

**COMMONWEALTH OF MASSACHUSETTS**  
**LAND COURT**  
**DEPARTMENT OF THE TRIAL COURT**

MIDDLESEX ss.

MISCELLANEOUS CASE  
No. 24 MISC 000521 (DRR)

JANE BECKER and MAREN CHIU,

*Plaintiffs,*

v.

CITY OF SOMERVILLE ZONING BOARD OF  
APPEALS; SUSAN FONTANO, ANNE  
BROCKELMAN, BRIAN COOK, SISIA DAGLIAN,  
ANN FULLERTON and ZACHARY ZAREMBA, as  
members of the Somerville Zoning Board of Appeals  
and not individually; and FIRST  
CONGREGATIONAL CHURCH OF  
SOMERVILLE; and SOMERVILLE HOMELESS  
COALITION, INC.,

*Defendants.*

**CORRECTED DECISION**

Plaintiffs, Jane Becker and Maren Chiu (the “Plaintiffs”), challenge the Somerville Building Inspector’s issuance of a building permit to First Congregational Church of Somerville (“First Church”) authorizing the conversion of the ground floor of First Church’s building, located at 89 College Avenue (the “Church Building”) into an emergency homeless shelter to be

operated by the Somerville Homeless Coalition, Inc. (the “Coalition”).<sup>1</sup> After the City of Somerville Zoning Board of Appeals (the “ZBA”) upheld the Building Inspector’s denial of Plaintiffs’ request for zoning enforcement, Plaintiffs filed this appeal of the ZBA’s decision (the “Decision”) under Chapter 40A, § 17.

For the reasons discussed below, I find and conclude that Plaintiff Jane Becker has established standing to challenge the Decision, but uphold the Decision of the ZBA because conversion of First Church’s ground floor to use as a homeless shelter is a religious use entitled to the protections of G.L. c. 40A § 3 (the “Dover Amendment”).

### **PROCEDURAL HISTORY**

On September 6, 2024, Plaintiffs filed their initial Complaint seeking annulment of the building permit in a single count, appealing the ZBA’s Decision pursuant to Chapter 40A, §17.<sup>2</sup> On October 17, 2024, Defendants filed a motion to dismiss the Complaint for lack of standing, contending that the Plaintiffs had failed to allege sufficient aggrievement arising from operation of the proposed homeless shelter to establish standing. After a hearing held on December 18, 2024, the court denied the motion to dismiss, instead affording Plaintiffs an opportunity to file an

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<sup>1</sup> First Church, the Coalition, and the ZBA are collectively referred to as “Defendants.”

<sup>2</sup> A third plaintiff, Alan Ball, joined the initial Complaint and also the Amended Complaint, but on August 21, 2025, the parties filed the Stipulation of Dismissal for Plaintiff Alan Ball ONLY, with Maren Chiu and Jane Becker thereafter remaining as plaintiffs.

amended complaint to clarify and expand upon their allegations of harm arising from the proposed homeless shelter.<sup>3</sup> Plaintiffs filed an Amended Complaint on January 15, 2025.

After the close of discovery, an initial pretrial conference was held on June 11, 2025, where the court set a briefing schedule for the Defendants' five motions in limine. A hearing on

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<sup>3</sup> The docket issued following that hearing states, in part: Following hearing, court DENIED First Congregational Church of Somerville and Somerville Homeless Coalition, Inc.'s Motion to Dismiss for Lack of Standing for the reasons articulated in the opposition, on the record, and as follows: The Church and Coalition contend that the plaintiffs have failed to sufficiently allege aggrievement, particularly under the heightened standard enacted by the Affordable Homes Act for challenges to local approval. Section 17 of Chapter 40A now provides: "If the complaint is filed by someone other than the original applicant, appellant or petitioner, then each plaintiff, whether or not previously constituting parties in interest for notice purposes, shall also sufficiently allege and must plausibly demonstrate that measurable injury, which is special and different to such plaintiff, to a private legal interest that will likely flow from the decision through credible evidence." Abutters and other parties in interest are no longer entitled to a presumption of aggrievement, but rather have the burden to demonstrate by credible evidence measurable injury distinct from any harm to the broader community. While plaintiffs' counsel acknowledges that the allegations of aggrievement set forth in Paragraph 28 of the Complaint are somewhat thin, plaintiffs seek leave to file an amended complaint to enhance those allegations. In support thereof, plaintiffs have filed the affidavit of Jane Becker in which she articulates concerns about safety arising from the proposed shelter project, as well as increased rodents, noise disruption, and loss of property value. Also filed are several police reports regarding incidents in Davis Square, a report from the University of British Columbia concluding in part that property crime rates increase in those areas where shelters for people experiencing homelessness are located, and a report from the City of New York regarding the alleged connection between homeless shelters and a diminution in property values. While these supplemental materials appear to be hearsay, they are not offered as evidence, but rather in support of plaintiffs' allegation that there is credible evidence to support their request to file an amended complaint stating allegations regarding safety and loss of property values arising from the proposed shelter project. In considering a motion to dismiss under Mass. R. Civ. P. 12(b)(6), "the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff's favor, are to be taken as true." *Nader v. Citron*, 372 Mass. 96, 98 (1977). The court then determines "whether the allegations 'plausibly suggest' that the plaintiff is entitled to relief on that legal claim . . . . The allegations must be more than 'mere labels and conclusions,' and must 'raise a right to relief above the speculative level.'" *Buffalo-Water 1, LLC v. Fidelity Real Estate, LLC*, 481 Mass. 13, 17 (2018) (quotations and citations omitted). I conclude that it is fair and equitable to afford plaintiffs an opportunity to file an amended complaint to clarify and expand on their claims of aggrievement. I note that neither Alan Ball nor Maren Chiu filed affidavits and instead appear to rely on Ms. Becker's affidavit and her allegations; they also appear to live quite a distance from the Church. Because Section 17, as amended, now requires that each plaintiff must independently satisfy the standard for aggrievement, Mr. Ball and Ms. Chiu will each need to plead their own alleged basis for aggrievement. The amended complaint must also demonstrate that the harm alleged by each plaintiff is specific to them and differs from any impact on the community at large and further demonstrate why any harm alleged is not de minimis or speculative. *Murchison v. Zoning Bd. of Appeals of Sherborn*, 485 Mass. 209, 214-215 (2020).

those motions was held on July 31, 2025. The motions were allowed in part and denied in part.

The court's rulings appear in the docket and are summarized below:

First Church and the Coalition's Motion in Limine No. 1 - Peter Clemons should be precluded from testifying at trial because Plaintiffs did not disclose him as a possible witness in response to Private Defendants' interrogatories. First Church and the Coalition sought to preclude the testimony of Peter Clemons because he had not been disclosed as a potential witness in Plaintiffs' answers to interrogatories. The court denied this motion, noting that Mr. Clemons did not sell his property at 15 Kidder Avenue to his neighbor (Plaintiff Maren Chiu's husband) until April 23, 2025, and concluding that Plaintiffs had reasonably identified Mr. Clemons as a witness on May 19, 2025, in their draft initial joint pre-trial conference memorandum, just days after the close of discovery.

First Church and the Coalition's Motion in Limine No. 2 - Clair Pagnano should be precluded from testifying at trial because, as a nonparty, "the likely impact of the shelter on herself and her property" is irrelevant to this proceeding. First Church and the Coalition sought to preclude testimony from Clair Pagnano, who lives next door to Jane Becker. The court denied the motion, allowing Ms. Pagnano's testimony not to show the impact of the proposed shelter on Ms. Pagnano's property, but rather to show impacts on Jane Becker's property.

First Church and the Coalition's Motion in Limine No. 3 - Plaintiffs' lay witnesses should be precluded from testifying about perceived safety, noise, rodent and trash and property valuation concerns that can only be established through expert testimony.<sup>4</sup> First Church and the Coalition sought to preclude lay witness testimony about safety, noise, rodent and trash and property valuation concerns. The court denied that motion, with proposed lay witness testimony to be heard de bene. As stated in *Harris-Lewis v. Mudge*, "it is up to the judge's sound discretion whether evidence should be admitted de bene, subject to later motion to strike. See *Ellis v. Thayer*, 183 Mass. 309, 310-311 (1903); *R.L. Polk & Co. v. Living Aluminum Corp.*, 1 Mass. App. Ct. 170, 172 (1973)." *Harris-Lewis v. Mudge*, 60 Mass. App. Ct. 480, 485 (2004).

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<sup>4</sup> Counsel argued Motion in Limine No. 3 simultaneously with Motion in Limine No. 5 - First Church and the Coalition's Motion in Limine No. 5 - Plaintiffs should be precluded from offering testimony on issues pertaining to aggrievement that are not within the scope of concern of the Zoning Act or the Somerville Zoning Ordinance. Both motions were decided together.

First Church and the Coalition's Motion in Limine No. 4 - Plaintiffs should be precluded from offering into evidence the journal article, out-of-state report, and hearsay contained within the police reports. This motion was allowed with no objection from Plaintiffs.<sup>5</sup>

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<sup>5</sup> The first proposed exhibit was a pre-print of the article titled Effect of Emergency Winter Homeless Shelters on Property Crime in the Journal of Experimental Criminology (the "Journal Article") and the New York Independent Budget Office fiscal brief titled Close to Home: Does Proximity to a Homeless Shelter Affect Residential Property Values in Manhattan? (the "Fiscal Brief"). The Journal Article analyzed the effect of emergency winter homeless shelters on property crimes in nearby communities every winter between 2009 and 2016 in Vancouver. Journal articles are hearsay unless accompanied by evidence demonstrating that they are a reliable authority. *Kace v. Liang*, 472 Mass. 630, 643 (2015); see also *Mayer v. Mental Health Ass'n*, 29 LCR 519 (2021) (Misc. Case No. 19 MISC 000557) (Roberts, J.) (hundreds of pages of articles inadmissible in absence of exception to hearsay rule). An article may be established as a reliable authority by testimony or admission of testifying witness, other expert testimony, or judicial notice. *Kace*, 472 Mass. at 643; Mass. Guide to Evidence, §803(18)(B). Beyond Plaintiffs' failure to clearly explain the relevance of a study concerning emergency winter homeless shelters in Vancouver, British Columbia, Canada relative to the neighborhood and circumstances of the proposed project here at issue. As noted in the docket, the court concluded that Plaintiffs failed to identify an expert witness, such as an author of the article, to testify as to the reliability and applicability of the Journal Article. Without evidence supporting the Journal Article's reliability or providing the defendants with an opportunity for cross-examination, the court concluded the Journal Article may not be introduced into evidence. As to the second proposed exhibit, a fiscal brief from the New York City Independent Budget Office, analyzing data collected by municipal departments between 2010 and 2018. The court concluded that Expert testimony not available to establish the reliability of that analysis. G. L. c. 233, § 78; *Kace*, 472 Mass. at 643. Plaintiffs failed to disclose an expert witness who could be available to explain how the data was compiled and analyzed, or how and why the analysis might be applicable to the neighborhood and proposed project here at issue. Nor is such an expert available for cross-examination. The court concluded this proposed study was not sufficiently reliable for admission into evidence. *Commonwealth v. Steeves*, 490 Mass. 270, 281 (2022).

