

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

IN THE MATTER OF:

Darnell Perkins & Associates,
LLC t/a Darnell's
944 Florida Avenue, NW
Retailer CT - ANC-1B
License No. 95113
Case #15-PRO-00002

Protest
Hearing

(Application to Renew the License)

April 8, 2015

The Alcoholic Beverage Control Board
met in the Alcoholic Beverage Control Hearing
Room, Reeves Building, 2000 14th Street, N.W.,
Suite 400S, Washington, D.C. 20009, Chairperson
Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
DONALD BROOKS, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

ZACHARY VICK, ABRA Investigator

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Opening Statement by Applicant22
 Opening Statement by Protestant.23
 Closing Statement by Applicant 148
 Closing Statement by Protestant. 150

| WITNESS | DIRECT | CROSS | REDIRECT | RECROSS |
|-----------------|--------|-------|----------|---------|
| Zachary Vick | 24 | 38 | | |
| Michael Istok | 48 | 54 | | |
| David Riley | 62 | 79 | | 114 |
| Josephine Poole | 119 | 123 | | |

1 P-R-O-C-E-E-D-I-N-G-S

2 2:46 p.m.

3 CHAIRPERSON MILLER: Okay. Good
4 afternoon, everyone. I'm going to call our
5 Protest Hearing case, Case No. 15-PRO-00002,
6 Darnell's located at 944 Florida Avenue, N.W.,
7 License No. 95113, in ANC-1B.

8 Okay. So I see the parties have come
9 to the table. And why don't we start with
10 introductions?

11 MS. TODD: Good morning. I'm Karen
12 Todd, attorney for the applicant.

13 MR. PERKINS: Good morning. Darnell
14 Perkins, owner of Darnell's.

15 CHAIRPERSON MILLER: Okay. Good
16 afternoon. Sir?

17 MR. RILEY: David Riley, protestant.

18 CHAIRPERSON MILLER: David Riley?
19 What did you say, protestant?

20 MR. RILEY: Yes.

21 CHAIRPERSON MILLER: Protestant, is
22 that what you said?

1 MR. RILEY: Yes.

2 CHAIRPERSON MILLER: Okay. And you
3 are the abutting property owner?

4 MR. RILEY: Yes.

5 CHAIRPERSON MILLER: Okay. All right.
6 Let's start with preliminary matters. Well, let
7 me tell you, I assume that some of you haven't
8 participated in a protest before, have you, in a
9 hearing?

10 MR. RILEY: I'm asking the Board to
11 let me have one of my neighbors and witness to
12 assist me in this process.

13 CHAIRPERSON MILLER: Sure.

14 MR. RILEY: Okay.

15 CHAIRPERSON MILLER: Sure. Okay.

16 What's your name?

17 MR. DUFFY: This is Sean Duffy.

18 CHAIRPERSON MILLER: Okay.

19 MR. DUFFY: I'm a resident of W Street
20 as well.

21 CHAIRPERSON MILLER: Okay. Good.

22 Basically, I want to just give you an idea of the

1 order of proceedings. The first thing we talk
2 about are are there preliminary issues. And I
3 know there is a preliminary issue, that there is
4 a motion that the applicant wants us to consider
5 before we start, so we are going to deal with
6 that first.

7 And then we will talk a little bit
8 about how many witnesses you have or whatever, so
9 we know what to expect. Though we have your
10 PIFs, we know what to expect somewhat.

11 Then the applicant does an opening
12 statement. You, protestant, can then do an
13 opening statement, if you like, or you can wait
14 until we call your case. The applicant's case
15 goes before you.

16 After the opening statements, there
17 will be a Board witness, the Investigator who
18 wrote the report will testify and you all can ask
19 questions of him based on his testimony, as can
20 the Board.

21 And then after the Investigator, the
22 applicant puts on his or her case and then the

1 protestant goes and then there is closing
2 statements. That's basically the way it goes.

3 Now, you all submitted PIFs, I
4 believe, which gave us an indication of the
5 issues. And I have not seen the exhibits. Did
6 you submit an Exhibit Form with exhibits?

7 MS. TODD: I did not, because the only
8 exhibits I have would have been the ones from the
9 investigative report and the report had not been
10 issued by the time --

11 CHAIRPERSON MILLER: Okay.

12 MS. TODD: -- I did it, so --

13 CHAIRPERSON MILLER: Okay.

14 MS. TODD: -- I didn't, but I figured
15 the Board would have copies of it.

16 CHAIRPERSON MILLER: We do. The
17 investigative report always goes --

18 MS. TODD: So I didn't have any
19 additional exhibits after that, no.

20 CHAIRPERSON MILLER: That's fine. I
21 think that in your motion you made reference to
22 Protestant's Exhibits 5 through 15 and I don't

1 know that I have those.

2 MS. TODD: Well, no, you don't. I
3 didn't have them either, but they were listed on
4 the PIF as exhibits, so I just listed them that
5 way, based on what he listed in his -- on the
6 second page.

7 CHAIRPERSON MILLER: Okay. So
8 applicant filed a motion to request that the
9 protestant be limited to matters in his original
10 complaint and to exclude certain exhibits. Did
11 you get a copy of that? The protest --

12 MR. RILEY: Yes, I got a copy of the
13 motion.

14 CHAIRPERSON MILLER: Okay. So the
15 first thing we are going to do, you know, is
16 address that motion. And so my question was, she
17 made reference to your exhibits based on what you
18 identified in your PIF.

19 MR. RILEY: And I --

20 CHAIRPERSON MILLER: Do you have those
21 exhibits?

22 MR. DUFFY: There are exhibits here.

1 I can tell you I have looked through them this
2 morning and --

3 CHAIRPERSON MILLER: Okay. They were
4 attached to the PIF?

5 MR. DUFFY: These were in Mr. Riley's
6 possession, but they were, I guess, listed in the
7 PIF. I don't know if they were attached or
8 copied.

9 CHAIRPERSON MILLER: So you haven't
10 shared the exhibits with --

11 MR. DUFFY: I do have exhibits here.
12 I can tell you from looking at them that they are
13 all ABRA records or I think two of them are
14 excerpts from Mr. Perkins' social media accounts.

15 CHAIRPERSON MILLER: Okay. So while--
16 all right. I mean, it's up to you all. I mean,
17 I can't end up ruling on a motion without seeing
18 the exhibits or you can provide us with a copy of
19 the exhibits.

20 MR. DUFFY: Let me make sure they are
21 all here.

22 MR. RILEY: When I came down December

1 31st, I talked to Ms. Fletcher.

2 CHAIRPERSON MILLER: Yes.

3 MR. RILEY: And I was originally a
4 group of 10 and I asked her to grandfather me in
5 with the concerns of that group as an individual.
6 I asked her to grandfather me. And I got told
7 that to come her by Ms. Fletcher.

8 CHAIRPERSON MILLER: Okay. My
9 question is though she has -- in her motion, she
10 asks that you are not -- that those exhibits be
11 excluded, I believe. So I'm asking you if you
12 want to --

13 MR. DUFFY: I'll provide those.

14 CHAIRPERSON MILLER: -- provide me the
15 exhibits to see --

16 MR. DUFFY: Yes.

17 CHAIRPERSON MILLER: -- what they are?

18 MR. DUFFY: Yes, absolutely.

19 MR. RILEY: Is it okay if I bring them
20 up?

21 MS. TODD: I haven't seen them either,
22 Madam Chair.

1 CHAIRPERSON MILLER: Do you have a
2 copy?

3 MS. TODD: I have no copy.

4 CHAIRPERSON MILLER: No. You need.
5 You haven't seen them?

6 MS. TODD: No.

7 CHAIRPERSON MILLER: Would you like to
8 see them?

9 MS. TODD: Yes, I would.

10 CHAIRPERSON MILLER: How many copies
11 do you have?

12 MR. DUFFY: He has one copy.

13 MR. RILEY: One copy.

14 CHAIRPERSON MILLER: Well, why don't
15 you let Ms. Todd take a quick look at them and
16 see how long she might need them for. I just
17 want to reiterate that we have these status
18 conferences. Were you at the Status Hearing in
19 which I gave direction about the PIF and the
20 Exhibit Forms and said that you needed to serve
21 both the opposing party and the Board with these
22 exhibits seven days ahead of time.

1 And this is why, because it makes it
2 very difficult. And we have said that they may
3 be excluded just for that reason.

4 MR. DUFFY: And I'm sorry, I just
5 wanted to add I think he misunderstood the
6 instructions and instead listed the exhibits on
7 the Exhibit Form and provided a copy of the PIF
8 and the Exhibit Form to Ms. Todd, but didn't know
9 that he needed to provide the actual exhibits.
10 That was a misunderstanding.

11 MR. RILEY: Actually --

12 CHAIRPERSON MILLER: Okay.

13 MR. RILEY: -- I came down here for
14 assistance with a Board letter and Ms. Fletcher
15 told me just put it on here and number the
16 exhibits that I was going to use.

17 CHAIRPERSON MILLER: Okay.

18 MR. RILEY: So that's the confusion.

19 MS. TODD: I have had a chance to look
20 at them. I'm not quite sure what all of it is,
21 because it looks like they are pictures, but they
22 are not labeled, so I'm not quite sure what I'm

1 looking at.

