plan No. 396 of 1986 and Plan No. 914 of 1986. The Business C Zoning District was added to Article III, Establishment of Districts, on 12-12-1991,

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by ORD No. 27265.) Chapter Z, Article V, Section 5.2 Off-Street Parking was added to the Zoning Code on 12-9, 1991. Any nonconformity with the dimensional limits of this existing building are therefore pre-existing legal nonconformities. Any proposed change to a building with such non-conformities shall be regulated pursuant to the Zoning Code, Sec 3.7 "Existing Buildings, Structures and Uses."

Under Zoning Code, Sec 3.7 "Existing Buildings, Structures and Uses," there are three subsections that should be analyzed: Subsections 3.7222, 3.7223 and 3.7251.

3.7222 provides that a nonconforming building may be:

Altered or enlarged in that use to an extent not exceeding 10% of the ground floor area of the building or area of land used at the time of the passage of this chapter when a special permit therefore has been granted by the Board of Appeals for such alteration or enlargement. The ability to petition the Board of Appeals for said ten-percent alteration or enlargement shall not be construed to deny any owner of a nonconforming structure the additional right to seek a special permit from the City Council to expand the present use to the maximum FAR allowed by special permit.

3.7223 provides that a nonconforming building may be:

Changed to a similar use of not less restricted character, when a special permit therefor has been granted by the Board of Appeals for such a change.

3.7251 provides that:

Existing nonconforming structures used for commercial and industrial purposes may be altered or rehabilitated as a matter of right if said alteration or rehabilitation does not exceed the floor area ratio (FAR) of the existing structure, if said rehabilitation does not include removal of any exterior walls and if such alteration, reconstruction or structural change does not increase the nonconforming nature of said structure. If rehabilitation does include removal of exterior walls, the criteria of Section 3.7241 shall apply.

Regarding each of these provisions:

3.7222: The project does not trigger the provisions of 3.7222, which provides that a nonconforming building may be altered or enlarged in that use to an extent not exceeding 10% of the ground floor area except for when a Special Permit has been issued by the ZBA – because this project proposes no increase in the ground floor area of the building.

3.7223: The project should not require a Special Permit from the ZBA under 3.7223, which provides that a nonconforming building may be changed to a similar use of not less restricted character, when a special permit therefore has been granted by the Board of Appeals for such a change. A "not less restricted" use is a use that is MORE restricted. Residential uses are a less restricted use than business uses. In contrast, if the proposal was to convert the business use into an Industrial or manufacturing use, that would be a "not less restricted" use, and would require a Special Permit.

3.72251: This provision makes the proposed renovation of the building into an “as of right” use. The building has been used in the past for commercial and industrial purposes. It may be “altered or rehabilitated as a matter of right” if that alteration meets the following criteria:

1. If said alteration or rehabilitation does not exceed the floor area ratio (FAR) of the existing structure.
 - a. No increase in FAR is proposed, thus, the proposal meets this criterion;
2. If said rehabilitation does not include removal of any exterior walls.
 - a. No alteration of the exterior walls is proposed, thus the projects meets this criterion.); and
3. If such alteration, reconstruction or structural change does not increase the nonconforming nature of said structure.
 - a. The proposed alterations are to the interior of the building, causing no change in the existing non-conformity of the structure. That nonconformity is the lack of required rear and side yard setbacks, and excess FAR. The proposed renovation of the interior of the budling does not alter any of those dimensional nonconformities.

Under Section 3.4 Table of Uses, a Multi-family dwelling use is designated Y-1, which under the Key is defined as “Permitted by right and additional intensity of use permitted by special permit from City Council.” Under Section 4.11, multi-family use is permitted by right up to 30 Dwelling Units per acre. The lot size is $5382 \text{ SF} = 0.1235 \text{ Acre} \times 30\text{DU/Acre} = 3.705 \text{ DU}$. Thus, only 3 units are permitted by right. Under Section 4.12, Footnote 12, the City Council has authority to grant a special permit for additional density up to 60 Dwelling Units per acre. At a density of 60 units per acre, this property could be eligible for approval of up to 7 units of residential use. Mr. Yu will seek approval by the City Council of only 4 units.

I conclude that this legal nonconforming structure and the proposed conversion of the second and third floors into residential uses meets all the criteria for approval “as of right” under the applicable provisions of the Zoning Code governing changes to such nonconforming structures; subject to a City Council Special Permit for the added density - one additional unit over the permitted by right 3 units.

Parking:

As noted above the provisions regarding parking were added in 1991 after the building and lot in its current configuration were established by 1986. The Zoning Code has no minimum lot size, but it does have setbacks to rear and side lots lines, a maximum FAR, and thus this is a pre-existing legal nonconforming structure, with changes to it including the change of some of the building into residential use permissible under the criteria for such a non-conforming structure.

To provide the ZBA with additional input, the Zoning Code, Section 5.23 sets forth parking requirements for the Business C District. These standards are directly applicable to newly constructed residential dwelling units or units designed from existing commercial space in an existing property without legal, nonconforming status. Section 5.232, which is applicable to projects that are proposed within either new projects or within existing buildings that conform fully to the dimensional requires, would require 1.25 parking spaces per unit.¹ To the extent that the ZBA concludes that a Special Permit or other relief is needed from this clause, the proposed design would provide 5 on site off-street parking spaces, where none currently exist. With 4 units of multi-family dwellings proposed, and 1.25 parking spaces per unit required, and 5 parking spaces proposed, the project complies with this standard.

I note, that in a building that has over 9,900 square feet of space, if it were fully occupied as an office building, the parking demand would far exceed that of the proposed continuation of the first floor commercial space with conversion of the upper floors into plus 4 residences. In addition, ample off-street municipal parking is available a short walk away from this location.

The usual standard for grant of a Special Permit is a finding that the proposed change will not be "substantially more detrimental" to the neighborhood than the existing structure and use. The proposed project will cause no substantial detriment to the neighborhood. Rather, if compared with the existing legal uses of the building, it would reduce the daytime parking demand as compared with a fully occupied office building. The municipal parking has more than ample spaces available for this building, either daytime or overnight. The project will include 4 new off street parking spaces, off setting the current demand from the commercial use, while providing spaces for the proposed residences.

Responses To City Law Department and Public Comment

The Law Department provided a memo dated March 24, 2026 to the Chair. I would agree with the Law Department's analysis if it were applied to a conforming structure. I disagree that this property, as a nonconforming structure, is subject to the Code as the Law Department has suggested.

- No use variance is needed or sought – residential uses are permitted uses in the Business C District. The Law Department interpreted the proposed 7 units rather than only 3 units as "in essence" needing a use variance. While such a calculation could be applicable to new construction, or conversion of an existing commercial building that has no nonconformities, it is not applicable to a proposal to modify a legal nonconforming building.
- Thus, the provisions of Section 4.11 NAD 4.122 under which the Law Department calculated the maximum density is not applicable here, because this is a legal nonconforming structure subject to Section 3.72251 and permissible as of right under that Section.

¹ The design of the parking space is not governed by Section 5.3. That section by its terms, is applicable only to parking spaces required under Section 5.21. Section 5.21 sets forth a table for parking standards, none of which are applicable to the parking requirements of a retrofit of residential units into an existing commercial building. If this project were subject to a parking requirement, that would be found in Section 5.232, not in Section 5.21.