Defendants sought to exclude three Somerville Police Department reports, arguing the police reports were hearsay and also irrelevant as to whether there will be similar incidents at or near the proposed homeless shelter at the First Church reports (prepared by Officer Daniel Haley for an October 10, 2024, arrest, Detective Joseph Moreira for an October 1, 2024, arrest, and Detective Fernando Cicerone for a September 28, 2024, arrest). Under Massachusetts evidentiary standards, "a statement that (1) the declarant does not make while testifying at the current trial or hearing, and (2) a party offers in evidence to prove the truth of the matter asserted in the statement" constitutes hearsay. Mass. Guide to Evidence, § 801. Hearsay is inadmissible unless an exception is provided by (a) case law, (b) a statute, or (c) a rule prescribed by the Supreme Judicial Court. Mass. Guide to Evidence, § 802. The purpose of the hearsay rule is to prevent evidence by those not present at trial by guarding "against the admission of unsworn testimony presented without the opportunity for cross-examination of the declarant, wherein the reliability and accuracy of the statement could be tested." *Steeves*, 490 Mass. at 281. Accordingly, "exceptions to the rule against hearsay must be narrowly crafted so as not to frustrate the purpose of the rule itself." *Id.* Police reports are generally admissible as a business record hearsay exception. *Commonwealth v. Walker*, 379 Mass. 297, 302 (1979); *Carey v. New Yorker of Worcester, Inc.*, 355 Mass. 450, 453 (1969). The court denied the motion in limine as to firsthand, factual observations contained in the police reports. With respect to the Private Defendants' hearsay objection, the reporting officers' firsthand, factual observations as recorded in their contemporaneous reports are admissible. *Adoption of Paula*, 420 Mass. 716, 727 (1995). The foundation for the admissibility of a business record does not

On August 20, 2025, the court conducted a view of the Church Building, the Plaintiffs' properties, the surrounding neighborhood, the nearby site of the Coalition's existing shelter, and Davis Square. Trial was held on August 26 and 27, 2025, in person. Court confirmed that there were no objections to the view and the issues for trial: (1) Whether Plaintiffs are "persons" aggrieved for purposes of G.L. c 40A § 17, with standing to pursue this appeal; and (2) Whether the shelter is religiously significant and the primary and dominant purpose of the Church remains religious to support that religious use and is thus subject to the Dover Amendment. In their Joint Pre-Trial Conference Memorandum, the parties stipulated to 31 Agreed Upon Facts in the Pre-Trial Conference Memorandum. Exhibits 1-29 were admitted. See Final Exhibits Index, filed on September 2, 2025, together with Exhibits 28 and 29.

The court heard testimony from Jane Becker ("Becker"), Maren Chiu ("Chiu"), Peter Clemons, Clair Pagnano, Michael Libby, Reverend Jenn Macy ("Rev. Macy"), Hannah Ferello, and Brett Smith. At the close of Plaintiffs' case-in-chief, Defendants made an oral motion for directed verdict on the basis of standing. The court concluded that Plaintiffs had introduced sufficient evidence from which a reasonable inference could be made that at least one of them was aggrieved by issuance of the building permit.

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need to be established through the testimony of the preparer. *McLaughlin v. CGU Ins. Co.*, 445 Mass. 815, 819 (2006). Rather, the absence of testimony from the preparers is a matter which will affect the weight of such records. *Wingate v. Emery Air Freight Corp.*, 385 Mass. 402, 406 (1982). The court allowed the motion in limine with respect to the recounted statements of third parties or observations of third parties included within the Police Reports, which those statements are inadmissible hearsay. The docket further noted that because it is far from clear how the three incidents at issue in the police reports was relevant to the proposed project or the Plaintiffs' aggrievement, the police reports would be admitted conditionally, with a determination as to relevance to be determined in the context of trial.

On October 17, 2025, the parties filed proposed Post-Trial Briefs, with proposed findings of fact and rulings of law. Closing arguments were held in person on November 17, 2025, after which time the trial transcripts were delivered and the court took this matter under advisement.

## **FACTS**

Based on my view of the properties, the stipulated facts, the exhibits, the testimony at trial and my assessment of the credibility of the witnesses at trial, I make the following findings of fact:

### *The Parties & Their Properties*

1. Plaintiff Becker owns and resides at 7 Francesca Avenue, directly across the street from First Church's side entrance on Francesca Avenue. She has lived there since 1989 and now lives there alone. Her property is almost at the corner of College Avenue and a few blocks from Davis Square. Tr. Vol I., pp. 102-103.

2. Plaintiff Chiu owns and resides in property improved with a two-family house at 17 Kidder Avenue. She lives with her husband and teenage daughter on the second and third floors. Her adult sons live on the first floor. The Chius purchased this property in 1995. This property is about three houses away from College Avenue. Kidder Avenue runs parallel with Francesca Avenue and is the next block further away from Davis Square as one leaves the Square and passes by First Church. Tr. Vol I., pp. 31-32.

3. Chiu and her husband also own a three-family house located at 24-26 Francesca Avenue, directly behind 17 Kidder Avenue. 24-26 Francesca Avenue is rented, with three separate apartments each currently occupied by tenants. The Chius rent one of the units to

an Afghan refugee family at substantially below market rent. Tr. Vol I., p. 32-33.

4. The ZBA is a duly authorized municipal body with a principal place of business at 93 Highland Avenue, Somerville. Its members are Susan Fontano, Anne Brockelman, Brian Cook, Sisia Dagilan, Ann Fullerton, and Zachary Zaremba. Statement of Agreed Facts in Joint Pre-Trial Conference Memorandum dated June 4, 2025 (“SOF”) ¶ 4.

5. The ZBA is the decision-making authority for administrative appeals from the issuance of building permits, pursuant to Section 15.5.2 of the Zoning Ordinance (the “Ordinance”). SOF ¶ 9.

6. First Church is a religious corporation with a principal office at 89 College Avenue. First Church owns the Church Building located at 89 College Avenue, pursuant to a deed recorded in the Middlesex (South) Registry of Deeds (the “Registry”) at Book 10529, Page 278. SOF ¶¶ 6, 10.

7. First Church owns a parsonage on College Avenue, adjacent to the Church Building, pursuant to a deed recorded in Registry at Book 10529, Page 278.

8. The Coalition is a Massachusetts nonprofit corporation with a principal office at 1 Davis Square in Somerville. SOF ¶ 7.

### *The Church Building and the Neighborhood*

9. The Church Building is located on a corner lot with its front door located on College Avenue and a side entrance on Francesa Avenue. The main entrance faces College Avenue and is accessed through a yellow door located at the top of a set of stairs. A separate entrance, also on College Avenue, leads to the second floor Sanctuary. There is a small front lawn. A third entrance further back from College Avenue with a red door (and

further away from Francesca Avenue) leads to utility areas and the ground floor. Tr. Ex. 22A.

10. The side entrance to the Church Building, located on Francesca Avenue, is accessible to people with disabilities because it is at ground level, opening directly into Duhamel Hall, a large open finished area where the shelter is proposed to be located and which First Church now uses for gatherings. Tr. Ex. 22A, Tr. Ex. 22B.

11. A bus stop for routes numbered 89, 94, and 96 is located near the main entrance to the Church Building on College Avenue. View observations.

12. College Avenue is a busy street with heavy traffic, with one lane of traffic moving in each direction. View observations.

13. The Church Building is a short walk from Davis Square, which is a busy, commercial center with restaurants, a movie theater, shops, and the like. Along College Avenue, there are multi-family residential buildings, small business offices, and several other churches/places of worship. Tr. Ex. 22F.

14. As one heads out of Davis Square toward Tufts University, the Church Building is on the right. The quiet neighborhood near the Church Building, leading away from College Avenue, consists primarily of single, two, and three-family homes. View observations.

15. Statue Park is located in the center of Davis Square, at the intersection of several streets, with substantial vehicular and pedestrian traffic. Statue Park is roughly two and a half blocks from the Church Building. It consists of a brick plaza, surrounded by stores and restaurants, with statues of life-sized human figures (hence the name, Statue Park). Public benches and tables, as well as trees, are located throughout the brick plaza. Tr. Ex. 22F.

16. An entrance to the Davis Square MBTA Redline Station is located on College Avenue, across the street from Statue Park and on the same side of College Avenue as the Church Building. There is also an adjacent bus stop. View observations.

*The Coalition, Its Work in Somerville, & the Existing Shelter*

17. Michael Libby (“Libby”) is the Executive Director of the Coalition. He has held different positions with the Coalition, beginning as a case manager in 2000. In 2002, he became the direct manager of the Coalition’s existing individual shelter at 64 College Avenue. Since that time, his responsibilities have grown, but throughout he has continued his role as the direct manager of the existing shelter. He holds a master’s degree in social work from Salem State University. He testified as to the Coalition’s work in Somerville and the existing shelter. Tr. Vol I., pp. 193-194.

18. The Coalition’s mission is to serve unsheltered individuals, those at risk, and food deprived individuals. The Coalition provides street outreach, physical and mental health services, support, food, addiction prevention services, and supportive permanent housing. It has an Engagement Center in Davis Square with computers that individuals can use to find jobs and housing opportunities.

19. The Coalition currently operates a homeless shelter in another church building at 64 College Avenue, where it has operated for over 40 years. The existing shelter is located in the basement of the Holy Bible Baptist Church, roughly one block from First Church, on the other side of College Avenue and closer to Davis Square. The existing shelter has sixteen (16) beds, housing guests from 4:00 P.M. to 8:00 A.M., seven days a week. Libby testified that the current shelter does not operate as a so-called night-to-night shelter, because there is a

fair amount of consistency in its guests and low turnover from day to day and week to week. The average stay for a guest is nine (9) months.