2 CHAIRPERSON MILLER: Did you already
3 have an argument without --

4 MS. TODD: Yes. I have an argument
5 without these.

6 CHAIRPERSON MILLER: So you could
7 proceed with the motion?

8 MS. TODD: I can. Yes, I can.

9 CHAIRPERSON MILLER: Okay. Could I --
10 I would like to see, have the exhibits here
11 though if I'm going to be ruling on excluding
12 any. Okay.

13 MR. DUFFY: And if it helps the Board,
14 I had the same question about some of the
15 photographs and I was able to determine that
16 those are exhibits or attachments to the ABRA
17 Investigator's reports.

18 CHAIRPERSON MILLER: They are in the
19 records?

20 MR. DUFFY: So those are again the
21 Investigator's, public records, things like that.

22 MS. TODD: Well, those pictures don't

1 look like --

2 CHAIRPERSON MILLER: Okay.

3 MS. TODD: -- any of the pictures from
4 the -- the exhibits that was with the
5 investigative report.

6 CHAIRPERSON MILLER: Okay.

7 MR. DUFFY: It's not from the current
8 Investigator report. It's from prior case
9 reports.

10 CHAIRPERSON MILLER: Prior case
11 reports.

12 MR. DUFFY: Regarding the
13 establishment.

14 MS. TODD: Okay. So --

15 CHAIRPERSON MILLER: All right.

16 MS. TODD: I guess --

17 CHAIRPERSON MILLER: What --

18 MS. TODD: -- my first thing would be
19 to the prior report, since I don't know if those
20 issues had been resolved. We have adjudicated
21 those matters, so --

22 CHAIRPERSON MILLER: Why don't we

1 address this in the context of your motion?

2 MS. TODD: Okay.

3 CHAIRPERSON MILLER: And just start
4 there. I just want to have the exhibits in case
5 I need to look at them to decide.

6 MS. TODD: Okay. So from my
7 understanding from Mr. Riley's PIF, he wants to
8 introduce exhibits that talk about advertising
9 and issues regarding the previous two complaints
10 issued by the ANC as well as the group of 10.
11 Those issues have been resolved through a
12 voluntary agreement. The Board has accepted that
13 and has been entered into the record as well. So
14 I think those issues are moot and we should move
15 on from that.

16 And then any additional issues that he
17 has raised, I think they fall outside of his
18 standing as an abutting property owner, which
19 talks about the appropriateness of bringing a
20 protest and I think that if we go through all the
21 things he wants to talk about, we will be here
22 forever.

1 And just in the course of time, we
2 should focus on the issues of his complaint,
3 which were peace, order and quiet and the
4 establishment operating past Board-approved
5 hours. And so now, he is attempting to expand
6 this complaint to a series of issues that I think
7 are outside the scope of this hearing as well as
8 his standing as an abutting property owner.

9 CHAIRPERSON MILLER: Okay. I'm just
10 going to say a couple of words to maybe save you
11 time and so you know what to address, because the
12 Board did read her motion before we came here and
13 your protest does need to be limited to your
14 protest letter.

15 That the way it goes is that you file
16 a protest and that sets the outside parameters of
17 your issues. And often as we get closer to
18 hearing, they get narrowed, but the applicant is
19 on notice then as to what the issues are. You
20 can't come in here and just start talking about
21 any subject, any complaint you have about the
22 applicant.

1 MR. RILEY: No. There were on notice.

2 MEMBER SILVERSTEIN: Sir!

3 CHAIRPERSON MILLER: Sir?

4 MR. RILEY: I'm sorry.

5 CHAIRPERSON MILLER: So if you look at
6 your protest -- we have looked at your protest
7 letter. And it does address hours of operation,
8 that looks to me like the -- that that's what it
9 addresses. Maybe I'll see if I can see anything
10 else in it.

11 So your scope is something -- is
12 issues dealing with hours. Now, if there is
13 something about hours, you know, like if it's
14 noisy late at night or something, fine, you know,
15 I'm not saying you can't talk about noise or
16 whatever. But it has to relate to your hours,
17 that's what you complained about in your letter.

18 But you can address it. I'm going to
19 give you this opportunity to make an argument. I
20 don't want to take that away from you. I'm just
21 telling you that's where we are coming from.
22 That's the way it works.

1 MR. RILEY: But even though I asked
2 the original protest, the concerns to be
3 grandfathered in, because I meant that --

4 CHAIRPERSON MILLER: No. Those
5 concerns were resolved by those parties.

6 MR. RILEY: But they were still my
7 concerns.

8 CHAIRPERSON MILLER: You didn't
9 articulate them in your protest letter, other
10 concerns. I'm not sure what you are referring
11 to, but you have to look at your letter and say--
12 I mean, if they overlap to some extent --

13 MR. RILEY: No.

14 CHAIRPERSON MILLER: So say for
15 instance the ANC had concerns about hours and
16 they resolved their concern, but that doesn't
17 mean you can't argue your concerns about hours.
18 That's fine. But you have to look at your
19 letter. You can't just pick up somebody else's
20 concerns.

21 MR. RILEY: No, I didn't.

22 CHAIRPERSON MILLER: Okay.

1 MR. RILEY: This was later the same
2 day that I made the protest to ask to be
3 grandfathered in.

4 CHAIRPERSON MILLER: You are limited
5 to your protest letter.

6 MR. DUFFY: Can I just make a comment
7 on the topic of the motion? The exhibits that
8 Ms. Todd has asked to be excluded also go to just
9 the state of operations at the bar. The general
10 history of operations which pertain to you, how
11 it is operated after hours, various noise
12 complaints made in the past, I think those are
13 directly relevant on the state of operations and
14 noise complaints.

15 CHAIRPERSON MILLER: Okay. So I'm not
16 ruling on those exhibits right now. And that's
17 where I agree with you to a certain extent. Like
18 if you are talking about state of operations that
19 relate to the hours, that's fine, you know.
20 That's fine.

21 MR. DUFFY: So that's all I was
22 saying. I think I was --

1 CHAIRPERSON MILLER: I'm just saying
2 you can't adopt some other party's protest.

3 MR. DUFFY: But to the extent the
4 exhibits go to prior noise violations, prior ABRA
5 violations, how the business had been operated
6 for the last five years, those are relevant?

7 CHAIRPERSON MILLER: Well, we can
8 address them as we come, you know, for instance,
9 but I don't know if they are relevant.

10 MR. DUFFY: Okay.

11 CHAIRPERSON MILLER: I mean you would
12 have to show how they are relevant to -- the way
13 I understand the protest is, you know, it's
14 understandable that if somebody is operating late
15 at night and you live next door, that's going to
16 bother you differently than it's going to bother
17 the ANC or somebody. So that's kind of what we
18 see this is about.

19 So, you know, if it's relevant to that
20 which you have cited in your protest letter,
21 fine. If it's not, you know, we will see as we
22 go along.

1 MS. TODD: Just to follow-up with
2 those statements.

3 CHAIRPERSON MILLER: Okay.

4 MS. TODD: Madam Chair, since I hadn't
5 seen all the exhibits, I could just only go off
6 of what was written in the PIF and --

7 CHAIRPERSON MILLER: Do we need to
8 address the exhibits now? They are not in
9 evidence or anything.

10 MS. TODD: No, they are not.

11 CHAIRPERSON MILLER: Maybe he won't
12 even put them in evidence, based on what we are
13 saying.

14 MR. DUFFY: Well --

15 CHAIRPERSON MILLER: I think what we
16 need to address right now and then we can start
17 the hearing is the scope of the hearing. And I
18 think that that was a major part of your motion
19 that it needs to be limited to his protest
20 letter.

21 MS. TODD: Correct.

22 CHAIRPERSON MILLER: Okay. So I think

1 it's the consensus of the Board that it does need
2 to be limited to the protest letter. And how you
3 make your case, you know, about those hours will
4 unfold. And that he cannot adopt the protest of
5 others that have settled with the applicant.

6 So why don't we stop there, if that's
7 all right, and then we will see what evidence,
8 what documents you want to put in. You may not
9 want to put in certain documents any more,
10 because -- based on what you have heard. Okay.

11 Are we ready to go? Ready to go?

12 MS. TODD: Yes.

13 CHAIRPERSON MILLER: Okay. So the
14 other thing I didn't say -- okay. I don't even
15 think we are going to get to this, hopefully, but
16 sometimes or almost always we do say an hour and
17 a half per side.

18 MEMBER SILVERSTEIN: And you don't
19 have to use it all.

20 CHAIRPERSON MILLER: This seems like
21 it should be a much more focused case, but in any
22 event, opening and closing arguments don't count

1 and that we give you up to about five minutes on
2 those. And what counts is your witnesses, when
3 you put witnesses on the stand and when you
4 cross-examine the others.

5 So I guess Mr. Silverstein is going to
6 keep track. Okay. Okay. Is that all right?
7 Everybody set?

8 MEMBER RODRIGUEZ: Yes.

9 CHAIRPERSON MILLER: Any questions
10 before we start? All right. So, Ms. Todd, are
11 you ready to start with applicant's opening
12 statement?

13 MS. TODD: Yes, I am. Good afternoon,
14 Board Members. We are here to show to the Board
15 that Darnell Perkins & Associates t/a Darnell's
16 located at 944 Florida Avenue, N.W., holds a
17 Retailers Class CT License fits the
18 appropriateness standard as outlined in D.C.
19 Official Code Sections 25-313 and 25-314 for the
20 neighborhood in which it is located.