- The Law Department's reference to *Whelan v. Zoning Bd. Of Appeals of Norfolk*, 430 Mass. 1009 (2000); and *Cuocco v. Westwood ZBA*, 102 Mass. Appr. Cut. 1124 (2023), can be distinguished here. In both cases the Zoning Codes set out minimum areas and frontages for lot areas. The applications sought approvals to create new nonconformities or place a new structure – such as a shed in the Westwood case – on those lots that lacked the required minimum area or frontage. In contrast, Waltham in the Business C Zoning District, has no required minimum area. The lot fully conforms with Waltham's requirements. The building on 719 to 723 Main Street has a nonconformity – as noted above it lacks the rear yard and side yard setbacks and has legal nonconforming excessive FAR. But unlike *Whelan* and *Cuozzo*, the land at 719 to 723 Main is a legal lot in a Zone with no minimum lot area.

The written comment from the public – from Fred Kimberk – is misplaced. It appears that Mr. Kimberk is focused on and concerned that his proposed project, which is proposed on a conforming parcel and would be subject to the full extent of the Zoning Code, could be treated differently from Mr. Yu's project that modified an existing nonconforming building. Mr. Kimberk notes long-standing problems that he claims he has had as the owner of parking lots in close proximity to the Site and having tenants and customers use his private parking. The existing building, if fully occupied as an office, would have significantly higher parking demand during the day than the existing or the proposed use, even though there is no requirement for on-site parking for office use. The proposed project would create 5 on-site spaces, and encourage the use of the nearby municipal parking. The City Council could include as a condition of the Special Permit that any off-street parking for this project, in addition to the minimum provided by creation of the 5 proposed spaces on site, use only municipal parking spaces or, off-site parking by contractual agreement.

Conclusion:

For all the above reasons, I urge the ZBA to find and conclude that the proposed renovation of the second and third floors of the property at 719 to 723 Main Street, on a legal parcel but in pre-existing legal nonconforming structure, is permitted as of right, subject only to a Special Permit by the City Council under the Table 3.4 designation Y-1, and Section 4.12 . In the alternative, if the Board so finds that a Special Permit is required, I urge the Board to find and grant the Special Permit, with a finding that the project will cause no substantial detriment to the neighborhood and is entitled to the relief. If the Board so chooses, it could condition such a permit to require that the new residential units use the 5 designated on-site parking spaces or be specifically directed to use the nearby municipal parking.

Sincerely,

Matthew Watsky

Matthew Watsky

PROPOSED
CHANGE OF USE
719-723 MAIN STREET
WALTHAM, MA 02451



PEOPLE ARCHITECTS
128 Lincoln St., Unit 110,
Boston, MA 02111

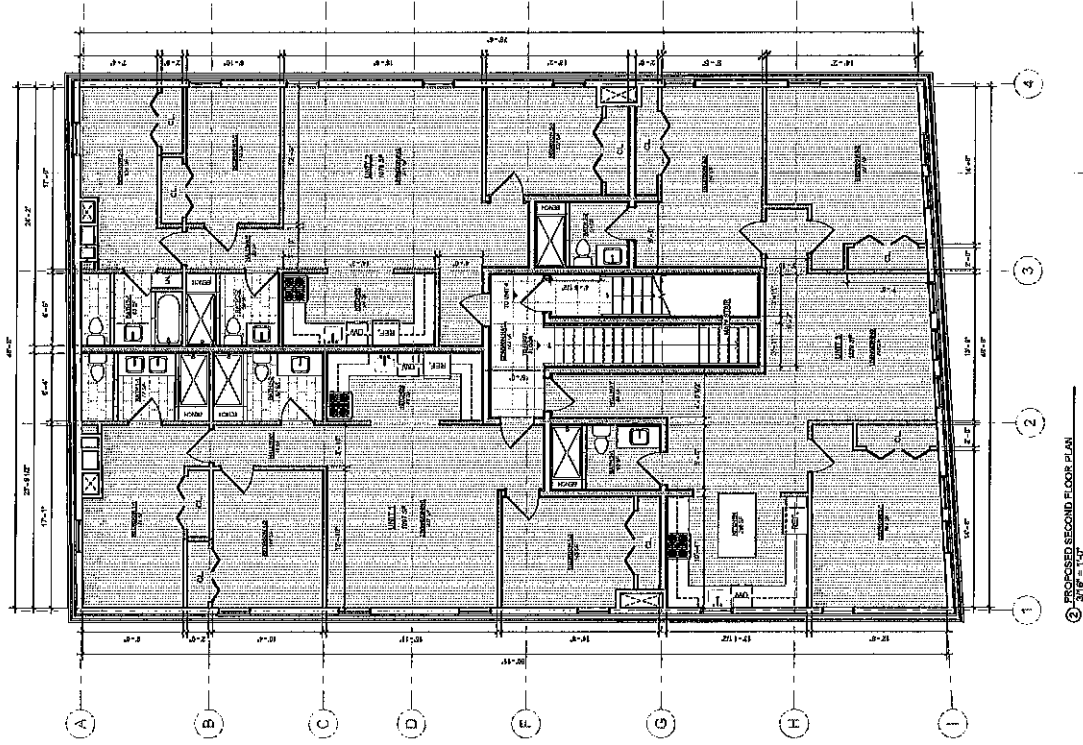
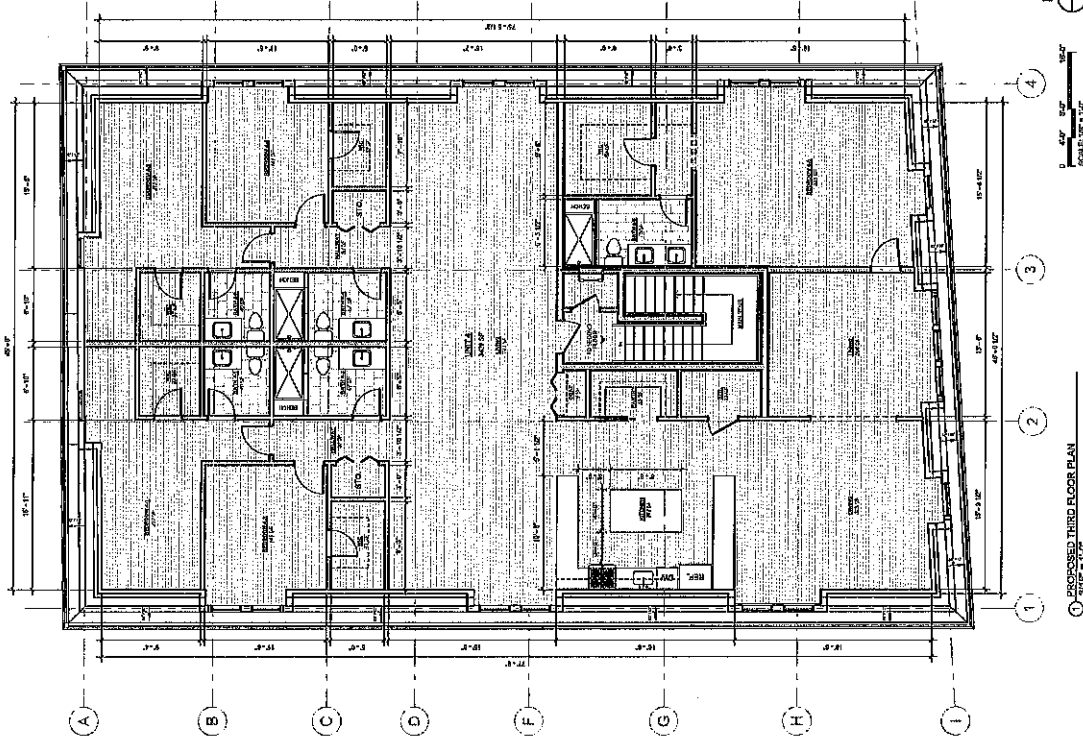
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PROPOSED FLOOR PLAN