20. The existing shelter is not accessible to people with disabilities. Tr. Ex. 22E.

21. Coalition's outreach teams identify unsheltered individuals who may be candidates to be guests at the existing shelter. The outreach team does so by becoming acquainted with unsheltered individuals in Somerville, identifying those who have an interest in becoming guests, and evaluating those who have an ability to function properly in a congregate living environment. When an opening occurs at the existing shelter, the outreach teams assist potential guests with the application process. Tr. Vol I., pp. 203-204.

22. The Coalition staffs the existing shelter with both full and part-time employees during operating hours. There are at least two employees on site during operating hours. Currently, five to six paid staff are assigned to the shelter, including a full-time manager, with volunteers and interns providing additional assistance. These numbers reflect increased staffing levels in anticipation of increased capacity at the proposed new shelter location and are proposed to remain in place at the new shelter location. Tr. Vol I., pp. 252-253.

23. Shelter staff receive training in subjects such as CPR, first aid, de-escalation (how to intervene in an emotional situation to decrease, rather than increase emotions), trauma-informed care (care that considers physical and psychological traumas that guests may have experienced), motivational interviewing (an approach that seeks to elicit a desire for change by focusing on positive outcomes), harm reduction (an approach that helps

people understand the benefits of making a positive change in lifestyle), and ethical conduct. Tr. Vol I., p. 255.

24. The existing shelter provides guests with a bed, linens, shower facilities, laundry facilities, bathrooms, a kitchen with food and meals, and a common area with television. Shelter staff also provide instruction in basic life skills, such as how to set and stick to a schedule, how to cook safely, and how to navigate personal relationships. Shelter staff also provide companionship. Tr. Vol I., p. 248-249.

25. The Coalition requires that shelter guests follow their Rules of Conduct. Those rules require, for example, that: guests must treat other guests and people in the neighborhood with respect; guests may not loiter on or offsite, nor trespass on neighborhood property; and guests may not bring illegal drugs or drug paraphernalia to the shelter. Violation of the Rules of Conduct may result in discharge. Libby estimated that, on average, the Coalition discharges approximately three (3) guests each year from its existing shelter. Tr. Vol I., pp. 212-216.

26. The existing shelter has been subject to the entrance requirements of a “low-barrier” shelter since approximately 2023. “Low-barrier” means that the Coalition cannot deny entry to a shelter applicant on the basis of a history of drug addiction, mental health conditions, or prior convictions, in accordance with its contracts with the Commonwealth. Tr. Vol I., pp. 196-197.

27. Any guest who is required to register as a sex offender must both register and report that status to the shelter staff.

28. First Church is a member of the United Church of Christ. The United Church of Christ operates both regionally and nationally, but members of each congregation make decisions and govern their local churches. As Lead Pastor of First Church, Rev. Macy is the head of staff, provides spiritual leadership, and assists lay leaders who hold the centralized power. The highest authority in the United Church of Christ is the local congregation's decision. The decision of each local church is final. Tr. Vol II., pp. 35-36.

29. Congregation members elect a leadership team to make decisions in between meetings of the congregation, as well as a diaconate for spiritual leadership. The diaconate is a group of lay leaders who assist with worship and help determine the direction of the congregation when there is a question requiring deep consideration. Tr. Vol II., pp. 36.37.

30. The elected leader of the congregation is called the Moderator, currently Hannah Ferello ("Ferello"), who has held that position since June 2022. The Moderator is the chair of the leadership team and serves as a volunteer. The leadership team also includes an elected Treasurer responsible for finances and bookkeeping, also a volunteer. Brett Smith ("Smith") is now the Treasurer. Tr. Vol II., pp. 58, 114.

31. Prior to becoming formal members of the congregation, individuals attend courses and participate in a formal ceremony. There are approximately two hundred ten (210) official members of First Church's congregation. Non-members are welcome to attend services and participate in the community. Tr. Vol II., p. 43.

#### *First Church's Discernment Process*

32. In the fall of 2023, First Church undertook a discernment process. A discernment process, as described by Rev. Macy and First Church's witnesses, means going to God in prayer, consulting scripture, and gathering in community to determine what God might be calling the

congregation to do. This included a so-called visioning process where the membership gathered to consider questions such as “Who are we now?” and “Who is God calling us to be?” Tr. Vol II., p. 40.

33. The result of the discernment process was a Vision Statement, which guided First Church’s decision-making in the years ahead. The Vision Statement is as follows: “First Church Somerville lives to make God’s expansive love and justice real through radically inclusive sanctuary, authentic connection, spiritual exploration, and transformative community engagement.” Tr. Vol II., p. 40.

*The Relationship Between First Church & the Coalition*

34. The relationship between Coalition and First Church predates the Coalition’s efforts to find a new shelter location. For more than twenty-five (25) years, First Church has hosted the Coalition’s Monday night community meal program. In addition, First Church has hosted an early Thanksgiving dinner for the Coalition’s clients, where First Church provides a blessing. First Church’s Justice and Outreach Committee has volunteered in the Coalition’s food pantry, has hosted diaper drives, toiletry drives, incontinence drives, and donates to the food pantry. Tr. Vol II., pp. 55, 57; Tr. Vol I., p. 269.

35. In the summer of 2022, following First Church’s visioning process, First Church and the Coalition began discussing additional ways for First Church to further engage with the Coalition. Initially, Rev. Macy suggested that the Coalition consider the parsonage building as shelter. After conducting a site visit, however, the Coalition determined that the parsonage was not suitable for a shelter because it could not easily be

made accessible for people with disabilities. Tr. Vol II., pp. 61-62.

36. In August 2023, Libby asked Rev. Macy whether First Church would consider allowing the Coalition to use the ground floor of the Church Building as a shelter. Rev. Macy discussed the idea with the leadership team and responded that First Church would be open to the idea but needed to go through a discernment process to deeply consider scripture and whether God was calling First Church to this task. Tr. Vol II., p. 63.

37. On September 12, 2023, First Church formed the “Discernment Task Force.” The Discernment Task Force was charged with leading the Congregation to discern whether hosting a homeless shelter within the Church Building was God’s work and, if so, whether it was First Church’s work to do that work. The Discernment Task Force also considered how First Church and a shelter could share the Church Building. A series of discernment meetings were held for congregation members. Tr. Vol II., p. 70.

38. On September 20, 2023, via email, First Church informed members of the congregation of the possible partnership with the Coalition. A meeting for congregation members was held on September 24, 2023. Those in attendance discussed whether the shelter was something that God was calling the congregation to do. An informal poll of those in attendance unanimously answered “Yes.” Tr. Ex. 11.

39. In September 2023, Rev. Macy and Libby asked Somerville’s Inspectional Services Department (“ISD”) to evaluate whether the ground floor of the Church Building could serve as a shelter. ISD gave them a green light, so long as the Church Building remained primarily for religious use and subject to certain life safety work, such as adding showers. Following this inspection, Libby sent First Church a proposal for First Church to host the shelter.

40. In December 2023, Libby informed First Church that he had become aware of an opportunity to apply for Commonwealth funding to renovate the Church Building for the proposed shelter.

41. In January 2024, First Church surveyed its members about hosting a proposed shelter and received fifty-six (56) responses. Those responses indicated overwhelming support for hosting the shelter, in furtherance of First Church's Christian calling and its Vision Statement, although there were some concerns about change and logistics. Tr. Ex. 10.

42. On January 14, 2024, First Church's leadership team convened a listening session for congregation members in advance of an upcoming discernment meeting, which was called for January 21, 2024. An informal poll of those in attendance at the listening session affirmed First Church's calling to host the shelter and partner with the Coalition (by a vote of 37 yes, 0 no, and 2 abstentions). See Meeting Minutes, Tr. Ex. 11.

43. In February 2024, the Coalition received a grant from the Commonwealth to fund renovations for the shelter in the amount of three hundred thousand dollars (\$300,000.00). First Church sped up its discernment process to try to accommodate the grant. Tr. Vol II., p. 9.

44. On February 13, 2024, First Church formed a Negotiation Task Force to negotiate the terms of a lease with the Coalition and the logistics of sharing space.

45. On February 25, 2024, First Church's leadership team hosted an information session for congregation members where Libby answered questions about the proposed shelter. First Church also hosted a dinner with its leadership team and the Coalition Board to promote good will and their shared mission. Tr. Vol II., pp. 131-133.

46. On March 17, 2024, First Church convened an official congregation Meeting to discuss the proposed shelter. A vote was taken on motion of the leadership team: "The First

congregational Church of Somerville enters into a partnership and lease agreement with Somerville Homeless Coalition to rent portions of our building for use as a shelter for the unhoused of Somerville.” By a vote of 41 to 0, the congregation voted to host the shelter. As sincerely described by Rev. Macy, Ferello, and Smith, this unanimous vote was a joyful moment for the congregation. Tr. Exs. 11, 13.

47. First Church’s decision to host the shelter was grounded in its religious beliefs as explored during the Discernment Process and guided by encouragement from the national United Church of Christ to engage in radically inclusive Christianity. Rev. Macy, Ferello, and Smith, who actively participated in and led the discernment process, provided robust scriptural support in both the Old and New Testament for housing the unsheltered and caring for strangers. These scriptural references include, among others:

- (a) Isaiah 58:7. Is it not to share your bread with the hungry and bring the homeless poor into your house; when you see the naked, to cover them and not to hide yourself from your own kin?
- (b) Hebrews 13:2. Do not neglect to show hospitality to strangers, for by doing that some have entertained angels without knowing it.
- (c) Acts 4:34;35. There was not a needy person among them, for as many as owned lands of houses sold them and brought the proceeds of what was sold. They laid it at the apostles’ feet, and it was distributed to each as any had need.

Tr. Ex. 1.

48. Neither First Church, nor the Coalition informed the neighbors about the proposed shelter while all the above activities were ongoing.

The Lease

49. The Coalition and First Church entered into a five-year lease pursuant to which the Coalition agreed to pay First Church an initial base rent of six thousand five hundred dollars (\$6,500) per month (\$78,000.00/year) in exchange for the use of the majority of the ground floor of the Church Building. Annual rent increases in ensuing years, rising to \$7,315.81/month for the fifth year. This rent constitutes approximately twenty percent (20%) of First Church's annual budget. The lease also provides the Coalition with an option for an additional five-year term. Tr. Ex. 8.

50. The lease was entered into on June 16, 2024, with rent commencing on July 1, 2024. The lease includes terms for shared space and expenses. For instance, the Coalition is responsible for managing trash removal and pest control and First Church and the Coalition share internet services. Tr. Vol II., pp. 161,166.