21 The evidence presented by ABRA's
22 Investigator and the Applicant's witness will

1 clearly show that the establishment's renewal
2 application should be approved without any
3 further restrictions to its license. Thank you.

4 CHAIRPERSON MILLER: Okay. Thank you.
5 Now, would you like to do an opening statement
6 now?

7 MR. RILEY: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MR. RILEY: My name is David Riley.
10 The issues with Darnell Perkins ABRA application
11 is I have been in this neighborhood for 45 years.
12 I have invested in this neighborhood. And I now
13 provide housing in this neighborhood. I paid
14 \$30,000 in property taxes and I am concerned
15 about the quality of living and property values
16 as a result of Darnell's Bar being a nuisance in
17 the neighborhood and through their noise and
18 trash, drinking in public and urinating on
19 private property.

20 CHAIRPERSON MILLER: Okay. All right.
21 Why don't we call our Investigator up now then.
22 Good afternoon.

1 Whereupon,

2 INVESTIGATOR ZACHARY VICK

3 was called as a witness by the ABRA Board, and
4 having been first duly sworn, assumed the witness
5 stand and was examined and testified as follows:

6 INVESTIGATOR VICK: Yes, I do.

7 CHAIRPERSON MILLER: Okay. Thank you.

8 Okay. I know you did an investigation of this
9 case. Do you want to give us a report?

10 INVESTIGATOR VICK: Yes, ma'am.

11 CHAIRPERSON MILLER: Thank you.

12 INVESTIGATOR VICK: Do I need to say
13 my name for the record?

14 CHAIRPERSON MILLER: Yes.

15 DIRECT EXAMINATION

16 INVESTIGATOR VICK: My name is
17 Investigator Zachary Vick with ABRA.

18 I conducted a protest investigation of
19 Darnell Perkins & Associations t/a Darnell's,
20 which is located at 944 Florida Avenue, N.W. The
21 establishment is bounded by W Street, N.W., to
22 the south and 10th Street, N.W., to the west.

1 Darnell's is located in a Residential
2 District with residences on either side of the
3 establishment and a Commercial District to the
4 south.

5 The area includes a total of 39 ABC
6 licensed-establishment. 15 of the establishments
7 are restaurants, 2 are B Retail, 2 are Class CX
8 multi-purpose, 18 are taverns and 2 are
9 nightclubs. In addition to the nightclubs, 25 of
10 the establishments have an entertainment
11 endorsement and 12 have summer garden
12 endorsements.

13 The renewal application is being
14 protested by abutting property owner, Mr. David
15 Riley. The application was originally protested
16 by ANC-1B, a group of 10 or more and abutting
17 property owner, Josephine Poole. ANC-1B reached
18 a settlement agreement with the establishment on
19 February 11, 2015. And the ANC and group of 10
20 withdrew their protest.

21 Ms. Poole's protest was dismissed by
22 the Board after not being present for a Status

1 Hearing on February 18, 2015.

2 The protest issues are adverse impact
3 on peace, order and quiet. On Friday, March 13,
4 2015, I telephonically interviewed the
5 applicant's attorney, Ms. Karen Todd. Ms. Todd
6 stated that Mr. David Riley is the main
7 protestant whose main concern was peace, order
8 and quiet.

9 Ms. Todd stated that Mr. Riley claims
10 that noise from Darnell's summer garden keeps his
11 tenants awake, that patrons of Darnell's publicly
12 urinate in the street and that Darnell's is not
13 fit for the neighborhood.

14 Ms. Todd stated that the applicant,
15 Mr. Darnell Perkins, has reached out to Mr. Riley
16 and that Mr. Riley wants Darnell's to close at
17 10:00 p.m. Ms. Todd stated that Darnell's hours
18 are already limited to 1:00 on the weekends and
19 further limiting the hours to 10:00 p.m. would
20 hurt the business' ability to make money.

21 Ms. Todd stated that Darnell's
22 voluntarily decreases the music volume inside the

1 rear room of the establishment at night and has
2 reached a settlement agreement with ANC-1B.

3 On Tuesday, March 17, 2015, I
4 telephonically interviewed Mr. David Riley,
5 abutting property owner and protestant. Mr.
6 Riley stated that Darnell's has a negative effect
7 on the neighborhood because of the noise
8 generated by the establishment until 1:00 a.m.
9 and because Darnell's operates after the Board-
10 approved hours until 2:00 or 3:00 in the morning.

11 Mr. Riley stated that he has called in
12 noise complaints on Darnell's, but nothing has
13 been done.

14 Mr. Riley stated that Darnell's brings
15 in patrons from outside the neighborhood which
16 puts a strain on parking in the area. Mr. Riley
17 also stated that he has concerns regarding the
18 ownership of Darnell's and questions whether the
19 transfer of Darnell's from previous ownership to
20 Mr. Darnell Perkins was legal.

21 Mr. Riley stated that he is also
22 concerned that Darnell's is not purchasing

1 alcohol from approved wholesalers. Mr. Riley
2 stated that the -- that he has no wish to close
3 the establishment, but that establishment has not
4 worked with the neighborhood and that the
5 neighborhood's concerns should come first.

6 On Friday, March 20, 2015, I
7 interviewed Josephine Poole, an abutting property
8 owner. Ms. Poole stated that she lives above
9 Darnell's at 907 W Street, N.W., and that she is
10 unable to sleep until Darnell's closes for the
11 night because of the loud music from inside the
12 establishment.

13 Ms. Poole stated that Darnell's has no
14 soundproofing. And she would like the music
15 inside Darnell's to be turned down. Ms. Poole
16 stated that Darnell's operates after its Board-
17 approved hours and that patrons of the
18 establishment litter on her property.

19 Ms. Poole stated that she does not
20 want Darnell's closed, but she would like the
21 establishment to lower the decibel level of the
22 music.

1 On Tuesday, March 24th, I interviewed
2 Darnell Perkins, the owner of Darnell's. Mr.
3 Perkins stated that Mr. David Riley lives next to
4 the establishment's summer garden and has
5 complained that music and patron voices on the
6 summer garden are too noisy.

7 Mr. Perkins stated that there is no
8 amplified music on his patio and he has installed
9 signs asking patrons to keep their voices down
10 while in the summer garden.

11 Mr. Perkins stated that
12 representatives from the Department of Consumer
13 and Regulatory Affairs or DCRA have visited the
14 establishment in spring of 2013, the exact date
15 unrecalled. And Mr. Perkins lowered the volume
16 level of his music to the level that the DCRA
17 officer prescribed.

18 Mr. Perkins stated that has ordered
19 noise muffling curtains for the windows of the
20 establishment and they will be installed in the
21 coming weeks.

22 Mr. Perkins stated that Darnell's

1 hours of operation are already shorter than other
2 establishments in the area and that he has cut
3 back is days of operation to the weekends.

4 Mr. Perkins stated that Darnell's
5 cater to an older crowd, which is not rowdy. He
6 is unaware of what else he could do to make his
7 establishment acceptable to Mr. Riley.

8 ABRA personnel monitored Darnell's on
9 11 separate occasions from March 12, 2015 to
10 April 1, 2015. Of the 11 occasions monitoring
11 Darnell's, the establishment was only open for
12 business three times. During the house ABRA
13 Investigators monitored activities in the area of
14 the establishment, no ABRA violations were
15 observed.

16 A regulatory inspection was conducted
17 at the establishment on March 27, 2015. No ABRA
18 violations were found.

19 Florida Avenue, N.W., is a high-volume
20 area and at any given time you can observe a
21 large number of vehicles traveling up and down
22 Florida Avenue. During the day, there are a

1 larger amount of pedestrians walking up and down
2 Florida Avenue. And on weekends the amount of
3 pedestrian traffic increases with the high amount
4 of bars and restaurants along the U Street
5 Corridor as well as the nearby 9:30 Club.

6 On March 31, 2015, Washington D.C.
7 Office of Unified Communications provided me with
8 information regarding calls for service to 944
9 Florida Avenue, N.W. There were 23 calls for
10 service between March 1, 2014 and March 1, 2015.
11 The calls consist of mostly disorderly calls.

12 The last call for service was on
13 November 30, 2014.

14 A check of ABRA records for noise
15 complaints determined that between the dates of
16 November 1, 2014 and March 29, 2015, ABRA
17 received seven noise complaints for Darnell's.
18 One of the complaints resulted in a violation on
19 January 15, 2015, that is Case 15-CMP-00166 and
20 it is pending.

21 That is all I have, ma'am.

22 CHAIRPERSON MILLER: Thank you very

1 much. A great report. Okay. I just want to
2 welcome Mr. Jones to the dias.

3 MEMBER JONES: Thank you, Madam Chair.

4 CHAIRPERSON MILLER: Are there
5 questions for the Investigator? Mr. Short?

6 MEMBER SHORT: Investigator Vick, how
7 are you this afternoon?

8 INVESTIGATOR VICK: Good. Thank you.
9 How are you doing, sir.

10 MEMBER SHORT: The pending case, the
11 last thing that was mentioned on your report,
12 what is that?

13 INVESTIGATOR VICK: Yes. That is a
14 case related to the substantiated noise complaint
15 on January 16, 2015.

16 MEMBER SHORT: So that was
17 substantiated?

18 INVESTIGATOR VICK: Yes, that was a
19 substantiated complaint and the establishment
20 received a \$250 citation for a noise violation.