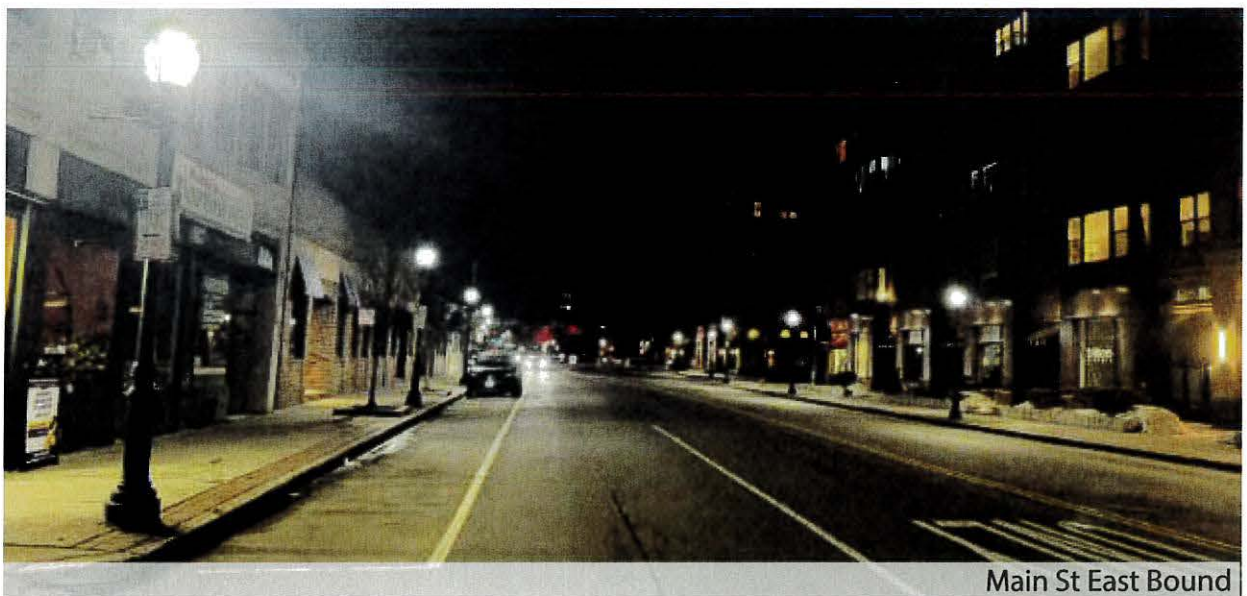
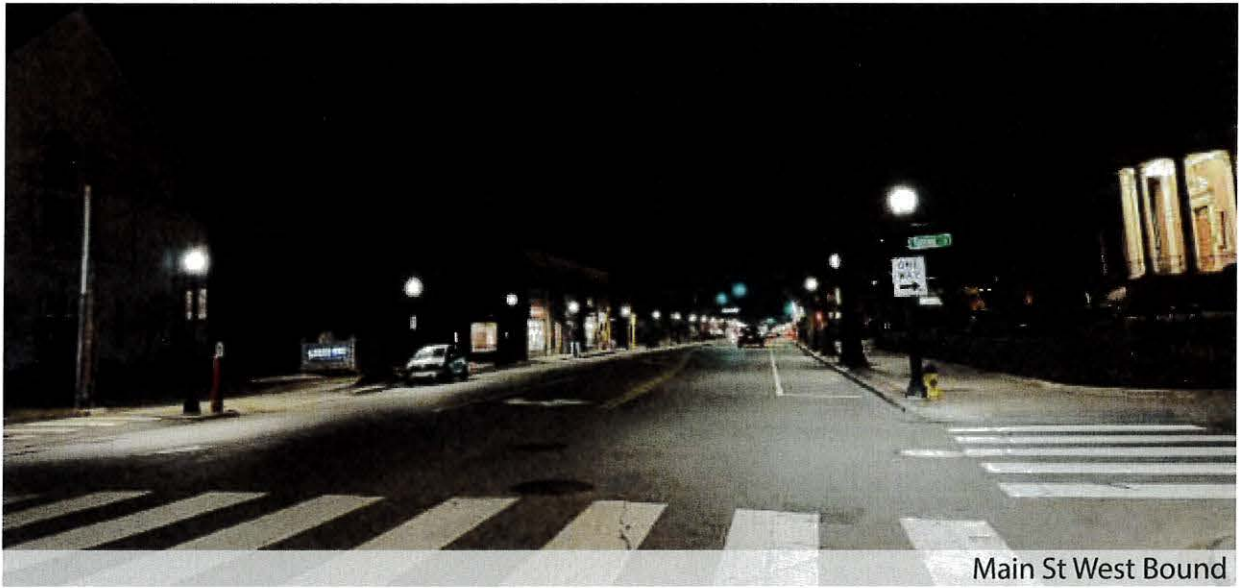
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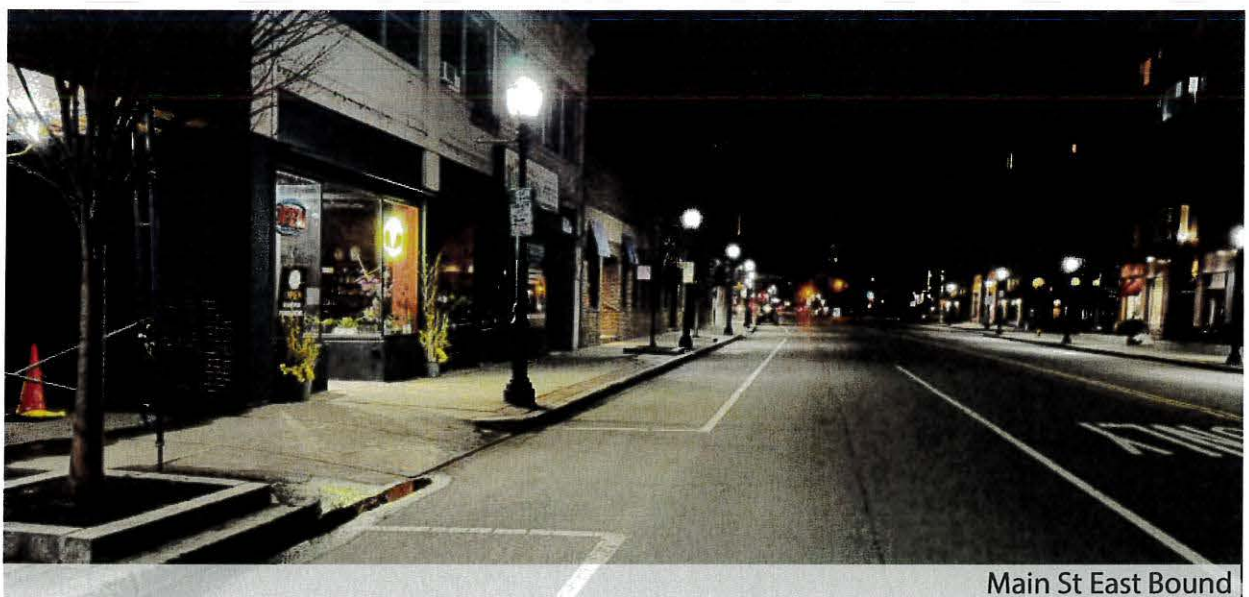
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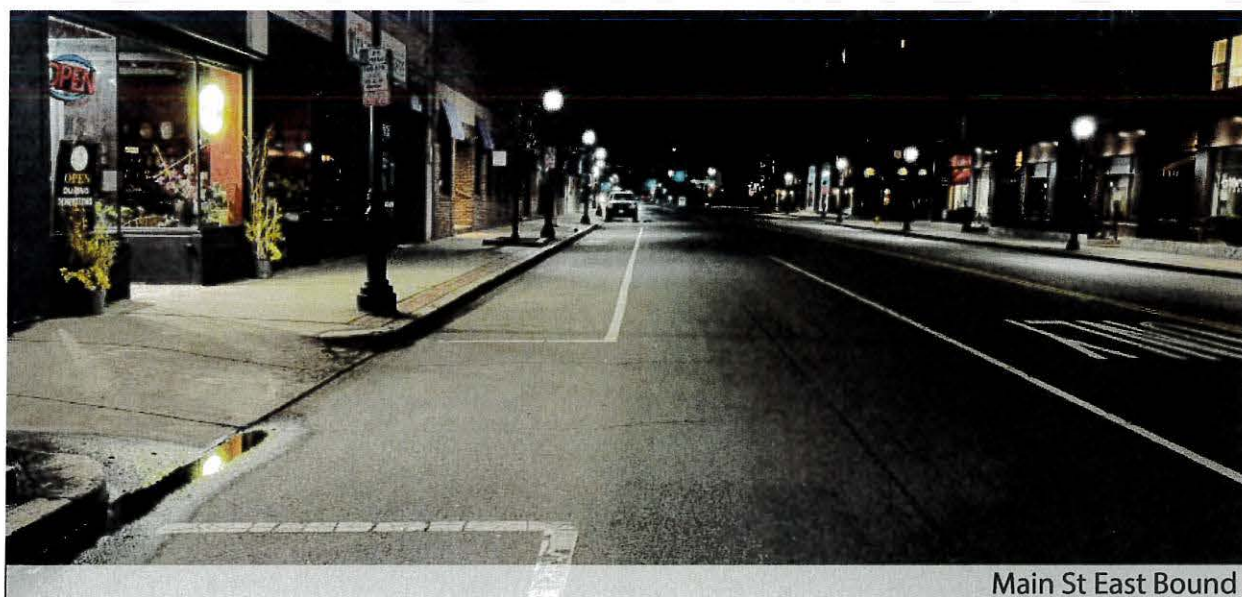