51. The Coalition continues to rent pursuant to Article 3 of the lease. However, the Coalition has not paid "additional rent" due under the lease (related to increased utility bills). Tr. Vol II., pp. 165-167.

52. Although the proposed shelter is not in operation, renovations to the Church Building have begun. First Church has used the rent payments to fund construction costs associated with relocating some church functions from the ground floor to the second floor.

53. First Church has assets available in the event its annual operating costs exceed revenues; however, those assets are limited, consisting of approximately \$180,000 in cash reserves and an endowment of an endowment of \$150,000. Tr. Ex. 21; Tr. Vol II., pp. 201-204.

54. Foregoing the Coalition's rent would have presented a challenge, requiring the

congregation to make some changes. For instance, without the Coalition's rental income, First Church might have to consider reducing its annual expenses, including possibly eliminating its pastoral residency program. Tr. Vol II., pp. 76-77, 201-211.

55. Based on the testimony of Rev. Macy, Ferello, and Smith and the lengthy discernment process undertaken by the congregation, I find that rent was not the motivation for First Church's decision to enter into the lease agreement with the Coalition. Rather, First Church entered into the lease with the Coalition in order to fulfill the congregation's religious mission. See e.g. Tr. Vol II, pp. 72-84, 207-211.

56. The primary focus of the lease negotiations was not on the dollar value of the rent, but on matters regarding the sharing of space and logistics. Tr. Vol II., pp. 163-164.

57. First Church's Justice and Outreach Committee, with help from the congregation, donated ten thousand dollars (\$10,000.00) to the Coalition in 2024 and 2025, while the lease was in effect, but the shelter was not in full operation. Tr. Vol II., p. 184.

#### *Proposed Shelter Operations*

58. The primary entrance for the proposed shelter is located on College Avenue, with steps leading down to Duhamel Hall on the ground floor. Tr. Ex. 22B. The side entrance is at ground level, opening directly into Duhamel Hall. Duhamel Hall will be used by shelter guests to socialize, eat and relax. Dormitory rooms lead off of Duhamel Hall, as does a kitchen, bathrooms, laundry area, and office. The side entrance, located on Francesa Avenue, is accessible to people with disabilities.

59. The proposed shelter will host up to twenty-six (26) individuals. The shelter

will operate as a so-called “low-barrier” shelter (like the existing shelter), as required by the Coalition’s contracts with the Commonwealth. Following meetings with some of the neighbors, Libby approached the Commonwealth to request some flexibility around the requirement to admit registered sex offenders, but that request was denied. Libby agreed that the neighbors’ concerns about the Coalition not being able to deny entrance to those with criminal records and registered sex offenders were reasonable and also acknowledged that Becker would be more impacted by shelter operations than those living farther away. Tr. Vol. I, p. 215-216.

60. Like the existing shelter, guests will be permitted to stay in the shelter between 4:00P.M. and 8:00A.M. the following morning. Guests must leave the shelter between 8:00A.M. and 4:00P.M. Tr. Vol I., p. 214.

61. The proposed shelter will be the only fully accessible shelter in Somerville.

62. At the time of the View, renovations were underway in the Church Building. Three dormitory rooms had been readied, with mattresses wrapped in plastic along the walls. See Tr. Ex. 3; Tr. Ex. 22B.

63. The Coalition will ensure that staff are on-site when the shelter is open. The staffing team includes one Full-Time Manager, one Housing Search Case Manager, and five (plus or minus) Full-Time Equivalent Direct Care Staff Members, as well as Director oversight. Tr. Vol I., p. 252-256.

64. The Coalition has developed written procedures for operating the proposed shelter, entitled Adult Shelter Operations Document (the “Operations Document”). The Operations Document is twenty-one (21) pages long and includes detailed and

comprehensive information about both the Coalition and the proposed new shelter. The Operations Document addresses why the shelter is moving, the project timeline, client demographics, and neighborhood safety, client (or guest) conduct, shelter operations, and building maintenance and management. It also includes a communications plan and phone tree in the event neighbors have an issue with shelter operations. This Operations Document reflects thoughtful effort on the part of the Coalition about how to smoothly operate the shelter to minimize impact on the neighbors. Tr. Ex. 7.

65. The Operations Document includes comprehensive and detailed policies and procedures about Client Conduct, such as loitering. Tr. Ex. 7, Topics 11-13. For instance:

- (a) Loitering is not allowed outside the immediate shelter premises or in any areas not designated for shelter use;
- (b) Guests that loiter outside designated areas will be approached by staff and informed that this behavior is not allowed. Guests that do not change this behavior may face discharge from the shelter;
- (c) Guests are not allowed to enter unauthorized areas of the shelter property or private property in the neighborhood; and
- (d) Trespassing on neighboring properties or in restricted areas will result in guests being held accountable, including warnings or discharge from the shelter, depending upon the severity.

66. The Operations Document details behaviors that may result in restriction from the shelter, such as threats and threatening behaviors, aggressive and intimidating behavior, harassment, illegal activity, stealing and damaging property, possession of a

weapon or use of an object to do harm, possession or use of drugs/alcohol or related paraphernalia in the shelter, and trespassing. Tr. Ex. 7.

67. The Operations Document also includes a Communication Plan in the event neighbors have issues with the shelter, both routine and urgent. This plan includes an email address for complaints or questions, a telephone number during hours that the shelter is open (4:00 p.m. to 8:00 a.m.), and a second telephone number when the shelter is closed. The Coalition encourages neighbors to contact the Somerville Police Department if there is a significant and imminent safety issue in the neighborhood. Tr. Ex. 7, Topic 17.

68. The shelter will use a warning system to inform guests that they are not adhering to the rules, policies, and general expectations of the shelter program. Shelter staff are trained to enforce the policies and procedures. Regular guest meetings are held to address the guest community collectively about any safety issues or other concerns.

69. Libby acknowledged that in the past there have been instances of guests engaging in threatening behavior and other behavior that violates the policies and procedures. In the past few years, Libby testified that approximately three times a year shelter a guest has been immediately discharged because of a rule violation and about nine times a year shelter guests have been discharged after receiving a number of warnings. Tr. Vol I., pp. 209-213.

70. Libby also testified to three incidents where shelter guests caused problems for area residents. In each of those situations, a guest was speaking loudly outside of the existing shelter eliciting complaints from neighbors; the guests were instructed not to do this again. Tr. Vol I., pp. 211-212.

71. Libby testified credibly that he is unaware of any incident where a shelter guest committed a property crime relative to a neighbor. Tr. Vol II., pp. 17-18.

*Shared Use of the Church Building & Church Involvement in the Shelter*

72. First Church intends to share use of Duhamel Hall, throughout the Coalition's lease term. First Church will continue to use the large open space and its tables and chairs for social events and gatherings. A kitchen, an office, laundry, and bathrooms (three toilets and three showers in two rooms), are also located on the ground floor and will also be shared. Both First Church and the Coalition will use the ground floor office equipment, such as the copier. Tr. Ex. 22B.

73. Some space on the ground floor is allocated exclusively for shelter use, specifically three dormitory rooms with bunk beds and two non-bunk beds.

74. The dormitory rooms were previously used by First Church as a nursery, chapel, and an office for Rev. Macy. Renovations to the second floor have been made so that these functions can move upstairs. See Tr. Ex. 3.

75. The second floor of the Church Building will be used only by First Church. First Church's sanctuary is located on the second floor, as is Rev. Macy's office, the nursery, and a library/meeting room. A bathroom on the second floor will be renovated for wheelchair accessibility. Shelter guests will have access to the second floor only if they are participating in worship services. Tr. Ex. 22C.

76. The Coalition has a contract with a professional trash removal company to serve the shelter and intends to comply with all City ordinances with respect to trash removal and management. Coalition staff will be responsible for making sure the Church

property remains clean and have committed to regular inspections of the property to find and remove any cigarette butts, discarded needles, trash, and the like. The Coalition has also engaged a pest control company. Tr. Ex. 7, Topics 19-22.

77. First Church intends to develop opportunities for its members to volunteer and engage with shelter guests. First Church envisions that its members will engage with and support shelter guests and staff. For instance, First Church envisions that its members will provide spiritual support and companionship, as well as material support such cooking meals. However, First Church's does not concern itself with nor require that guests convert or participate in First Church's services. Tr. Vol II., pp. 16-17, 53-54.

#### *Davis Square*

78. All witnesses agreed that there has been an increase in the number of unhoused people in Davis Square in the past few years. According to the Coalition's annual survey of homelessness, conducted pursuant to federal regulations, the incidence of homelessness in Somerville as a whole quadrupled from January 2023 to January 2024 (increasing from nine unsheltered people to approximately 35 to 40 unsheltered people).

79. In the fall of 2024, with the mayor and Chief of Police in attendance, the City of Somerville held a community meeting to discuss homelessness and crime reports in Davis Square. Tr. Vol I., p. 112.

80. I credit Libby's testimony that not all of the unhoused individuals who frequent Davis Square are guests at the existing shelter. Rather, unhoused individuals come to Davis Square for a variety of reasons, such as to visit their friends or visit the Coalition's Engagement Center. Also, an MBTA Redline station is located in Davis Square, as is a

bus station.

*The Shelter is Announced to the Neighbors*

81. Chiu previously had a relationship with both First Church and the Coalition. She attended services at First Church beginning in about 2005 or 2006, but stopped attending services around 2018 when the former pastor departed. Chiu and her mother-in-law were active with First Church, volunteering in the nursery and with the meals program. In addition, Chiu and her husband have supported the Coalition since 2013, helped plan the gala fundraiser, organized hygiene and clothing drives, and made substantial annual donations to the Coalition (totaling at least \$50,000.00). Tr. Vol I., pp. 34-37.

82. Despite her connections to both First Church and the Coalition, Chiu first learned that the Coalition planned to move into the Church Building on June 14, 2024, when the Coalition sent a group email stating that construction would begin for a new shelter at the Church Building on the following Monday. Chiu was upset that both First Church and the Coalition had chosen not to involve her or the neighborhood in the decision to relocate the shelter, particularly given her long-standing support for both organizations. It was particularly upsetting to Chiu that she had attended a Coalition dinner party with Libby in March where there was no mention of the move. Tr. Vol I., pp. 38-41.

83. Also in June, 2024, First Church and the Coalition sent a letter to area residents advising that the Coalition's shelter was relocating to the Church Building and expanding to address the "growing number" of homeless individuals in Somerville. Tr. Ex. 6.