21 MEMBER SHORT: What time was that
22 violation?

1 INVESTIGATOR VICK: One moment, sir.
2 I believe that was end of the night, but I would
3 have to check that report.

4 MEMBER SHORT: If you could provide
5 that to me later, I would appreciate it.

6 INVESTIGATOR VICK: Yes, sir.

7 MEMBER SHORT: And I guess was that
8 after the agreement with 1B was signed?

9 INVESTIGATOR VICK: No, that agreement
10 was signed on February 11th and the violation was
11 on January 16th.

12 MEMBER SHORT: So there have been no
13 violations since he signed the --

14 INVESTIGATOR VICK: No.

15 MEMBER SHORT: That's all I have,
16 Madam Chair. Thank you.

17 CHAIRPERSON MILLER: Okay.

18 MEMBER SHORT: Thank you, Investigator
19 Vick.

20 CHAIRPERSON MILLER: Mr. Brooks?

21 MEMBER BROOKS: Yes. I just want to
22 continue with the noise complaint. What was

1 that? Was that a DJ or --

2 INVESTIGATOR VICK: As I understand
3 it, it was a hotphone complaint from a
4 neighboring resident or a resident on W Street,
5 N.W. And the violation was for bass being heard
6 inside the neighbor's home.

7 MEMBER BROOKS: So someone went inside
8 the neighbor's home and heard the bass?

9 INVESTIGATOR VICK: Yes, to
10 substantiate noise complaints, it's required that
11 we enter a home and hear the noise. So, yes, an
12 ABRA Investigator entered the home and heard
13 bass.

14 MEMBER BROOKS: Okay. And then they
15 went to the establishment and they turned the
16 bass down? Is that your understanding?

17 INVESTIGATOR VICK: Yes, that is my
18 understanding.

19 MEMBER BROOKS: Okay. Thank you,
20 Madam Chair.

21 CHAIRPERSON MILLER: Okay. Others?
22 Do you know the occupancy of the summer garden?

1 INVESTIGATOR VICK: I do not.

2 CHAIRPERSON MILLER: Okay. Or the
3 occupancy of the establishment?

4 INVESTIGATOR VICK: Overall occupancy
5 of the establishment is 125.

6 CHAIRPERSON MILLER: Okay.

7 INVESTIGATOR VICK: During a check of
8 ABRA records, I was unable to determine what the
9 exact occupancy is of the summer garden.

10 CHAIRPERSON MILLER: Why is that? Do
11 you know?

12 INVESTIGATOR VICK: I checked the
13 original application.

14 CHAIRPERSON MILLER: Yes.

15 INVESTIGATOR VICK: And pretty much
16 every piece of that, the applicant's file, and
17 was unable to find an exact number for what the
18 summer garden was licensed for.

19 CHAIRPERSON MILLER: Okay. But they
20 do have an endorsement for a summer garden?

21 INVESTIGATOR VICK: They are endorsed
22 for a summer garden.

1 CHAIRPERSON MILLER: Yes.

2 INVESTIGATOR VICK: Yes.

3 CHAIRPERSON MILLER: Okay. Are there
4 comparable establishments in this block? You
5 know, comparable meaning it has a summer gardens
6 that are, you know --

7 INVESTIGATOR VICK: Yes. If you give
8 me one moment, there are, make sure I have the
9 exact number that have summer gardens, within
10 1,200 feet there is Town, Satellite Room is
11 nearby as well as American Ice Company, Climax
12 Restaurant is south on Florida Avenue, which is
13 nearby. They all have summer gardens. But there
14 are 12 within 1,200 feet.

15 CHAIRPERSON MILLER: Okay. And they
16 all have residences abutting them or anything?

17 INVESTIGATOR VICK: Well, Darnell's is
18 in a Residential District.

19 CHAIRPERSON MILLER: Yes.

20 INVESTIGATOR VICK: I'm not exactly
21 sure what the rest of those establishments are
22 zoned.

1 CHAIRPERSON MILLER: Okay. I was just
2 wondering in your opinion whether it should be
3 treated even differently because it is near more
4 residences or no?

5 INVESTIGATOR VICK: I couldn't say.
6 I do know that, for example, Climax Restaurant
7 and Hookah Bar does have residences nearby.

8 CHAIRPERSON MILLER: Okay.

9 INVESTIGATOR VICK: So some of these
10 establishments may have residents nearby.

11 CHAIRPERSON MILLER: Okay.

12 INVESTIGATOR VICK: That part of
13 Florida Avenue, there are more residences there
14 than the general U Street Corridor.

15 CHAIRPERSON MILLER: Do you have an
16 opinion, if it's appropriate to ask, about the
17 measures they have taken to reduce the noise?
18 Whether they are effective or sufficient?

19 INVESTIGATOR VICK: I could not say.

20 CHAIRPERSON MILLER: Okay.

21 INVESTIGATOR VICK: Yes, I could not
22 say.

1 CHAIRPERSON MILLER: Is that the first
2 noise violation that they have had?

3 INVESTIGATOR VICK: Yes.

4 CHAIRPERSON MILLER: Okay.

5 INVESTIGATOR VICK: Since the license
6 transferred in November of 2014, this is the only
7 noise violation that has been found.

8 CHAIRPERSON MILLER: Okay. Only
9 violation period? Okay. All right. Okay. So
10 any other Board questions? Applicant questions?

11 MS. TODD: Thank you.

12 CROSS-EXAMINATION

13 MS. TODD: Thank you, Investigator
14 Vick, for your testimony. I just have a couple
15 of more follow-up questions. One has to do with
16 are you familiar with ABRA and DCRA employees
17 going out together to inform licensees, license
18 holders about the noise issues that they have in
19 the community with MPD? Are you familiar with
20 any of those Task Forces that have gone out?

21 INVESTIGATOR VICK: There is a Noise
22 Task Force. MPD, DCRA and ABRA Investigators go

1 out.

2 MS. TODD: Okay. So --

3 INVESTIGATOR VICK: And monitor
4 establishments.

5 MS. TODD: -- are aware.

6 INVESTIGATOR VICK: Yes.

7 MS. TODD: Okay. And are you familiar
8 with DCRA and ABRA having different Noise
9 Regulations in terms of the decibel reading by
10 DCRA and ABRA having their policy that they have
11 to hear the noise inside the actual unit of the
12 person?

13 INVESTIGATOR VICK: Yes, ma'am.

14 MS. TODD: And have you experienced
15 any of the establishments being confused by any
16 of those regulations because they are all going
17 out together, they have different policies and
18 possibly maybe instructing the establishment to
19 do one thing versus the other and then you find
20 that there is a violation because there is some
21 confusion? Have you found that to be an issue?

22 INVESTIGATOR VICK: In my experience,

1 we all go out together, but DCRA employees as
2 well as ABRA employees do a good job of
3 explaining the difference.

4 MS. TODD: Okay. Okay. Moving past
5 that point, you said that you did not observe any
6 violations while present at the establishment.
7 Is that correct?

8 INVESTIGATOR VICK: Yes, ma'am.

9 MS. TODD: And how many times did you
10 actually observe the establishment?

11 INVESTIGATOR VICK: I observed the
12 establishment -- the establishment was monitored
13 11 times overall, eight of those were by me.

14 MS. TODD: And did you observe any
15 littering by the establishment or its patrons?

16 INVESTIGATOR VICK: I did not.

17 MS. TODD: Did you observe any
18 rowdiness by the establishment and its patrons?

19 INVESTIGATOR VICK: I did not.

20 MS. TODD: Did you notice or observe
21 any criminal activity by the establishment?

22 INVESTIGATOR VICK: I did not.

1 MS. TODD: Or its patrons? You also
2 mentioned that during your visits you noticed a
3 flow of traffic change because of the nature of
4 the U Street Corridor. I know you said you went
5 there 11 times and only three times the
6 establishment was open.

7 INVESTIGATOR VICK: Yes.

8 MS. TODD: Did you notice the
9 difference between the traffic, the 11 times when
10 Darnell's was closed versus the times that you
11 noticed or observed when Darnell's was open?

12 INVESTIGATOR VICK: On weekends, I
13 would say the traffic is heavier in that area,
14 pedestrian traffic and vehicular traffic.

15 MS. TODD: Yes.

16 INVESTIGATOR VICK: I don't believe
17 there was a significant difference --

18 MS. TODD: Okay.

19 INVESTIGATOR VICK: -- between the
20 times that the establishment was closed or open.

21 MS. TODD: Okay. Okay. No further
22 questions. Thank you.

1 CHAIRPERSON MILLER: Okay.

2 Protestant?

3 MR. DUFFY: Could I ask a couple of
4 questions?

5 CHAIRPERSON MILLER: Yes.

6 MR. DUFFY: Nice to meet you,
7 Investigator. How are you doing?

8 INVESTIGATOR VICK: How are you doing?

9 MR. DUFFY: Okay. So you said that of
10 the 11 times ABRA observed the establishment, it
11 was open three times?

12 INVESTIGATOR VICK: Yes.

13 MR. DUFFY: And during what time of
14 the day did you observe?

15 INVESTIGATOR VICK: We --

16 MR. DUFFY: On those three occasions
17 specifically.

18 INVESTIGATOR VICK: On those three
19 occasions that it was monitored, give me one
20 moment. I'll make sure I make that exact. All
21 right. On the three times the establishment was
22 opened was at 1:10 in the afternoon on Friday,

1 March 27th; on Saturday, March 28th 12:00 a.m. to
2 12:30 a.m.; and it was monitored again on
3 Saturday, March 28th from 1:45 to 2:15 a.m.