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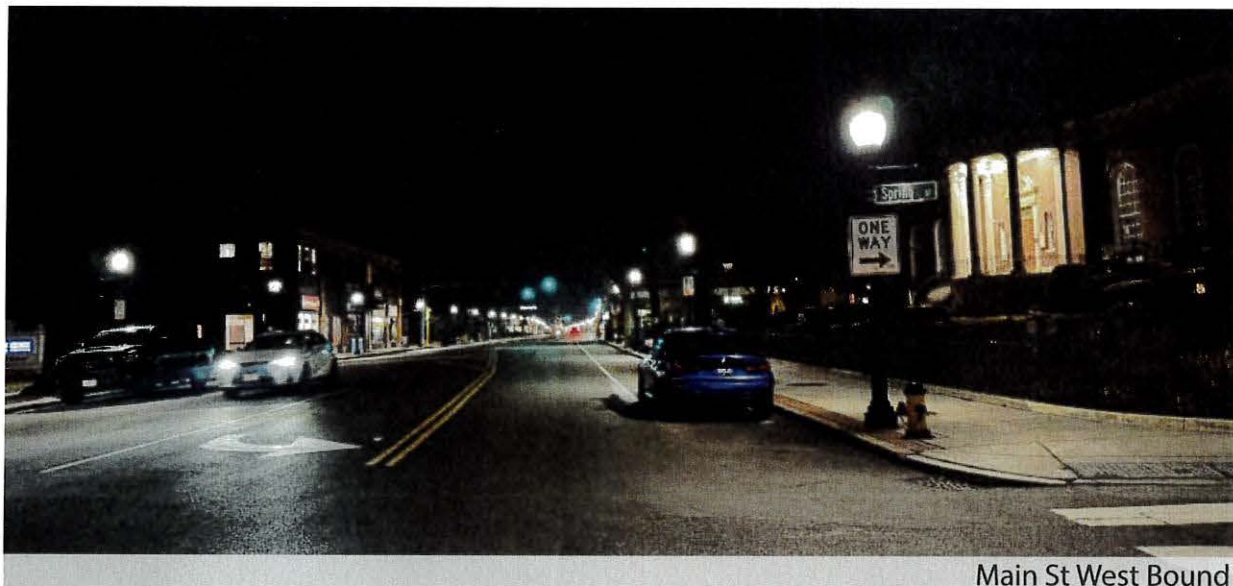
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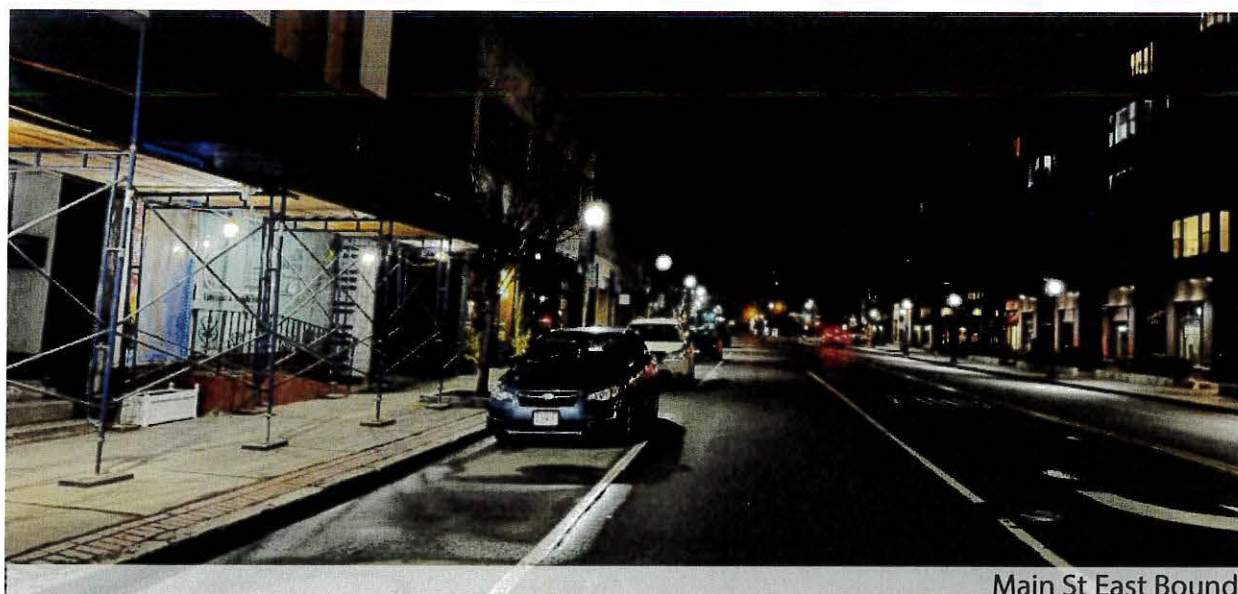
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Main St West Bound