84. Becker learned about the proposed shelter when a letter was slipped through her door in June 2024. Like Chiu, Becker was surprised that neither the Coalition nor First Church reached out to inform the neighbors of the new shelter location until a deal had been consummated and a building permit had been obtained, particularly since other projects in the neighborhood had been the subject of meetings for community input prior to decisions being made and because she and her family had a good relationship with prior pastors at First Church. She has also donated to the Coalition. Tr. Exs. 6, 22D.

85. On June 17, 2024, Chiu responded to the email and asked that the Coalition speak with the neighbors of First Church. Chiu, Becker, and others, attended three community meetings to discuss the new shelter. Becker testified that although she appreciated these meetings, she continued to have concerns about the proximity of the proposed shelter. Dissatisfied with the level of communication from First Church and the Coalition, Chiu joined with a group of other neighbors to challenge the building permit. Tr. Vol I., pp. 45-48.

*The Plaintiffs' Objections to the Shelter*

86. Chiu and Becker testified sincerely that the reason they oppose the proposed shelter at First Church is because of its “low-barrier” status. They would not oppose First Church’s hosting a shelter for families, elders, or women. Tr. Vol I., p. 50.

87. Based on personal observations, Chiu worries that locating the low-barrier shelter at First Church will make her neighborhood less safe. Specifically, she credibly testified about drug paraphernalia in the immediate vicinity of her home and along College Avenue as it leads to Davis Square. Chiu regularly walks to Davis Square from her home

and observes loitering, drug use, and drug paraphernalia outside of the existing shelter at 64 College Avenue. She has also observed needles outside of the Church Building. Libby, on the other hand, testified credibly that he had never observed drug paraphernalia outside the existing shelter. Tr. Vol I., p. 265. Given this conflicting testimony, it is unclear whether the drug paraphernalia occasionally observed by Chiu and the other neighbors derived from guests of the existing shelter, from other visitors to Davis Square, or from community members.

88. Chiu's concern about diminished safety arising from shelter operations at the Church Building was largely speculative, reflecting an unsupported assumption that shelter guests were involved in certain unwelcome events in and around Davis Square and near the existing shelter. For instance, Chiu described one particular person who she observed to be regularly loitering out front the existing church, but later acknowledged on cross-examination that she was unaware that this person was not a guest of the shelter (rather the individual may have had a relationship with the host church). Likewise, while Chiu credibly testified about an unpleasant experience in Davis Square when an individual threw a book at her while she was playing with a band, it is unclear whether that individual had a connection with the existing shelter. Tr. Vol I., p. 67.

89. Chiu also expressed concern that the proposed shelter would generate noise related to anticipated additional emergency vehicles. At present, Chiu hears emergency vehicles on College Avenue about three to four times per day. Tr. Vol I., pp. 82-83.

90. Chiu also expressed concern about a diminution of property value related to the proposed shelter at First Church. This concern was based on her own sense that people do

not want to live next door to a homeless shelter. This stated concern, however, is undercut by the fact that after learning of the proposed shelter, Chiu and her husband agreed to purchase a third property in the neighborhood.

91. Because Chiu's observations about loitering on Francesca Avenue associated with the community meals program were corroborated by both Becker and Pagnano, I credit her testimony and conclude that such loitering occurred. Although Libby testified that he has never received a complaint about loitering from neighbors of the existing shelter, he did receive complaints about noisy telephone calls. I find that it is quite possible that shelter guests will loiter on Francesca Avenue, near the side entrance to the Church Building. These instances of loitering, however, will be minimized to the extent the Coalition abides by its commitment to ensure that guests (other than those with disabilities) do not use the side entrance.

92. Becker does not have much experience with the existing shelter because she usually walks to Davis Square on "her" (the other side) of College Avenue. Also, she doesn't walk to Davis Square as much anymore because of the changes there and because she has a bad hip. She has also observed open air drug use on College Avenue outside of Davis Square, near the library. Tr. Vol I., pp. 127, 137-139,

93. Becker objects to the proposed shelter based in part on her prior years of experience as a neighbor to First Church. On those days when First Church hosted the community meals program, Becker would come home from time to time to find people on her front stoop and trash in her yard and on her driveway (plastic utensils, cans, take out containers, and cigarettes). Although Becker found this conduct bothersome at the time,

she tolerated the situation since it was only once a week and because she wanted to be charitable. She is concerned that expanding First Church's charitable work from a once-a-week meals program to a full-time overnight shelter will increase the impact on her property. Specifically, as to safety, she is concerned that if the shelter asks a guest to leave in the middle of the night for infractions of the rules, the guest may settle onto her stoop like they did in the past.

94. Claire Pagnano ("Pagnano") has lived next door to Becker since 2012, at 11 Francesca Avenue. She testified credibly that on two or three occasions she came home to find people sitting on her front stairs and eating food on days when First Church hosted the community meals program across the street. In one instance, she was frightened by an angry guest of the meals program whose loud swearing upset her child who was playing outside. Tr. Vol I., pp. 161-162.

95. Pagnano walks regularly to Davis Square and credibly testified that on the route to Davis Square, and in the environs of Davis Square, she observed open air drug use, fighting, and discarded needles. She is unsure if the individuals involved are guests of the existing shelter or clients of the Coalition. These incidents increased in the twelve-month (12) period leading up to trial in August 2025. Tr. Vol I., pp. 161-169.

96. Peter Clemons, another neighbor, also testified. Clemons and his wife Marianne Benson purchased 15 Kidder Avenue in 1975. They had been thinking about selling and downsizing their lifestyle as they aged. They accelerated their decision to sell their property when they heard about the proposed shelter. On April 23, 2025, Peter Clemons and his wife sold their property at 15 Kidder Avenue to Michael and Owen Chiu for one

million seven hundred thousand dollars (\$1,700,000.00), by deed recorded at the Registry at Book 84002, Page 261. When asked how the price was determined, Clemons testified that it was the midpoint of the prices for similar homes at the time. Tr. Ex. 20; Tr. Ex. 22D.

*Brett Smith's Testimony as Neighbor & as Treasurer of First Church*

97. Brett Smith, Treasurer for First Church and a member of its leadership team, has lived at 22 Francesca Avenue for sixteen years. That property is immediately adjacent to the Chius' rental property on Francesca Avenue (24-26 Francesca Avenue) and three doors down from First Church. Smith began attending First Church in May of 2020. He became a member in 2021. As Treasurer, he is responsible for keeping the books and finances, generating reports, and has signing authority for financial accounts.

98. Smith testified that he was not aware of the existing shelter until recently, even though he passes it every now and then while walking his dog. Smith has twice seen used needles in his walks around the neighborhood, once in Statue Park and once in Seven Hills Park, behind the MBTA Station. Tr. Vol II., p. 195.

99. When Smith first learned of the proposed shelter, his concerns were much like those of Becker, Chiu, and Pagnano. For instance, when asked if he had concerns about Francesca Avenue at the outset of the process, he replied: "I did. It was easy to imagine that there might be impacts to the immediate neighborhood about the ... stemming from the shelter, depending on like guest behavior or even just like, shelter operations." On cross-examination, Smith anticipated that there might be noise intrusions from the shelter, particularly noise from emergency vehicles with sirens late at night. Smith can hear

Sunday worship from his home when he is unable to attend services.

Tr. Vol II., pp. 152-153; pp. 212-216.

100. Unlike Becker, Chiu, and Pagnano, Smith had the benefit of lengthy and detailed discussions with Libby and the Coalition about proposed shelter operations during the discernment process and negotiations between First Church and the Coalition. Based on those lengthy and detailed discussions, Smith was able to better understand how the proposed shelter would run smoothly so as to minimize impact on the neighbors.

However, he acknowledged a likelihood that incidents will occasionally arise from the proposed shelter:

Throughout the process of learning more about how the [Coalition] operates its current shelter. I – all of the concerns that I had at the start of the process, born out of uncertainty, had been addressed to my complete satisfaction. I heard multiple neighbors who live adjacent to the current shelter, talk about the fact that they were completely happy with how the shelter was run. I heard Mike Libby describe the processes that they use to be proactive to make sure that there are good neighbors, similar to the testimony he gave earlier today.

And so, given that, I felt confident that it would be a welcome addition or a – like welcoming change in the neighborhood. Let’s put it that way, right? *Like, there will be problems. I am anticipating there will be a bad night where I have to email Mike Libbey and be like, “Hey so what was that about?”* But it’s clear that [the Coalition] has so much experience, like managing and mitigating those problems that I wasn’t concerned about it.

Tr. Vol II., pp. 159-160 (emphasis supplied).

### Police Reports

101. Three police reports regarding incidents in Davis Square were admitted into evidence only with respect to the reporting officers' contemporaneous firsthand, factual observations, but not as to the recounted statements of third parties or observations of third

parties included, which were excluded from evidence as inadmissible hearsay. *Adoption of Paula*, 420 Mass. 716, 727 (1995). See discussion above regarding the defendants’ motion in limine.

- (a) Police Report for November 6, 2024, describes an incident in Statue Park. The police responded to an attempted attack with a hatchet. Tr. Ex. 23.
- (b) Police Report for September 28, 2024, describes an incident in Statue Park where the police took into custody two individuals, one of whom was in possession of a knife and the other of a white powder believed to be cocaine. Tr. Ex. 24.
- (c) Police Report for October 1, 2024, describes an incident in Statue Park and subsequent arrest of an individual at the Coalition’s Engagement Center in Davis Square. Tr. Ex. 25.

102. There is no evidence before the court establishing that guests of the existing shelter were involved in any of these incidents.

*The Building Permit Application & Plaintiffs’ Appeal to the ZBA*

103. The Church lies in a zoning district designated as Urban Residential (UR) under the Ordinance. In the UR zoning district, a “Community or Group Residence” is allowed by right.<sup>6</sup> Although Homeless Shelters require a special permit, “Religious & Educational

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<sup>6</sup> Section 3.2 of the Ordinance describes the Urban Residential District “as characterized by a variety of moderate FLOOR PLATE, multi-unit buildings where outdoor AMENITY SPACE is typically shared between the residents of a BUILDING. The district is almost entirely residential, with occasional neighborhood stress, schools, places of worship, and arts related USES on advantageous SITES. The district can provide a transition between Neighborhood Residential and the Mid-Rise [sic], and Commercial Districts when mapped accordingly.

Uses Protected by M.G.L. 40A, Sec. 3” are allowed by right. See Ordinance, § 15; Table 3.2.15.