4 MR. DUFFY: Okay. So one in the
5 afternoon and then twice early in the morning or
6 late in the evening?

7 INVESTIGATOR VICK: Exactly.

8 MR. DUFFY: Okay. And you said you
9 didn't observe any violations. Did you note if
10 there was amplified music being played in the
11 establishment at the time?

12 INVESTIGATOR VICK: The time that I
13 visited?

14 MR. DUFFY: Yes.

15 INVESTIGATOR VICK: There was not
16 amplified music being played.

17 MR. DUFFY: Okay. Are you aware of
18 the establishment playing amplified music?

19 INVESTIGATOR VICK: Yes.

20 MR. DUFFY: Okay. And did you
21 actually enter the premises?

22 INVESTIGATOR VICK: I did.

1 MR. DUFFY: On any of those?

2 INVESTIGATOR VICK: On the date that
3 I visited, I conducted a regulatory inspection.

4 MR. DUFFY: And did you find the
5 nature of the building in terms of size,
6 soundproofing, construction, number of restrooms,
7 I'll say, appropriate for the number of patrons
8 and the use that it's being used for?

9 INVESTIGATOR VICK: I don't believe
10 that I'm in a position to judge soundproofing, as
11 I'm not an engineer. The establishment did have
12 restrooms. It was of a medium size.

13 MR. DUFFY: Okay. Did you note if
14 there was -- what music was being played in the
15 establishment?

16 INVESTIGATOR VICK: The rear room of
17 the establishment.

18 MR. DUFFY: Okay. And would you
19 characterize that room as being abutting Florida
20 Avenue or abutting W Street?

21 INVESTIGATOR VICK: W Street.

22 MR. DUFFY: And the only thing I

1 wanted to touch on was you referred to their
2 being a number of commercial establishments on
3 the block, but you defined that to be 1,200 feet
4 of the establishment. Is that correct?

5 INVESTIGATOR VICK: No. It's if you
6 refer to one of my exhibits, which is the GIS
7 Map, the 1,200 feet is drawn on the GIS Map, that
8 is, let me make sure to be correct, Exhibit No.
9 4. So it's a 1,200 foot radius from Darnell's as
10 the center.

11 MR. DUFFY: Okay. And the first
12 thing, you mentioned Climax as another similarly
13 situated establishment on Florida Avenue?

14 INVESTIGATOR VICK: Yes. It's located
15 on Florida Avenue to the south.

16 MR. DUFFY: And are you aware of that
17 liquor license being protested as well?

18 INVESTIGATOR VICK: I am not.

19 MR. DUFFY: Okay.

20 MS. TODD: I object to the relevance
21 of that question.

22 MR. DUFFY: Withdrawn. Talking --

1 CHAIRPERSON MILLER: Okay.

2 MR. DUFFY: -- about just the square,
3 the block that Darnell's is on, the residential
4 block between, I guess it's the 900 Block of W
5 Street, you said that it zoned residential?

6 INVESTIGATOR VICK: It is.

7 MR. DUFFY: And are any of the other
8 establishments zoned residential that you
9 referred to?

10 INVESTIGATOR VICK: I would have to
11 research that.

12 MR. DUFFY: And are you -- earlier Ms.
13 Todd mentioned the difference between DCRA and
14 ABRA Noise Regulations.

15 INVESTIGATOR VICK: Yes.

16 MR. DUFFY: Are you familiar with what
17 the noise limit for the DCRA?

18 INVESTIGATOR VICK: I believe it's 65
19 decibels.

20 MR. DUFFY: And that's in a
21 residential neighborhood?

22 INVESTIGATOR VICK: I believe that's

1 65 decibels for the city.

2 MR. DUFFY: Okay. And how would you--
3 I don't -- is that a loud level? Is that a
4 conversation? Is that a boombox?

5 INVESTIGATOR VICK: I'm not an expert
6 on decibel levels. You would have to ask a DCRA
7 employee.

8 MR. DUFFY: Okay. I don't have any
9 other questions.

10 CHAIRPERSON MILLER: Okay. Any other
11 Board questions? All right. Thank you very
12 much.

13 INVESTIGATOR VICK: Thank you.

14 (Whereupon, the witness was excused.)

15 MEMBER SILVERSTEIN: Okay. The
16 applicant puts on their side.

17 CHAIRPERSON MILLER: Okay. Ms. Todd,
18 whenever you are ready.

19 MS. TODD: Okay. We would like to
20 call Mike Istok to testify as our first witness.

21 CHAIRPERSON MILLER: Okay. How many
22 witnesses will you have?

1 MS. TODD: I had two, but one didn't
2 show, so I'm just going to call him as a witness.

3 CHAIRPERSON MILLER: Okay. Okay.
4 Hello.

5 MR. ISTOK: I don't know the process.

6 CHAIRPERSON MILLER: The process is
7 I'm going to swear you in.

8 Whereupon,

9 MICHAEL ISTOK

10 was called as a witness by Counsel for the
11 Licensee, and having been first duly sworn,
12 assumed the witness stand and was examined and
13 testified as follows:

14 MR. ISTOK: I do.

15 CHAIRPERSON MILLER: Okay. I don't
16 know if you -- did you come late?

17 MR. ISTOK: No.

18 CHAIRPERSON MILLER: Okay. So you
19 know she is going to ask you questions and we are
20 all going to cross. Okay. You can have a seat.

21 DIRECT EXAMINATION

22 MS. TODD: Good afternoon, Mr. Istok.

1 Could you, please, state your name for the
2 record, please?

3 MR. ISTOK: Yes. My name is Michael
4 Istok.

5 MS. TODD: Mr. Istok, where do you
6 live?

7 MR. ISTOK: I live in the building
8 across the street 2120 Vermont Avenue.

9 MS. TODD: How far is that,
10 approximately, from Darnell's?

11 MR. ISTOK: Well, the building itself
12 is right next door right across the street. It's
13 a relatively large condo building, but I'm in
14 that area a lot. I walk my dog.

15 MS. TODD: How long have you lived
16 there?

17 MR. ISTOK: Three and a half years.

18 MS. TODD: Have you ever been to
19 Darnell's establishment?

20 MR. ISTOK: I have.

21 MS. TODD: Can you give us a rough
22 estimate of how many times?

1 MR. ISTOK: More than a handful. I
2 find it a very nice place to go.

3 MS. TODD: Do you consider it a place
4 that people in the neighborhood could come and
5 frequent?

6 MR. ISTOK: Sure.

7 MS. TODD: If they so chose?

8 MR. ISTOK: Absolutely.

9 MS. TODD: Could you give us a
10 description of the crowd that typically frequents
11 it?

12 MR. ISTOK: Well, it's I would say
13 typically in their 40s, although a pretty big
14 range. Not generally young people, but, you
15 know, sometimes. I'm 59, so there is old people,
16 too.

17 MS. TODD: Do you think it's
18 professional people that go there?

19 MR. ISTOK: Oh, absolutely. I'm
20 always amazed at people I meet, doctors, lawyers,
21 nonprofit.

22 MS. TODD: Okay. Have you ever been

1 to the outside summer garden?

2 MR. ISTOK: I have.

3 MS. TODD: Would you -- have you ever
4 heard any amplified music being played out there?

5 MR. ISTOK: No, no, there is no music
6 out there. I mean, when somebody opens the door,
7 you might hear it for a moment, but then the door
8 closes and it's --

9 MS. TODD: So typically you would
10 describe it as a place that people go and talk
11 and they can smoke or something like that?

12 MR. ISTOK: Yes, yes, go out for a
13 cigarette.

14 MS. TODD: As a neighbor in the
15 community, have you ever been disturbed by the
16 noise coming from Darnell's?

17 MR. ISTOK: No.

18 MS. TODD: As you walk your dog and I
19 don't know if you have walked your dog during the
20 hours that Darnell's is open, have you ever heard
21 any excessive noise coming as you are moving
22 about as a neighbor in the community?

1 MR. ISTOK: No. I mean, I walk my dog
2 at all times of the -- you know, for sure during
3 the evening and night and, you know, you might
4 hear some music as you're going by a little bit,
5 but, you know, you hear that all the --
6 everywhere.

7 MS. TODD: Do you perceive Darnell's
8 as having an adverse impact on the community?

9 MR. ISTOK: I do not.

10 MS. TODD: Have you ever seen anyone
11 littering or seen litter from Darnell's when you
12 are passing through the community walking your
13 dog?

14 MR. ISTOK: Not any more than anywhere
15 else around that whole area.

16 MS. TODD: Do you notice any criminal
17 activity or any spiking crime as a result of
18 Darnell's being in the neighborhood?