Spring St



Main St East Bound

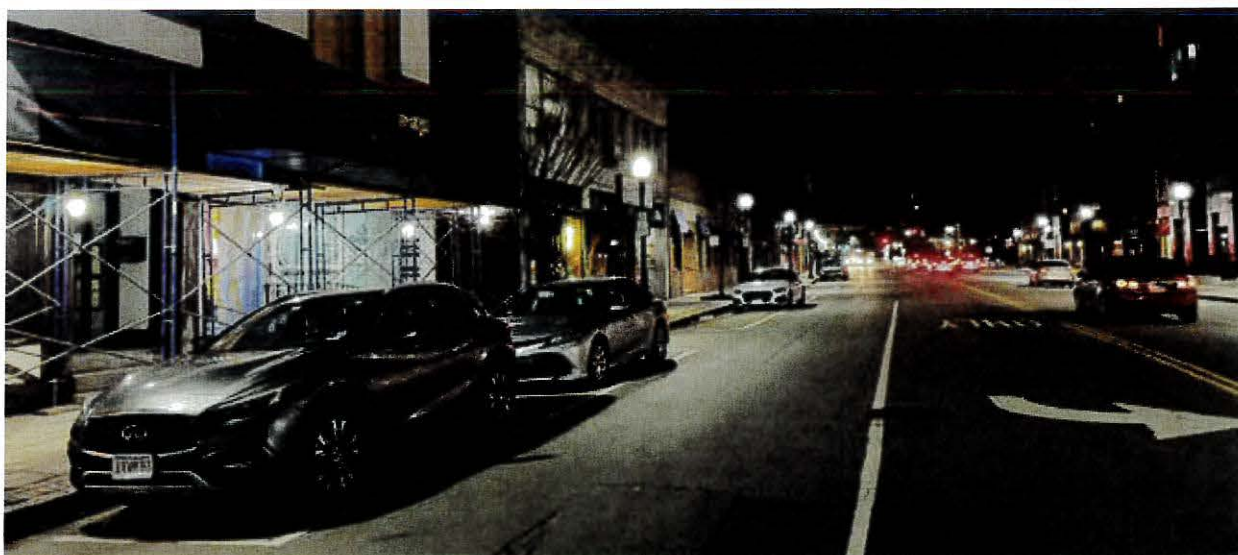
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Main St West Bound



Spring St



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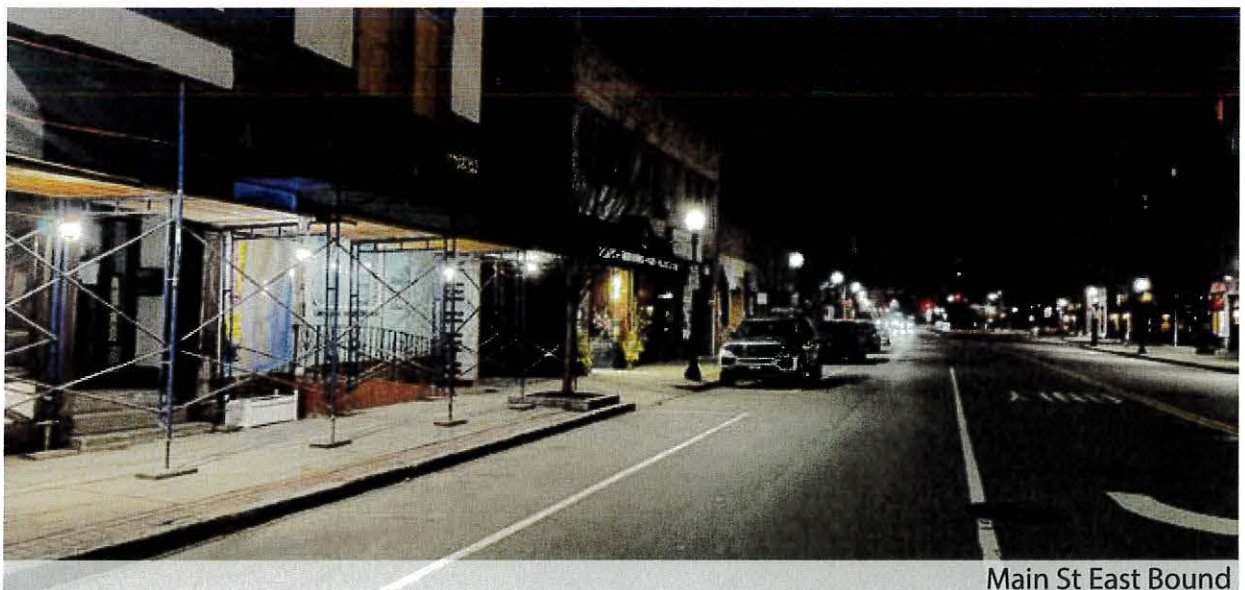
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Main St West Bound



Spring St



Main St East Bound

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Main St West Bound



Spring St



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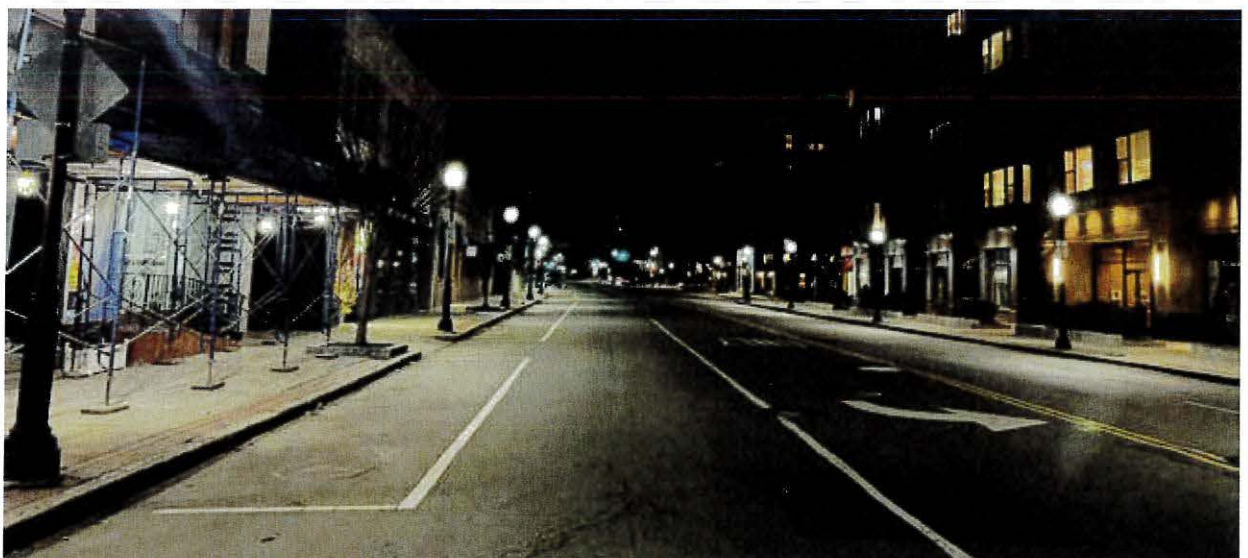
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Main St West Bound