104. On or about May 2, 2004, Velney Construction LLC, filed an application (the “Application”) on behalf of First Church for a building permit to “renovate [the] ground floor of [the Church] to serve as [an] emergency homeless shelter” for the Coalition.

105. On or about June 13, 2024, the ISD approved the Application and issued a building permit to renovate the ground floor of the Church Building to serve as an emergency homeless shelter. Tr. Ex. 4.

106. On July 3, 2024, Plaintiffs, along with other Somerville residents, filed an administrative appeal of the building permit, pursuant to §15.5.2 of the Ordinance and G.L. c. 40A, §§ 8 and 15.

107. The ZBA held a duly advertised public hearing on the Plaintiffs’ appeal on July 31, 2024. The hearing was continued on August 14, 2024.

108. By decision filed with the City Clerk on August 20, 2024 (the “Decision”), the ZBA voted unanimously to deny the Administrative Appeal on the ground that the building permit was issued for an accessory homeless shelter use in an existing religious institution and was protected under G.L. c. 40A, § 3 (the “Dover Amendment”). Plaintiffs timely appealed the Decision to the Land Court. Tr. Ex. 5.

## **DISCUSSION**

### ***I. STANDING***

The Defendants contend that Chiu and Becker have failed to establish that they are aggrieved by the proposed shelter under the heightened standard for appeals of decisions of local

zoning boards, as enacted by the Affordable Homes Act on August 6, 2024 (the “Act”). Among changes to G.L. c. 40A, § 17, the Act removed the presumption of standing for abutters. *Van Reed v. Schultberg*, 33 LCR 286, 290 (2025) (Case No. 24 MISC 000604) (Foster, J.); *Fabbri v. Parisi*, 33 LCR 323, 325 (2025) (Case No. 24 MISC 000149) (Smith, J.); *Byrne v. Zoning Bd. of Appeals of the Town of Manchester-by-the-Sea*, 33 LCR 422, 424 n.6 (2025) (Case No. 23 MISC 000182) (Vhay, J.). As noted by Judge Foster, that change aside, the amended Chapter 40A “more or less restates the standard for established in previous caselaw.” *Van Reed v. Schultberg*, 33 LCR 286, 290 (2025) (Case No. 24 MISC 000604) (Foster, J.), citing e.g., *Murchison v. Zoning Board of Appeals of Sherborn*, 485 Mass. 209, 215 (2020); *Butler v. Waltham*, 63 Mass. App. Ct. 435, 441 (2005).

Section 17 of Chapter 40A now provides:

If the complaint is filed by someone other than the original applicant, appellant or petitioner, then each plaintiff . . . must plausibly demonstrate that measurable injury, which is special and different to such plaintiff, to a private legal interest that will likely flow from the decision through credible evidence.

Thus, each of Becker and Chiu must show that their claims of aggrievement fall within the interests protected by Chapter 40A and the Ordinance. *Murchison*, 485 Mass. at 214; *Picard v. Zoning Bd. of Appeals of Westminster*, 474 Mass. 570 (2016). Each must also provide evidence of injury that is particular to them (as opposed to the neighborhood in general), which injury must be causally related to a violation of zoning laws and it must be more than de minimis. *Id.*, See *Kenner v. Zoning Bd. of Appeals of Chatham*, 459 Mass. 115, 117 (2011).

The “credible evidence” standard has both quantitative and qualitative components:

“[q]uantitatively, the evidence must provide specific factual support for each of the claims of

particularized injury the plaintiff has made. Qualitatively, the evidence must be of a type on which a reasonable person could rely to conclude that the claimed injury likely will flow from the board's action.” *Butler*, 63 Mass. App. Ct. at 441 (citation omitted). Should a plaintiff fail to meet this credible evidence standard, a defendant need not present their own evidence, and may instead rely on plaintiff’s lack of evidence in order to defeat standing. See *Standerwick v. Zoning Bd. of Appeals of Andover*, 447 Mass. 20, 35 (2006).

“Aggrievement requires a showing of more than minimal or slightly appreciable harm . . . . The adverse effect on a plaintiff must be substantial enough to constitute actual aggrievement such that there can be no question that the plaintiff should be afforded the opportunity to seek a remedy . . . . Put slightly differently, the analysis is whether the plaintiffs have put forth credible evidence to show that they will be injured or harmed by proposed changes to an abutting property, not whether they simply will be ‘impacted’ by such changes.” *Kenner*, 459 Mass. at 115, 121-22. “Speculation and conjecture are not evidence, and in any event, more than a ‘minimal or slightly appreciable’ harm is required.” Further, “[n]either conjecture nor speculative personal opinion substitutes for proof.” *Murchison*, 485 Mass. at 215.

Here, Plaintiffs’ claim to standing is based on concern about increased crime, loitering, littering, noise and rodents, and diminution of property values. Accordingly, I examine whether each area of alleged harm is an interest protected by Chapter 40A and the Ordinance, and subsequently consider each Plaintiffs’ supporting evidence.

A. Concern About Increased Crime

Plaintiffs point to Section 1.1.4.b(ii) of the Ordinance to show that concern about increased crime is a protected interest under the Ordinance. Section 1.1.4.b(ii) appears in the Introductory Provisions under a heading entitled “Intent.” It states:

- (i) To equitably balance the regulation of real property with interest of the community as a whole.
  
- (ii) To protect the health, safety, and general welfare.

The difficulty with this argument is that statements of legislative purpose in a local zoning ordinance do not alone establish a basis for standing, unless the ordinance also contains a corresponding provision specifically addressed to the claimed basis for standing. *Pobeda RT II, LLC v. Zoning Board of Appeals of Watertown*, 104 Mass. App. Ct. 250, 253 (2024) (concluded that diminution of value was not a protected interest under the Watertown zoning bylaw where the bylaw did not include any protection for individual property values). The Appeals Court explained, “Insofar as § 1.00 of the ordinance seeks to conserve property value, it does not do so to protect individual economic interests, but instead serve to serve the broader objectives of promoting public safety and health.” *Id.* This is because legislative statements of purpose “suggest standards for the exercise of discretion where such discretion is other provided. They are not themselves a source of discretion.” *Id.*, quoting *McCaffrey v. Board of Appeals of Ipswich*, 4 Mass. App. Ct. 109, 112 (1976). But see *Mayer v. Mental Health Ass’n*, 29 LCR 519, 524 (October 29, 2021) (19 MISC 000557) (Roberts, J.) (“there can be no doubt that safety is an interest protected by the [zoning ordinance],” where the applicable ordinance stated an intent to “protect the health and safety of its inhabitants”). Because Plaintiffs do not identify any other

Ordinance provision other than the introductory purpose section above, their claim of aggrievement based on increased criminal activity must fail.

Even if protection from crime was a protected interest under the Ordinance, the Plaintiffs' evidence was lacking. Plaintiffs introduced no expert testimony even though concerns about increased crime are beyond the scope of common knowledge, experience, and understanding. *Standerwick*, 447 Mass. at 36 (where plaintiffs offered no expert evidence, their concerns that crime or vandalism would increase as a result of a proposed affordable housing project were nothing more than unsupported apprehension and speculation). See also *DiBona v. City of Quincy Zoning Bd. of Appeals*, 32 LCR 376, 379 n. 4 (2024) (23 MISC 000195) (Rubin, J.).<sup>7</sup>

Further, to the extent that Plaintiffs' concern about increased crime derives from the possibility that certain shelter guests may be registered sex offenders, the Legislature has enacted a comprehensive statutory scheme precluding local regulation, specifically G. L. c. 6, §§ 178C-178Q (the Sex Offender Registry Law) and G. L. c. 123A (providing for the "Care, Treatment and Rehabilitation of Sexually Dangerous Persons"). In *Doe v. City of Lynn*, 472 Mass. 521, 525 (2015), the Supreme Judicial Court invalidated a local bylaw seeking to restrict where level two and level threes sex offenders could live. "The totality of the 1999 statutory scheme, incorporating as it does a series of interdependent policies and practices specifically designed to protect the public from level two and level three sex offenders by monitoring and notification to the public, evinces the Legislature's intent to have the first and final word on the subject of residency of sex offenders." *Id.* at 533. Thus, concerns about this type of criminal activity is not

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<sup>7</sup> Plaintiffs withdrew two expert documents proposed as Trial Exhibits when challenged with a motion in limine seeking to exclude the documents as hearsay.

an interest that Chapter 40A or the Ordinance can protect. See *Mayer v. Mental Health Ass'n*, 29 LCR at 524 (rejecting safety concerns of neighbors who challenged the proposed location of a group home that might house level one and level two sex offenders).<sup>8</sup>

Plaintiffs hypothesized that the “low-barrier” nature of the proposed shelter would result in crime. As discussed above, a “low-barrier” shelter is one that prohibits the operator from denying entry to shelter applicants on the basis of a history of drug addiction, mental health conditions, or prior convictions, in accordance with its contracts with the Commonwealth. Given this designation, some shelter guests may well have a history of drug addiction, mental health conditions, or prior convictions (including among others, convictions as sex offenders). It does not logically follow, however, that these guests will pose an actual safety risk to the Plaintiffs. Indeed, as was highlighted during Plaintiffs’ cross-examination, people with those histories may well already reside in the neighborhood surrounding the Church Building. Nor was there any evidence to support their claim that the proposed shelter would create a safety risk different from that experienced by the community as a whole. *Butler*, 63 Mass. App. Ct. at 442.

Plaintiffs also introduced three police reports involving incidents in Davis Square, Chiu’s testimony about an assault that occurred while she was playing in a band in Davis Square, and testimony from Becker, Chiu, and Pagnano about discarded needles and open air drug use. The police reports were admitted into evidence only with respect to the reporting

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<sup>8</sup> The fourth paragraph of Chapter 40A, § 3 also provides protections for disabled persons, which protections extend to those shelter guests with substance abuse disorders. See *BAK Realty, LLC v. City of Fitchburg*, 495 Mass. 587, 588 (2025). See also *Granada House, Inc. v. City of Boston*, 1997 WL 106688 (Super. Ct. Feb. 28, 1997) at 7 (protections for people recovering from substance abuse disorders under the federal Fair Housing Act, 42 U.S. C. §§ 3601, et seq).

officers' contemporaneous firsthand, factual observations, but not as to the recounted statements of third parties or observations of third parties included, which were excluded from evidence as inadmissible hearsay. *Adoption of Paula*, 420 Mass. at 727. Those contemporaneous observations do not link the Davis Square incidents to the Coalition's existing shelter.