19 MR. ISTOK: No. I have not seen any
20 crime.

21 MS. TODD: How about any rowdiness
22 from any of the patrons?

1 MR. ISTOK: No. I have not.

2 MS. TODD: And I know there is concern
3 about parking in that general area. Is parking
4 an issue?

5 MR. ISTOK: Well, that whole area, I
6 mean, U Street has a lot of people, so parking
7 does tend to get probably challenging on the
8 weekends. I don't park in the street myself. I
9 have a parking spot in the building, but I have
10 people who come visit and they seem to find a
11 spot, so I think it is --

12 MS. TODD: Do you --

13 MR. ISTOK: -- probably what you would
14 expect for that area.

15 MS. TODD: And compared -- since
16 Darnell's has been voluntarily closing a lot
17 during the week, have you noticed any change in
18 the parking from their being more available
19 spaces during the time it's closed versus the
20 days that he is open?

21 MR. ISTOK: Well, you know, typically
22 there is hardly any parking most times of the day

1 and night. It doesn't really seem to matter. I
2 mean, there is only so many spots. People just
3 have to park further and further away.

4 MS. TODD: Okay. I have no further
5 questions. Thank you.

6 CHAIRPERSON MILLER: Okay. Cross?
7 Protestants, do you have questions?

8 MR. DUFFY: Sure.

9 CROSS-EXAMINATION

10 MR. DUFFY: Is it Mr. Istok?

11 MR. ISTOK: Yes.

12 MR. DUFFY: Do you live -- the
13 residence that you described is that The Rhapsody
14 Condo building?

15 MR. ISTOK: It is.

16 MR. DUFFY: Okay. And how large is
17 that building?

18 MR. ISTOK: It's big. I don't know
19 exactly how one would describe that.

20 MR. DUFFY: Okay. Six stories tall?

21 MR. ISTOK: Yes.

22 MR. DUFFY: And which floor are you

1 located on or is your condo located on?

2 MR. ISTOK: I'm on the fourth floor.

3 MR. DUFFY: Okay. And does your condo
4 look out over W Street or Darnell's?

5 MR. ISTOK: No, it does not.

6 MR. DUFFY: What direction does your
7 condo unit face?

8 MR. ISTOK: It faces south and west.
9 I'm at a corner.

10 MR. DUFFY: So sort of near the
11 American Ice Company or that way?

12 MR. ISTOK: Yes.

13 MR. DUFFY: On V Street?

14 MR. ISTOK: Yes. They are pretty
15 loud.

16 MR. DUFFY: So about a full block away
17 from Darnell's?

18 MR. ISTOK: Yeah, but like I said, I
19 walk my dog past there quite a bit, so I know
20 what that area sounds like.

21 MR. DUFFY: But when you are in your
22 home and when you are trying to sleep, you are

1 not impacted by Darnell's, because it's over a
2 block away?

3 MR. ISTOK: Even if I stuck my head
4 out the window, I don't think I would hear it.

5 MR. DUFFY: From your condo
6 overlooking V Street?

7 MR. ISTOK: Well, my -- like I said my
8 window faces west as well, so if I stuck my head
9 out the window, I could see Darnell's.

10 MR. DUFFY: Okay. Okay. No
11 questions. Thank you.

12 CHAIRPERSON MILLER: Board Members
13 have any questions?

14 MR. ISTOK: Thank you.

15 CHAIRPERSON MILLER: Okay. Thank you
16 very much.

17 MR. ISTOK: Thank you.

18 (Whereupon, the witness was excused.)

19 CHAIRPERSON MILLER: Okay.

20 MS. TODD: We have no further
21 questions. No further witnesses. So I don't
22 know if you want us to do our closing?

1 CHAIRPERSON MILLER: We have redirect?
2 What did you say?

3 MS. TODD: No. I said we have no more
4 witnesses. So I don't know if you want us to do
5 our closing now? I prefer to wait for --

6 CHAIRPERSON MILLER: No, no, wait.

7 MS. TODD: Okay.

8 CHAIRPERSON MILLER: But do you have
9 any documents you want to put into evidence?

10 MS. TODD: Again, the only documents
11 I had --

12 CHAIRPERSON MILLER: You just
13 referenced --

14 MS. TODD: -- were the record from the
15 actual Investigator's report.

16 CHAIRPERSON MILLER: Okay. That's
17 automatically in evidence.

18 MS. TODD: That's automatically in, so
19 no, I don't have any further documents.

20 CHAIRPERSON MILLER: Okay. Great.
21 Thank you. So you do know it's time for you to
22 put your case on?

1 MR. DUFFY: Yes, I was actually just
2 wondering --

3 CHAIRPERSON MILLER: Do you need a
4 minute?

5 MR. DUFFY: Could I ask my agency just
6 some logistical matters in terms of if Mr. Riley
7 was going to be a witness as well as making an
8 opening statement or if he can present exhibits
9 during his statement? I'm sorry or during -- how
10 he can present his papers.

11 CHAIRPERSON MILLER: It can be both.

12 MR. DUFFY: Okay.

13 CHAIRPERSON MILLER: It can be both.

14 MR. DUFFY: So I think --

15 CHAIRPERSON MILLER: Or you can ask
16 like you have been, like a lawyer.

17 MR. DUFFY: Old habit.

18 CHAIRPERSON MILLER: So, yes, however
19 you all want to do it. We're flexible.

20 MR. DUFFY: Okay. Could I ask for
21 just five minutes?

22 CHAIRPERSON MILLER: Okay. All right.

1 MR. DUFFY: Thank you.

2 CHAIRPERSON MILLER: We will take a
3 five minute break. Okay.

4 (Whereupon, the above-entitled matter
5 went off the record at 3:30 p.m. and resumed at
6 3:45 p.m.)

7 CHAIRPERSON MILLER: Okay. I think
8 the other Board Members are going to be out
9 momentarily. So but I just want to take a moment
10 to stress to the protestants because you are
11 about to start your case. And I know that you
12 haven't done this before. You are not -- are you
13 an attorney?

14 MR. DUFFY: I'm an attorney, yes.

15 CHAIRPERSON MILLER: All right. Oh,
16 okay.

17 MEMBER RODRIGUEZ: Okay.

18 CHAIRPERSON MILLER: But so well then
19 you can relate to this. What I said before was
20 when we were talking about the protestant being
21 limited to the issues identified in the protest,
22 I just want to expand that just a tiny bit,

1 because I think it is fair also that if the
2 applicant raised an issue, you can also address
3 that issue.

4 So for instance, if the applicant
5 raised an issue about parking, which I thought
6 she did, you could do that. Okay. But that
7 doesn't mean -- that doesn't really open the door
8 that much more, but I just didn't want you to be
9 -- you know, feel that you couldn't address the
10 applicant's case.

11 MR. DUFFY: Thank you.

12 CHAIRPERSON MILLER: Okay. So are you
13 ready to proceed?

14 MR. DUFFY: Yes, I think so.

15 CHAIRPERSON MILLER: Okay.

16 MR. DUFFY: Are we --

17 CHAIRPERSON MILLER: Do you have a
18 witness?

19 MR. DUFFY: -- addressing the Board?

20 MEMBER SILVERSTEIN: Go ahead.

21 CHAIRPERSON MILLER: I don't know. By
22 the time they come up if you are going to put

1 your witness up, I mean, by the time we get into
2 evidence, I --

3 MR. DUFFY: So I think --

4 MEMBER SILVERSTEIN: And we can tell
5 you that there is television in the back. They
6 can hear you. If they are signing other things
7 and doing other work, they would be paying
8 attention.

9 MR. DUFFY: Okay.

10 MEMBER SILVERSTEIN: I spent a good
11 amount of time back there myself.

12 MR. DUFFY: Yes, that's fine. I just
13 didn't want to be rude and start without them.

14 MEMBER SILVERSTEIN: Okay. No.
15 You're fine.

16 CHAIRPERSON MILLER: Okay.

17 MR. DUFFY: So I think we would ask
18 that Mr. Riley be the first witness.

19 CHAIRPERSON MILLER: Okay. Oh, how
20 many witnesses are you going to have?

21 MR. DUFFY: So besides Mr. Riley just
22 one more.

1 CHAIRPERSON MILLER: Okay. Great.
2 All right. Mr. Riley, are you going to come take
3 the stand?

4 MR. DUFFY: Take the stand.

5 CHAIRPERSON MILLER: Okay.

6 Whereupon,

7 DAVID RILEY

8 was called as a witness by Counsel for the
9 Protestant, and having been first duly sworn,
10 assumed the witness stand and was examined and
11 testified as follows:

12 MR. RILEY: I do.

13 CHAIRPERSON MILLER: Okay. Thank you.

14 DIRECT EXAMINATION

15 MR. DUFFY: Mr. Riley, could you
16 introduce yourself?

17 MR. RILEY: My name is David Riley.

18 MR. DUFFY: Okay. And where do you
19 live?

20 MR. RILEY: 912 W Street, N.W.

21 MR. DUFFY: Okay. And where is that
22 in relation to the establishment?

1 MR. RILEY: Directly across from the
2 garden.

3 MR. DUFFY: And do you own any other
4 properties in the immediate area?

5 MR. RILEY: Yes.

6 MR. DUFFY: And could you list those
7 or describe the location?

8 MR. RILEY: 909 W Street is a two unit
9 flat which is 3 feet away from the back of the
10 garden. And --

11 MR. DUFFY: The garden you are
12 referring to is the summer garden?

13 MR. RILEY: Darnell's garden.

14 MR. DUFFY: Okay. Are you opposed to
15 having any bars in the neighborhood?

16 MR. RILEY: No.

17 MR. DUFFY: Okay. What has your
18 history been with the establishment?

19 MR. RILEY: My history is I was one of
20 the witnesses for Mr. Kidane when he applied for
21 the license. He told me it was going to be a
22 nice little quiet restaurant setting, no noise.