Spring St



Main St East Bound

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Main St West Bound



Spring St



Main St East Bound

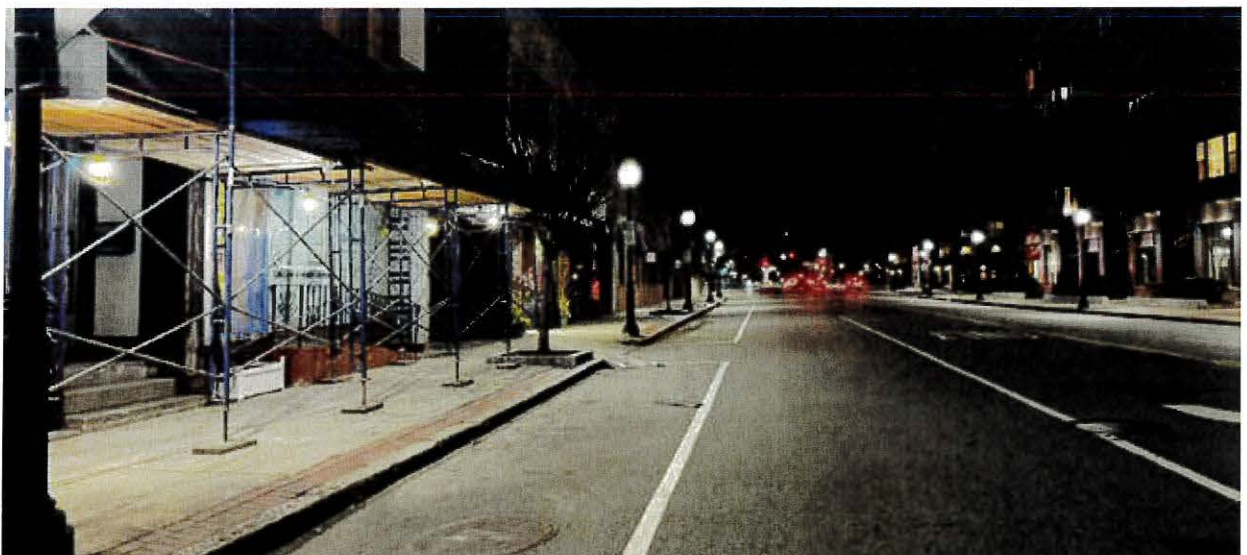
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Main St West Bound



Spring St



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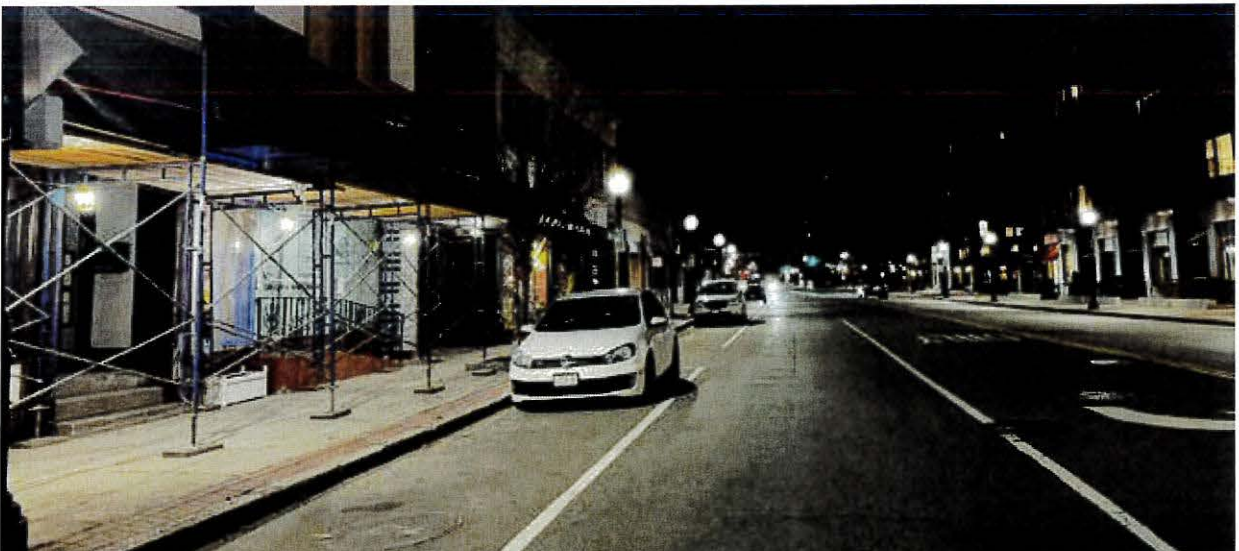
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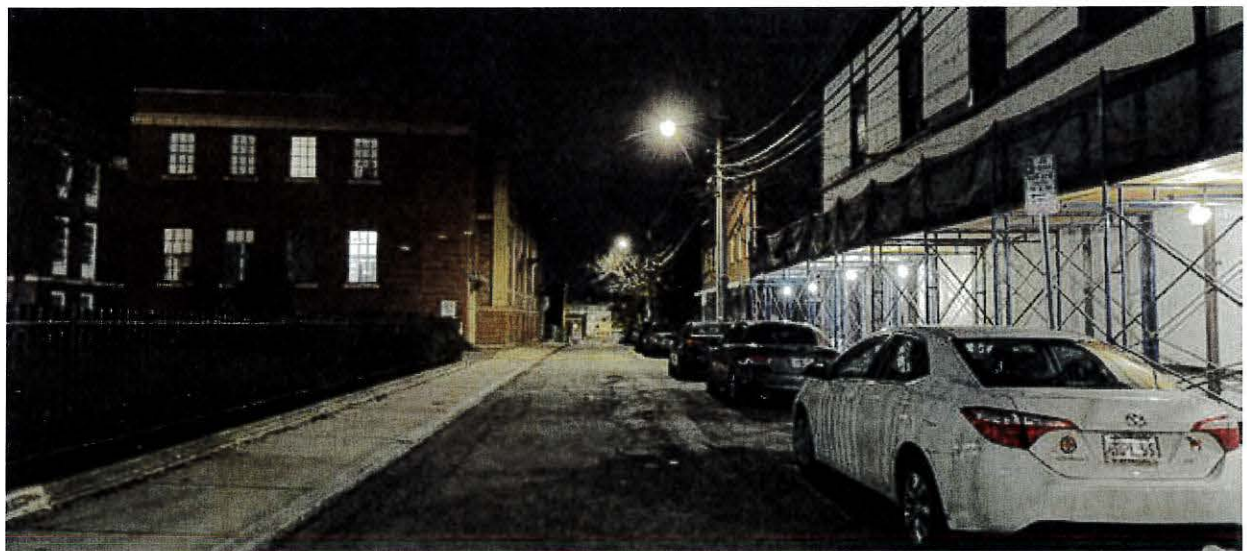


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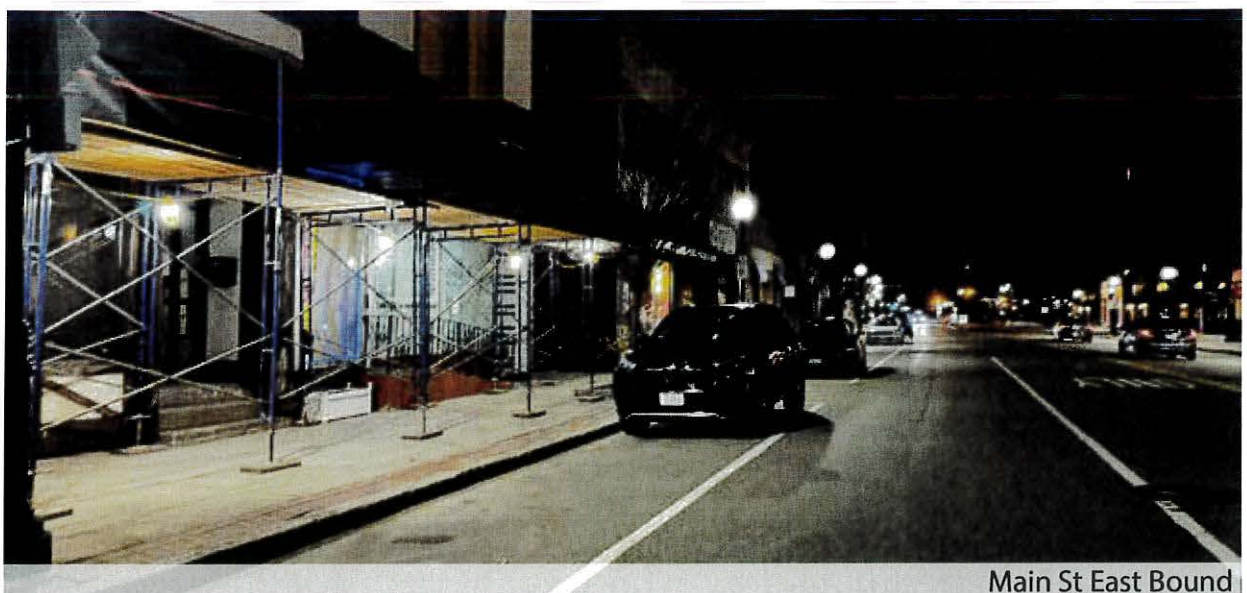
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Main St West Bound