Rather, the police reports and Plaintiffs' evidence as a whole establish that Davis Square – and not the existing shelter – is the focal point for the concerning activity (for instance, Chiu's assault in Davis Square, Becker's observation of open air drug use along College Avenue, and discarded needles). This may be the case, in part, because the MBTA Redline station is located in Davis Square, as is a bus station, both providing easy access to surrounding communities. Indeed, there was robust evidence that the unhoused population in Somerville – and in Davis Square – has grown exponentially in the past few years. The evidence, as detailed above, is insufficient to prove that Plaintiffs will experience an increased criminal activity near their homes in connection with the proposed shelter.<sup>9</sup> Further, it would be speculative to conclude that the Coalition's activities have increased the unhoused population in and around Davis Square or the incidence of crime; it is just as likely that the Coalition is helping to ameliorate the difficulties incident to this growth.

*B. Diminution of Property Values.*

Preservation of property values is not an interest that Chapter 40A is meant to protect

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<sup>9</sup> Libby's testimony that he asked the Commonwealth for flexibility about the low-barrier requirement was not an admission that shelter guests would create unsafe conditions. Rather I find that he made the request in an attempt to be responsive to the neighbors' concerns and to be neighborly.

unless it is “derivative of or related to cognizable interests protected by the applicable zoning scheme.” *Kenner*, 459 Mass. at 123, quoting *Standerwick*, 447 Mass. at 31–32. Here, the Ordinance itself does not protect property values. Instead, Plaintiffs attempt to tether their claim of diminution of property value to the safety concerns above. Since those safety concerns were speculative, as discussed above, Plaintiffs claim to aggrievement based on diminution in property values cannot succeed.

In any event, Plaintiffs’ evidence of alleged diminution of property value was sparse. Here again, Plaintiffs did not present expert testimony, such as that from an appraiser or real estate broker. Instead, they relied almost exclusively on the testimony of Clemons. While a nonexpert owner of property may testify to its value based upon their familiarity with the characteristics of the property, knowledge or acquaintance with its uses, and experiences in dealing with it, the witness must establish a credible basis for their qualifications on the topic of property values. *Epstein v. Bd. of Appeal of Boston*, 77 Mass. App. Ct. 752, 759 (2010); *Bergmann v. Lexington Bd. of Appeals*, 25 LCR 154, 161 (2017) (Misc. Case No. 16 MISC 000138) (Speicher, J.). Whether an owner is sufficiently qualified to offer an opinion is a question committed to the judge’s sound discretion. *Epstein*, 77 Mass. App. Ct. at 760; *Bergmann*, 25 LCR at 161. Additionally, any testimony regarding diminution in property values, whether from a property owner or a real estate professional, must be based in fact rather than unsupported assumptions. *Murchison*, 485 Mass. at 215; *Bergmann*, 25 LCR at 161.

Clemons testified that he had recently sold his property at 15 Kidder Avenue to Chiu’s husband and son. That testimony did not support the Plaintiffs’ contention that the proposed shelter location would cause their properties to suffer a loss of value. While Clemons and his

wife accelerated their decision to sell because of the shelter, they were also motivated by a desire to downsize as they aged (having lived at 15 Kidder Street for fifty years). As to the sales price, Clemons testified that he sold his property to the Chius for one million seven hundred thousand dollars (\$1,700,000.00). Clemons did not consider this price to be below fair market value, but rather as the midpoint of the market for similar homes at the time. I credit that Clemons undertook reasonable due diligence prior to selling his property and that the sales price did not reflect a depreciated value. There was no expert testimony or otherwise that this sales price did not reflect fair market value. For these reasons, the evidence presented by the Plaintiffs was insufficient to establish aggrievement based on diminution of property values.

*C. Concern about Loitering, Trash, and Rodents*

The Ordinance states among its objectives, two goals which support Plaintiffs' claim that protection from loitering, trash, and rodents are protected interests under the Ordinance. The first is the goal to "develop and maintain... neighborhoods that foster a strong sense of community throughout the city." The second goal is to "preserve and enhance the existing character of Somerville's traditional housing and respect existing built form and development patterns." I conclude that fostering a strong sense of community and the preservation of existing character would be undermined by excessive loitering on private property, unauthorized trash disposal, and rodent infestation.

Becker testified credibly about her many years of experience as a neighbor to First Church and its community meals program. She described multiple experiences coming home to find people on her front stoop at the end of the community meals program,

sometimes in the evening, and trash in her yard and on her driveway (plastic utensils, cans, take out containers, and cigarettes). She testified credibly, consistently, and sincerely that although these intrusions were bothersome, she tolerated the situation since the community meals program was only once a week and in order to be charitable. Becker explained her concern that expanded use of First Church from a weekly meals program to a permanent overnight shelter would heighten the impact on her property. Pagnano likewise testified credibly that on several occasions she came home to find people sitting on her front stairs eating food from the community meals program. In one instance, she was frightened by an angry guest of the meals program whose loud swearing upset her child who was playing outside. For these reasons, I find and conclude that Becker has reason to be concerned that shelter guests and trash may find their way to her doorstep and leave discarded items in her yard. Becker has established her standing to bring this appeal.

However, the frequency of any loitering or trash disposal on Francesca Avenue will be substantially mitigated by the decision to require most shelter guests, staff, and vendors to access the shelter by way of the main entrance on College Avenue. The side entrance on Francesca Avenue will only be available to people with disabilities, because that entrance is at ground level and opens directly into Duhamel Hall without the need to use the front stairs. Impacts will also be substantially mitigated by the Coalition's professional operations and management. Unlike the community meals program, which was run by volunteers associated with First Church, the proposed shelter will be operated by a professional and experienced organization. The Coalition has been operating the existing shelter for many years, with few complaints from neighbors. The Coalition has

professional staff who are trained to work with unhoused individuals and encourage adherence to the shelter's rules, as discussed above. In addition, the Coalition has developed a comprehensive Operations Document with procedures and approaches to minimize impacts on shelter neighbors. For instance, the Operations Document addresses standards for guest conduct and includes a communications plan and phone tree in the event neighbors have an issue with shelter operations. The Coalition will ensure that staff are on-site when the shelter is open and are tasked with making sure the Church property remains clean, with regular inspections in order to find and remove any cigarette butts, discarded needles, trash, and the like. The Coalition also engages a pest control company.

In addition, Libby will provide experienced oversight of these operations. He began working for the Coalition in 2000 as a case manager, became the direct manager of the existing individual shelter, and now serves as Executive Director. Libby was thoughtful and forthright both about the challenges of operating a "low-barrier" shelter and how the Coalition will manage those challenges. He lucidly explained how First Church and the Coalition will work to minimize the impact on Becker and other neighbors by directing shelter guests, staff, and vendors away from the Church Building's side entrance. These proposed operations are a far cry from the ad hoc community meals program run by First Church's volunteers. Thus, I find and conclude that the Coalition's operations, staffing, and facilities plans will substantially temper potential impacts on Becker and the neighborhood.

*D. Concerns About Sirens from Emergency Vehicles.*

There do not appear to be any provisions in the Ordinance to support Plaintiffs' claim that increased noise associated with emergency vehicles is a protected interest. Although the Ordinance does include a number of provisions regulating noise, those provisions concern very different types of land uses and do not pertain to emergency vehicles. For instance, the Ordinance includes noise mitigation requirements for roof-mounted mechanical systems and noise regulations for animal services, home occupation accessory uses, and manufacturing use. (Tr. Ex. 2, §§ 4.1.14.c.ii, 4.2.14.c.ii, 4.3.14.c.ii, 9.2.6.a.i.a, 9.2.1.4. b.i.c, and 8.4.12.j.iii.b.) I conclude that protection from the sound of emergency vehicles is not a protected interest under the Ordinance.

For the sake of completeness, I consider the evidence before the court. Only Chiu's claim to standing is at issue in this regard because Becker testified that she was unaware of noise from emergency vehicles on College Avenue. Plaintiffs introduced no expert testimony as to noise disruption, relying solely on testimony from Chiu and Smith. Chiu expressed concern that the new shelter would generate additional emergency response vehicles with their sirens. She currently hears emergency vehicles on College Avenue about three to four times per day. Smith is also worried about increased noise from emergency vehicles with sirens late at night, because he can hear Sunday worship from his home when he is unable to attend services.

While it is likely that the shelter will generate a few additional visits from emergency vehicles and while sound does appear to travel in the neighborhood, I conclude the impact on Chiu and her properties will be de minimis given the proximity of her properties to the very busy College Avenue and dense urban fabric in and around Davis Square. Further, Chiu

failed to provide credible evidence that a slight increase in emergency vehicle sirens would impact her or her properties in any particular way or degree that differs from the impact on the community as a whole. The concerns voiced by Chiu were not concerns unique to her but affected the community at large. See *Ricker v. 3253 Washington LLC*, 93 Mass. App. Ct. 1121 (2018) (Rule 1:28 Decision) (no standing because plaintiffs did not distinguish their claimed injuries from those that would be suffered by others in the neighborhood); *Butler*, 63 Mass. App. Ct. at 440 (plaintiff's injury flowing from the board's decision must be "special and different from the injury the action will cause to the community at large"); *Barvenik v. Bd. of Alderman*, 33 Mass. App. Ct. 129, 132 (1992) (no standing because plaintiffs had shown "no effect of the grant [of the special permit] on them different from that of the general populace of Newton."); *Cross v. Volo*, 16 LCR 725, 729 (2008) (Grossman, J.) (finding no aggrievement with respect to parking/traffic since plaintiffs failed to show that traffic or parking related injuries were distinguishable from those encountered by the neighborhood or community at large). For these reasons, I conclude that Chiu failed to establish standing to appeal the ZBA's Decision.

## ***II. THE DOVER AMENDMENT***

Plaintiffs contend that First Church should have applied for a special permit because the proposed shelter cannot be viewed as a religious use entitled to the protection under the Dover Amendment, G. L. c. 40A, § 3. The Somerville Ordinance does not permit shelters as an as-of-right use in the Urban Residential (UR) District where First Church is located. Instead, shelters and other institutional uses are only permitted by special permit. See Ordinance Table 3.2.15. However, First Church did not apply for a special permit, which would have required notice to abutters and a public hearing. Instead, with the support of the Building Inspector, they applied

for and received a building permit authorizing conversion of the ground floor of First Church's building into shelter. The ZBA then voted unanimously to deny the neighbors' appeal, having determined the building permit was issued for an accessory homeless shelter use in an existing religious institution and was protected by the Dover Amendment.