1 And later on he came to me and told me that he
2 couldn't find time to run it about after a year
3 of not being in there and he told me he was going
4 to lease the business to Darnell.

5 MR. DUFFY: Okay. And when was that?

6 MR. RILEY: Five years ago, maybe six.

7 MR. DUFFY: Okay. And what has your
8 relationship been like with Mr. Perkins and
9 Darnell's bar since then?

10 MR. RILEY: Horrible.

11 MR. DUFFY: Could you describe it?

12 MR. RILEY: Well, he holds parties
13 there and loud noise, after hours. At first it
14 was like 2:00 or 3:00 in the morning. And we
15 called, people come out, they had spotters
16 outside. When you see them, the turn the music
17 down. When you leave, they turn it back up.

18 MR. DUFFY: What word did you use
19 there?

20 MR. RILEY: Spotters.

21 MR. DUFFY: Oh, spotters.

22 MR. RILEY: Somebody standing out

1 inside the garden and if you see a car come up,
2 ABRA car come up or a police car come up, you
3 will turn the music down.

4 MR. DUFFY: Are you aware during that
5 time period of the bar receiving any ABRA
6 violations?

7 MR. RILEY: At the time I wasn't until
8 I got the information from the Freedom of
9 Information Act.

10 MR. DUFFY: What information?

11 MR. RILEY: There was fines, I think,
12 \$3,750, \$500, \$750 for violations. And it might
13 have been a \$250 in there.

14 MR. DUFFY: Do you remember what those
15 violations related to?

16 MR. RILEY: Noise, entertainment
17 without a DJ, I think. It's in the exhibits.

18 MR. DUFFY: Would it be all right to
19 introduce the exhibits or have we resolved that
20 issue?

21 CHAIRPERSON MILLER: Sure. You can
22 introduce them any time in your case.

1 MR. DUFFY: Okay.

2 CHAIRPERSON MILLER: As long as -- and
3 if you need to authenticate them, you have a
4 witness.

5 MR. DUFFY: Okay. Do you need me to
6 authenticate the ABRA reports?

7 CHAIRPERSON MILLER: No.

8 MR. DUFFY: Okay.

9 CHAIRPERSON MILLER: The investigative
10 report is actually in the record already.

11 MR. DUFFY: Okay. I'm sorry, not the
12 one that was prepared for this proceeding.

13 CHAIRPERSON MILLER: Oh.

14 MR. DUFFY: I think two or three of
15 the exhibits are the ABRA reports, the
16 investigative reports for the prior violations
17 against the bar.

18 CHAIRPERSON MILLER: Okay. They are
19 not in this record.

20 MR. DUFFY: Okay.

21 CHAIRPERSON MILLER: Okay.

22 MR. DUFFY: Could I approach him to

1 see the exhibits?

2 CHAIRPERSON MILLER: Yes.

3 MR. DUFFY: I think they were turned
4 in earlier.

5 CHAIRPERSON MILLER: You turned the
6 exhibits in earlier?

7 MR. DUFFY: Did you turn them in
8 earlier?

9 MR. RILEY: Yes. The young lady came
10 down.

11 CHAIRPERSON MILLER: Martha, do you
12 know where the exhibits are?

13 MS. TODD: I thought he handed them to
14 you so you could look at them because there was
15 only one set.

16 CHAIRPERSON MILLER: Great.

17 (Off the record discussion.)

18 CHAIRPERSON MILLER: Okay. So why
19 don't you take your exhibits and then when you
20 want to offer them into evidence, you know, if
21 they need to be authenticated, you can do that
22 and then give them to me.

1 MR. DUFFY: Okay. That's fine.

2 CHAIRPERSON MILLER: And Ms. Todd has
3 seen them or you need to see them again?

4 MS. TODD: I would just like a copy of
5 whichever exhibits that they offer in, so I can
6 make an appropriate objection.

7 CHAIRPERSON MILLER: Right.

8 MS. TODD: I only got to glance at
9 them.

10 CHAIRPERSON MILLER: So you will need
11 to show her first.

12 MR. DUFFY: Okay.

13 MS. TODD: Is the Board ready? I
14 don't know.

15 CHAIRPERSON MILLER: Are you ready?
16 I'll go.

17 MS. TODD: Okay.

18 CHAIRPERSON MILLER: Are you ready?
19 I'll get the Board, the rest of the Board.

20 MS. TODD: I just didn't know are we
21 still going or are we waiting for them?

22 CHAIRPERSON MILLER: Well, you were

1 looking at the exhibits.

2 MS. TODD: Yes, okay.

3 CHAIRPERSON MILLER: So it wasn't
4 imperative for them to be here, but if you are
5 ready --

6 MS. TODD: Yes, I'm ready.

7 CHAIRPERSON MILLER: -- I will let
8 everyone know.

9 MEMBER JONES: Excuse me, parties? I
10 just want to let you know I'm fully participating
11 and engaged in this. There is a matter in the
12 back that I need to review with Fred Moosally,
13 Director of the Agency. The Chairperson had an
14 issue or concern with the fact that I was not
15 here at the dias, but I'm hearing everything that
16 is taking place and going on.

17 If you have any concerns related to
18 that, feel free to raise them with me, so that
19 the Chairperson can calm down, relax and know
20 that I'm fully participating and fully cognizant
21 of what is going on and aware of what's going on.

22 Are there any issues, Ms. Todd?

1 MS. TODD: No.

2 MEMBER JONES: Any issues protestant?

3 MR. DUFFY: No.

4 MEMBER JONES: Thank you very much.

5 CHAIRPERSON MILLER: Okay.

6 MS. TODD: All right. I would like to
7 object to those.

8 CHAIRPERSON MILLER: Okay.

9 MS. TODD: One, for the basis that it
10 was from the previous owner and not Darnell
11 Perkins.

12 CHAIRPERSON MILLER: Okay. Wait. I
13 don't --

14 MS. TODD: I'm sorry. You don't know
15 what the exhibits are yet.

16 CHAIRPERSON MILLER: Yes.

17 MR. DUFFY: I can provide the
18 exhibits.

19 CHAIRPERSON MILLER: Okay. So you are
20 starting with Exhibit 1?

21 MS. TODD: Yes. He just gave -- I
22 don't know which one is which.

1 CHAIRPERSON MILLER: Let's do --

2 MS. TODD: He just showed me all
3 three.

4 CHAIRPERSON MILLER: Okay. You can
5 take a seat, if you don't need them right now.
6 So --

7 MS. TODD: They are all basically
8 three showing violations of noise, I believe. I
9 skimmed at them. They looked like previous from
10 2012, 2010 and I believe 2013.

11 CHAIRPERSON MILLER: So you -- let me
12 see, you would like to enter into this record
13 three case reports?

14 MR. DUFFY: Yes.

15 CHAIRPERSON MILLER: Okay. Let me
16 just hear him first.

17 MS. TODD: Okay.

18 CHAIRPERSON MILLER: And then you can
19 object. All right. Looking at them though, date
20 of occurrence one is December 14, 2012, one is
21 January 11, 2013 and one is December 12, 2010.

22 MR. DUFFY: Yes.

1 CHAIRPERSON MILLER: Okay.

2 MR. DUFFY: Would you like me to
3 respond to that? I think there is a question
4 there.

5 CHAIRPERSON MILLER: I would like you
6 to, yes, tell me why you want to -- why they are
7 relevant and, yes, why you want to offer them
8 into evidence.

9 MR. DUFFY: Yes.

10 CHAIRPERSON MILLER: Okay.

11 MR. DUFFY: And I think this is really
12 the crux of the issue that was both the prior
13 motion made by Ms. Todd and the entire hearing is
14 that this hearing has now been about two and a
15 half years in the making. This is a license that
16 was under protest prior to being transferred to
17 Mr. Perkins.

18 When it was transferred to Mr. Perkins
19 or prior to being transferred to Mr. Perkins, Mr.
20 Perkins was the ABC Manager of the establishment
21 of record or ABC Manager on record. I think Mr.
22 Riley has other views about his role in the

1 establishment, but it is uncontested that he was
2 the ABC Manager and ran the day-to-day operations
3 of the establishment going back to at least 2010.

4 So I think it's relevant in terms of
5 how he has managed this establishment for the
6 last five years and that's probably the best
7 indication of how he is going to manage it going
8 forward.

9 MS. TODD: And I would like to --

10 CHAIRPERSON MILLER: Could you just
11 clarify for the record it has been under Mr.
12 Perkins' ownership since what date?

13 MS. TODD: November of 2014. He was
14 the ABC Manager prior to it being transferred
15 over to him.

16 CHAIRPERSON MILLER: Right. Okay.

17 MS. TODD: One, I would like to state
18 that Mr. Perkins has taken several steps to show
19 that as an owner he understands the community's
20 concerns, that's why he entered into a voluntary
21 agreement back in February, in addition to impute
22 the issues of the previous owner and license that

1 although Mr. Perkins was the ABC Manager, I will
2 still argue that the issues that we had in 2010,
3 '12 and '13 should not be then put over to the
4 new licensee that we are standing before and he
5 should be given an opportunity to show himself to
6 be a steward of good business practices going
7 forward, since he is now the new agency license
8 holder.