Spring St



Main St East Bound

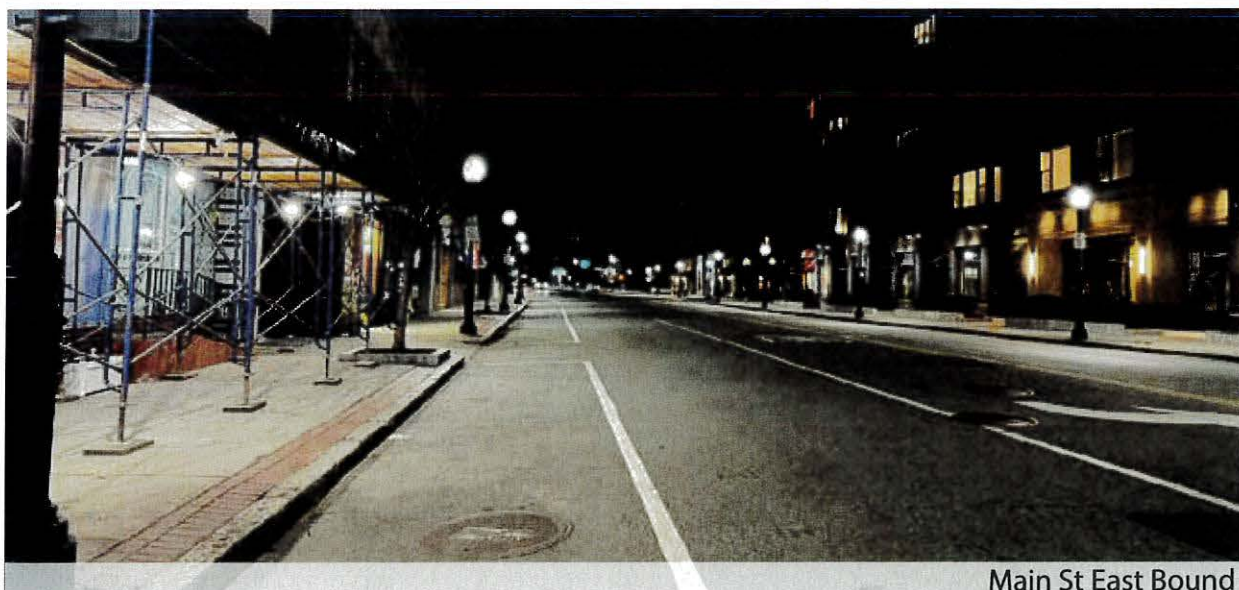
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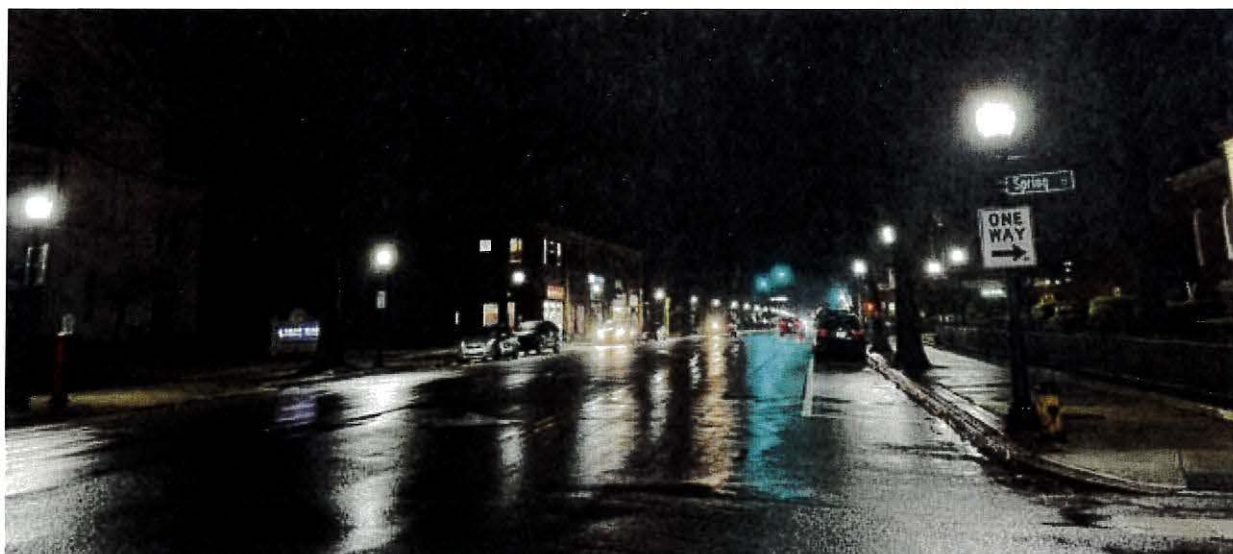