Thus, the question before the court is whether the proposed shelter is entitled to the protections of Chapter 40A, § 3. In pertinent part, it states:

No zoning ordinance or by-law shall . . . prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by . . . a religious sect or denomination, or by a nonprofit education corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

By enacting the Dover Amendment, the Legislature limited the restrictions that a municipality is authorized to place on religious uses in order to ensure that the municipality cannot "exercise its preferences as to what kind of . . . religious denominations it [would] welcome." *Bible Speaks v. Bd. of Appeals of Lenox*, 8 Mass. App. Ct. 19, 33 (1979). The Dover Amendment seeks to "strike a balance between preventing local discrimination against [a religious] use . . . and honoring legitimate municipal concerns that typically find expression in local zoning laws." *Martin v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 434 Mass. 141, 148 (2001) (quoting *Trs. Of Tufts Coll. v. City of Medford*, 415 Mass. 753, 757 (1993)). This balance is struck by allowing certain dimensional reasonable regulation but prohibiting local officials from applying zoning requirements where to do so would "unreasonably impede the protected use without appreciably advancing critical municipal goals." *Id.*

What constitutes a “religious use” or “religious purpose” is a matter of interpretation for the court, with reference to the everyday use of those terms and free from the court’s own conceptions of expediency. *Needham Pastoral Counseling Ctr., Inc. v. Bd. of Appeals of Needham*, 29 Mass. App. Ct. 31, 33 (1990). By its plain language, religious purpose is “something in aid of a system of faith and worship, usually of a higher unseen power entitled to reverence,” and “[f]idelity to a set of principles or rituals is a central characteristic.” *Id.* A two-part analysis is employed to determine whether a use is entitled to protection under Chapter 40A, § 3. The first asks “whether the proposed use has as its “bona fide goal something that can reasonably be described as” religiously significant.” *Hume Lake Christian Camps, Inc. v. Planning Board of Monterey*, 492 Mass. 188, 195 (2023), citing *Regis College*, 462 Mass. at 285. The second inquiry is “whether the religiously significant goal is the “primary or dominant’ purpose for which the land or structures will be used.” *Id.*, quoting *Whitinsville Retirement Soc’y, Inc. v. Northbridge*, 394 Mass. 757, 760, 477 N.E.2d 407 (1985).

#### A. Religious Significance

The first inquiry is whether use of the ground floor of the Church Building as an emergency homeless shelter has as its bona fide goal something that can reasonably be described as religiously significant. Plaintiffs do not dispute that First Church is itself a religious organization. Nor do they dispute that providing shelter to unhoused individuals “aligns” with First Church’s Christian values. They argue, however, that use of the ground floor as a shelter cannot reasonably be described as religiously significant because a shelter use does not involve religious reflection. They view the shelter not as a religious use, but as housing and a way for First Church to be charitable and also generate income.

I conclude to the contrary. First Church’s witnesses – Rev. Macy, Ferello, and Smith credibly testified as to the congregation’s sincere and in-depth efforts to reflect upon whether it was their religious mission to host the shelter. The congregation’s structured and contemplative process about how to fulfil their religious mission began well before the First Church learned about the concrete proposal to host the shelter in partnership with the Coalition. As discussed above, First Church began its discernment process in the fall of 2023, going to God in prayer, consulting scripture, and gathering in community to determine what God might be calling the congregation to do. Discernment included a so-called visioning process where the membership gathered to consider questions such as “Who are we now?” and “Who is God calling us to be?” The resulting Vision Statement guided First Church’s decision-making. It states: “First Church Somerville lives to make God’s expansive love and justice real through radically inclusive sanctuary, authentic connection, spiritual exploration, and transformative community engagement.”

It was only after this visioning process that First Church and the Coalition began discussing ways for First Church to further engage with the Coalition. In this context, Libby asked whether First Church would consider allowing the Coalition to use the ground floor of the Church Building for a shelter. First Church’s decision to host the shelter came only after a further discernment process, where the congregation deeply considered scripture and whether hosting a homeless shelter within the Church Building was God’s work and, if so, whether it was First Church’s calling to do that work. The Discernment Task Force also considered how First Church and a shelter could share the Church Building.

Throughout the lengthy discernment process, as detailed above, the congregation supported the idea that it was their religious mission to host the shelter. First Church's decision-making process was grounded in spiritual reflection about how to advance the goals of their Visioning Statement in the real world and how to engage in radically inclusive Christianity. The process was guided by robust scriptural support for housing the unsheltered and caring for strangers in both the Old and New Testament. As sincerely described by Rev. Macy, Ferello, and Smith, the unanimous vote in March 2024 was a joyful moment for the congregation. I am convinced that the bona fide goal of hosting the proposed shelter under First Church's own roof is a religiously significant use.

This conclusion is further supported by First Church's stated intent to engage with shelter guests and staff, as well as the congregation's decision to share space with the shelter. As to the former, First Church contemplates volunteer opportunities such as providing spiritual support and companionship to guests and staff, as well as material support such as cooking meals. As to the latter, the ground floor will include several shared uses. First Church intends to share use of Duhamel Hall, the large room in the basement of the Church Building, throughout the Coalition's lease term, for social events and gatherings. A kitchen, laundry, and bathrooms located on the ground floor and will also be shared. Both First Church and the Coalition will have offices on the ground floor and share office equipment, such as the copier. I conclude this ongoing engagement, shared use of space, and support for unhoused individuals is religiously significant. This congregation has chosen to host the proposed shelter in order to "to make God's expansive love and justice real through radically inclusive sanctuary, authentic connection, spiritual exploration, and transformative community engagement."

*B. Dominant Religious Purpose*

The second inquiry is whether First Church's religious goal is the primary or dominant purpose for which the Church Building and its ground floor will be used. *McLean Hosp. Corp.*, 483 Mass. at 220; *Fitchburg Hous. Auth. v. Bd. of Zoning Appeals of Fitchburg*, 380 Mass. 869, 874 (1980) "The primary or dominant purpose requirement ensures that an ostensibly religious purpose is not 'mere window dressing' for a nonexempt use." *Hume Lake*, 492 Mass. at 195. "To determine whether the plaintiff's intended use is for religious . . . purposes and, hence, within the protective ambit of § 3, focus must be placed on the use of the structure rather than on the structure itself." *Worcester Cnty Christian Commc'ns, Inc., v. Board of Appeals*, 22 Mass. App. Ct. 83, 87 (1986). There must be more than merely an element of religious or educational use, *Whitinsville Ret. Soc'y, Inc. v. Town of Northbridge*, 394 Mass. 757 (1985).

In *Hume Lake*, the Supreme Judicial Court considered whether the use of a Christian camp was primarily religious or whether its purpose was primarily recreational. Courts do not take "a piecemeal approach" to this question but rather ask "whether the structure as a whole is to be used for religious purposes." *Hume Lake*, 492 Mass. at 196. Thus, in *Martin*, 434 Mass. at 149-150, the Supreme Judicial Court cautioned that the court ought not inquire whether each particular room of a temple independently served a religious purpose, but instead should consider that structure as a whole. In order to avoid making judgments about whether a proposed use constitutes a necessary element of a particular religion, the Dover Amendment protections do not require that a proposed use "be intrinsically religious in order to serve a religious purpose." *Hume Lake*, 492 Mass. at 196. Rather, the Dover Amendment protections encompass accessory uses that, "while not inherently religious in nature, are components of a broader religious project,

and that facilitate the functioning of that project.” *Id.*, citing *Needham Pastoral Counseling Ctr., Inc. v. Board of Appeals of Needham*, 29 Mass. App. Ct. 31, 37 (1990).

Thus, in *Hume Lake*, the primary or dominant purpose of an RV camp providing temporary housing for staff and volunteers at a Christian camp was religious, because the RV camp facilitated the operations of and strengthened attendance at the Christian Camp, whose mission was to cultivate religious practice and spiritual growth. *Hume Lake*, 492 Mass. at 196; See *Shrine of Our Lady of La Salette Inc., v. Board of Assessors of Attleboro*, 476 Mass. 690, 695 (2017) (dominant purpose of a maintenance building was religious because maintaining the shrine was connected with religious worship and instruction offered at the property); *Bible Speaks*, 8 Mass. App. Ct. at 30, 34 (snack bar on a school's softball field served an educational purpose). Compare *Whitinsville Ret. Soc’y, Inc.*, 394 Mass. at 761 (nursing home facility with merely an “element of education” was a retired living community rather than an educational facility where it lacked a formal program or trained professionals and there was only informally interplay among residents of the nursing home community).

Guided by these principles, I reject the Plaintiffs’ effort to characterize the dominant and primary purpose of the ground floor as housing, somehow separate and apart from First Church’s use of the Church Building as a whole. The Discernment Task Force specifically considered how First Church and the shelter could share the Church Building. Leading to the structure encompassing shared spaces, such as shared use of Duhamel Hall and the ground floor kitchen, office and equipment, laundry, and bathrooms, further supporting a holistic religious purpose. As discussed above, use of the ground floor to host the shelter is an integral part of First Church’s religious mission, as developed during the discernment process. Further, First Church’s

involvement in the shelter, while not inherently religious in nature, are components of a broader religious project supported by First Church's intention to develop opportunities for its members to volunteer and engage with the shelter guests.

The Plaintiffs' focus on the revenue that will be generated from its lease with the Coalition is also misplaced. *Hume Lake*, 492 Mass. at 200 (rejecting argument that Christian camp was primarily motivated to house volunteers and seasonal staff at the RV camp in order to defray costs). The focus of the court's analysis is not on an organization's reason for choosing one means of pursuing its goals rather than another, but rather on the purpose of the particular use to which the land or structure is put. *Id.* Here, the purpose of leasing the ground floor to the Coalition is to advance the religious mission of First Church and the spiritual growth of the congregation. For the reasons above, I conclude that the proposed shelter is entitled to protection under the Dover Amendment.

### **III. CONCLUSION**

For the reasons discussed above, the proposed location of the shelter in a portion of the ground floor of First Church's property at 89 College Avenue is a religious use entitled to the protection of the Dover Amendment, G. L. c. 40A, § 3. The ZBA's Decision is upheld. Judgment to issue accordingly.

**SO ORDERED**

By the Court (Rubin, J.)

/s/ Diane R. Rubin

Attest:

/s/ Deborah J. Patterson

Deborah J. Patterson

Recorder

Dated: April 8, 2026