Spring St



Main St East Bound

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Main St West Bound



Spring St

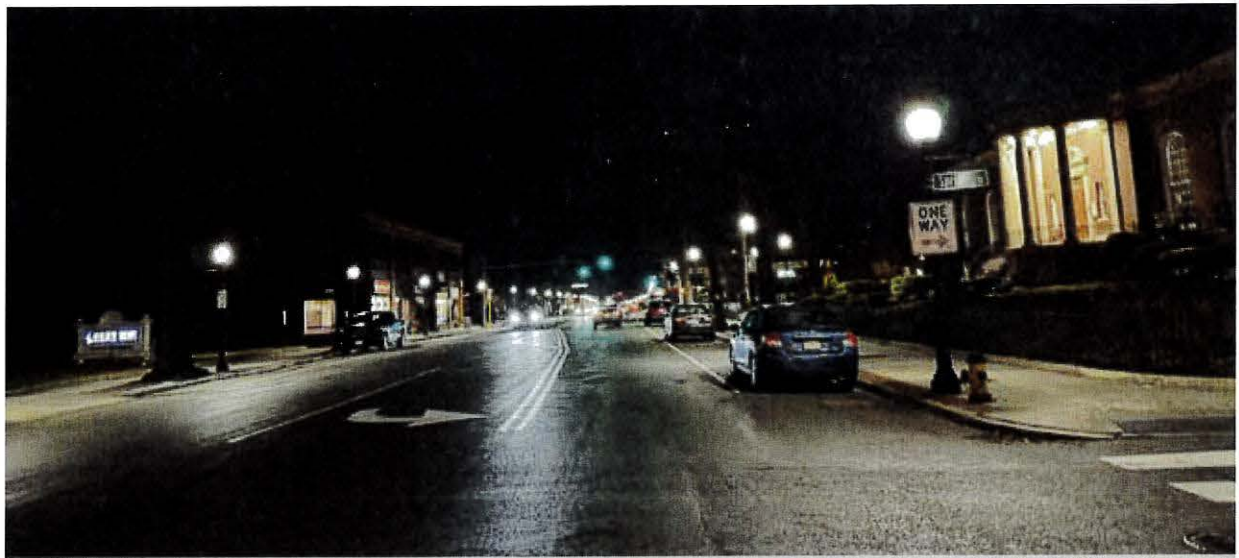


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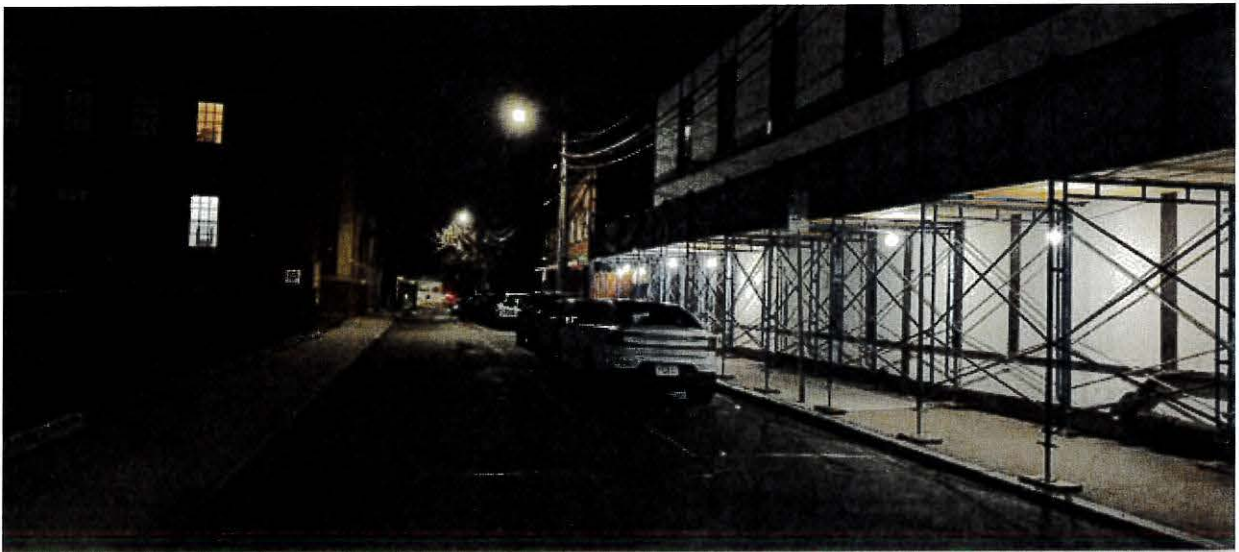
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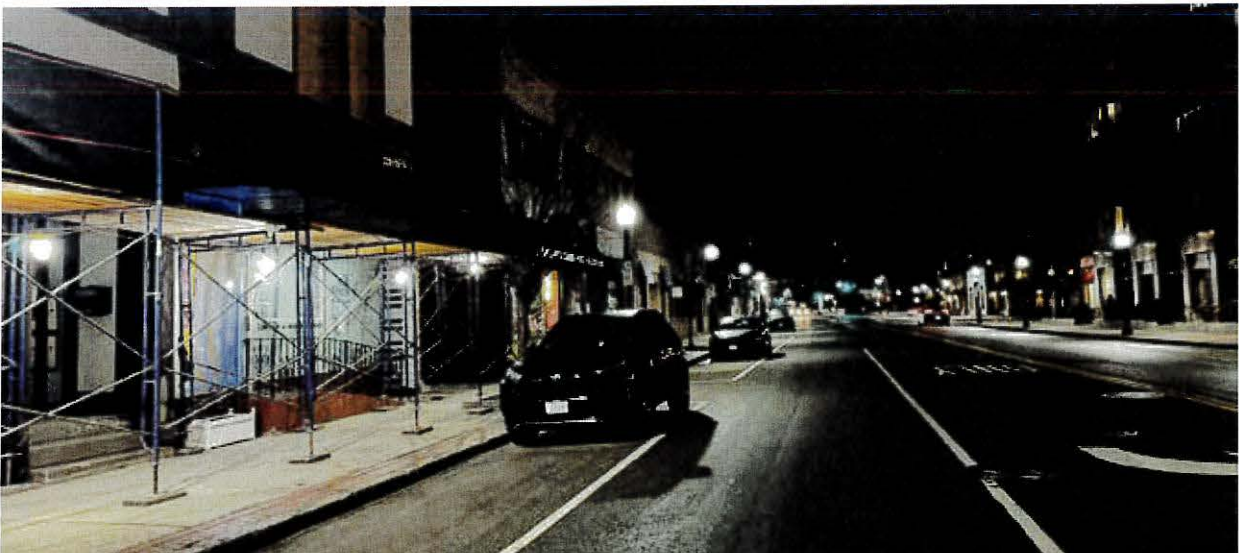
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Main St West Bound



Spring St



Main St East Bound

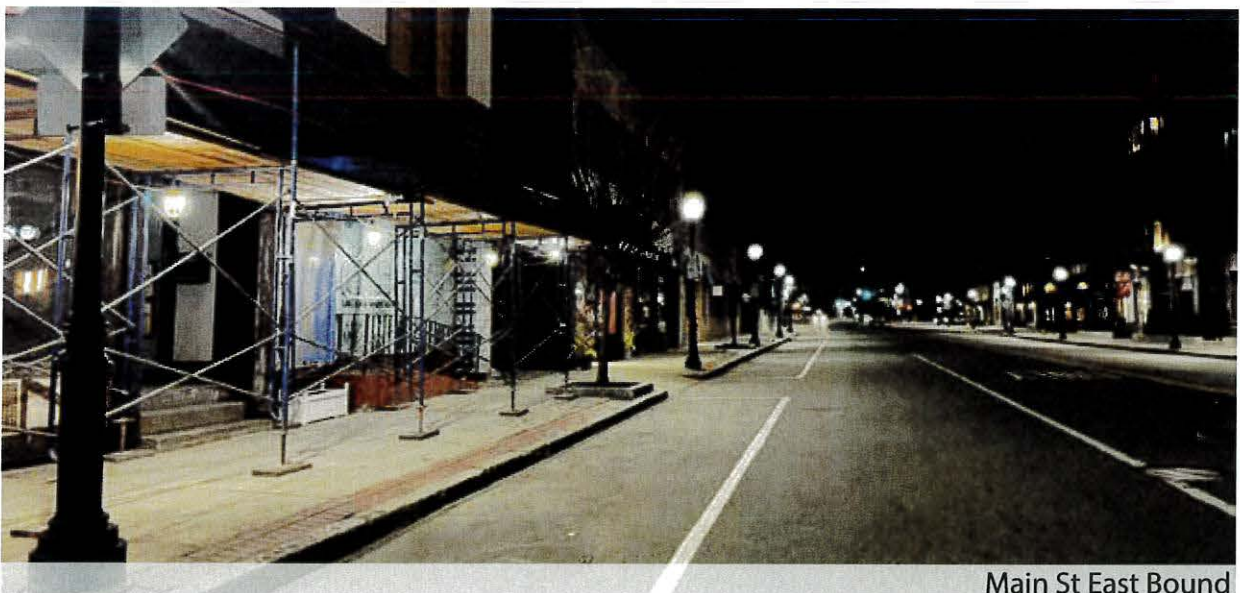
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Main St West Bound



Spring St



Main St East Bound