9 So I don't mind those being admitted
10 in, but just for a limited purpose. I do want to
11 state my objections that I do want Mr. Perkins to
12 have the opportunity to be looked at with fresh
13 eyes by the Board.

14 CHAIRPERSON MILLER: Yes. No, I don't
15 think that they are relevant. We are looking at
16 -- I think there has been enough time to look at
17 how this establishment has operated under the
18 ownership of Mr. Perkins. It is over a year.
19 And the focus of the protest, as we said before,
20 is the hours and how -- you know, what
21 disturbances there may be or whatever related to
22 the hours.

1 So I don't think going into these past
2 records would help the Board in any way. So I
3 don't want to clutter the record with things that
4 aren't relevant. That's why we don't admit
5 things, some things based on relevance.

6 MR. DUFFY: And I don't want to
7 contradict the Chair. I believe he has only
8 owned the establishment since winter of -- I
9 think it was November or December of this past
10 year. So several months.

11 CHAIRPERSON MILLER: Oh.

12 MR. DUFFY: Do you happen to know when
13 the license transferred?

14 CHAIRPERSON MILLER: November 20th.

15 MS. TODD: November.

16 CHAIRPERSON MILLER: I'm sorry. Okay.

17 MS. TODD: Yes, November 25, 2014.

18 CHAIRPERSON MILLER: So I mean, some
19 of these go back to 2010. So anyway, basically,
20 this is what I'm going to say. For me, you know,
21 I'm interested in whether Mr. Riley is being
22 disturbed by, you know, late hour music and

1 people screaming in the street and all those
2 kinds of stuff that could associate with the
3 hours issue.

4 And so therefore, this information is
5 just not helpful. Okay. And it could be
6 prejudicial and so I'm not going to admit it.
7 All right. So let's move on. Okay.

8 MR. DUFFY: So I'll just return to
9 asking him questions, but without any --
10 admitting any evidence into the record.

11 CHAIRPERSON MILLER: You can ask him
12 questions.

13 MR. DUFFY: Okay. So, Mr. Riley,
14 could you just describe any, I guess, conditions
15 or situations -- issues you had with the
16 operation of Darnell's bar since November of
17 2014, when it -- when the license transferred?

18 MR. RILEY: Well, actually, Mr.
19 Perkins hadn't been opening up down there and has
20 not been open but one day a week for the last
21 three weeks. For the last three or four weeks,
22 he hasn't been open on Friday. He open on a

1 Saturday one time in the last three or four
2 weeks. So nobody can really investigate him.

3 MR. DUFFY: And have you had any noise
4 issues or other quality of life issues revolving
5 around the bar in that period?

6 MR. RILEY: Yes.

7 MR. DUFFY: Could you describe those?

8 MR. RILEY: Friday. A patron came out
9 of Darnell's and urinated on a tree in front of
10 914 W Street. I mean, 921 I'm sorry. 921. Left
11 and came back and went in the back gate to the
12 garden. At that time, I came up and knocked on
13 your door because I could hear the music and I
14 asked you could you hear the music up there. It
15 was loud. That was Friday past.

16 MR. DUFFY: So actually you described
17 a patron coming and going through the summer
18 garden?

19 MR. RILEY: Yes.

20 MR. DUFFY: Is it possible to them
21 come and go from the bar without going through
22 the actual establishment? I'm sorry, without

1 going through the front door of the bar?

2 MR. RILEY: Yes.

3 MR. DUFFY: Okay. So this is a patron
4 just leaving the back garden, urinating and then
5 going back?

6 MR. RILEY: Yes.

7 MR. DUFFY: Okay.

8 MR. RILEY: They only have one toilet
9 in there.

10 MR. DUFFY: Are there any other noise
11 issues that you have experienced since Mr.
12 Perkins formally took over ownership of the bar?

13 MR. RILEY: Well, he had a party there
14 the other night. That was the night I'm talking
15 about. He hasn't been open, so I can't, you
16 know. He hasn't been open. You can't charge a
17 person if they are not open. And I think the
18 reason he hasn't been open is because of the
19 hearing.

20 MEMBER SHORT: Because of the what?

21 MR. RILEY: Because of this hearing.

22 MR. DUFFY: Okay. I have no further

1 questions.

2 CHAIRPERSON MILLER: Okay. Cross?

3 CROSS-EXAMINATION

4 MS. TODD: Mr. Riley, just a few
5 questions. When you state that a patron came and
6 peed on a tree across the street --

7 MR. RILEY: Not across the street, the
8 same block.

9 MS. TODD: On the same block.

10 MR. RILEY: Side.

11 MS. TODD: Of Darnell's, correct?

12 MR. RILEY: Yes.

13 MS. TODD: Did you see that patron
14 actually exit Darnell's?

15 MR. RILEY: Yes.

16 MS. TODD: And then you saw them enter
17 back?

18 MR. RILEY: Yes. I saw --

19 MS. TODD: Where were you standing?

20 MR. RILEY: On the front.

21 MS. TODD: And what time, roughly, was
22 this?

1 MR. RILEY: About -- was it about
2 10:30 when I knocked on your door? About 10:30
3 that night, Friday night.

4 MS. TODD: Okay. And did you call the
5 police?

6 MR. RILEY: No.

7 MS. TODD: So did you view that as a
8 nuisance?

9 MR. RILEY: Yes.

10 MS. TODD: Who do you think has
11 control over a patron exiting an establishment
12 and urinating on a tree? Who do you think would
13 have the purview of handling that?

14 MR. RILEY: Well, if you have enough
15 toilets inside, he had a large crowd there.

16 MS. TODD: Yes.

17 MR. RILEY: No outside toilet. If he
18 had enough in there, they do that all the time.

19 MS. TODD: Okay.

20 MR. RILEY: Even though it's private
21 property. I had to physically push one of the
22 guys last year off of my property urinating in my

1 yard.

2 MS. TODD: And you --

3 MR. RILEY: And at that time, I called
4 the police. He tried to swing on my door.
5 Police asked did I want to press charges and I
6 said no, just get him away from here.

7 MS. TODD: Okay.

8 MR. RILEY: And that's what they did.

9 MS. TODD: And in that instance as
10 well, that you saw that person enter and exit
11 Darnell's?

12 MR. RILEY: He came out of the garden.
13 I'm sitting at my window and I saw him come
14 across and come in the corner of my house and
15 when I went outside, he was urinating. I shoved
16 him out of my yard.

17 MS. TODD: Okay.

18 MR. RILEY: And when the police came,
19 he called somebody to pick him up after I told
20 the police I didn't want to press charges. And
21 he called somebody and told them he just came out
22 of Darnell's.

1 MS. TODD: Oh, okay. And you also
2 stated, Mr. Riley, that you believe that Mr.
3 Perkins intentionally closed his establishment
4 because of the Protest Hearing. Is that correct?

5 MR. RILEY: Yes.

6 MS. TODD: Do you have any proof of
7 that?

8 MR. RILEY: He had been open every
9 weekend besides it. I don't have any direct
10 proof, no.

11 MS. TODD: Okay. So that was all
12 speculation, correct?

13 MR. RILEY: Yes.

14 MS. TODD: Okay. Thank you. No
15 further questions.

16 CHAIRPERSON MILLER: Board questions?
17 Yes, Mr. Silverstein?

18 MEMBER SILVERSTEIN: Thank you, Mr.
19 Riley. You are an abutting property owner here?

20 MR. RILEY: Yes.

21 MEMBER SILVERSTEIN: And as such there
22 -- abutting property owners have special rights

1 because you may have issues that other people
2 might not, because you are right smack up against
3 the place.

4 Is there a problem with soundproofing
5 inside your place from inside their place? Is
6 there -- do you share a party wall?

7 MR. RILEY: No. We got 3 feet in
8 between. It's a private alley going on W Street
9 to serve the houses on Florida Avenue.

10 MEMBER SILVERSTEIN: So you can
11 literally --

12 MR. RILEY: It's 3 feet, about this
13 wide.

14 MEMBER SILVERSTEIN: -- sort of walk,
15 wiggle between the two houses.

16 MR. RILEY: Exactly.

17 MEMBER SILVERSTEIN: If you don't
18 weigh 300 pounds. And in a situation like that,
19 do you have a problem with the noise from their
20 establishment coming into your establishment or
21 is the soundproofing between their house and your
22 house is that part of it okay?

1 MR. RILEY: Well, the house that I
2 have next to it, I have tenants in it. I live
3 directly across the street. My tenants can't
4 open their windows and enjoy the fresh air during
5 the summer months when it's open. And they have
6 a trash bin built there and it's raunchy, got
7 trash and stuff in it, rats all around it and my
8 tenants can't sit on their front and enjoy
9 theirselves.

10 MEMBER SILVERSTEIN: They have to go
11 in the front? What were you saying?

12 MR. RILEY: The front of the houses.
13 Right here is 909.

14 MEMBER SILVERSTEIN: Yes.

15 MR. RILEY: 3 feet there is a garden
16 right here.

17 MEMBER SILVERSTEIN: Okay. Now, as
18 far as the summer garden is concerned, tell me
19 how close that is and paint me a word picture as
20 to how that affects your tenants.

21 MR. RILEY: Well, it affects my
22 tenants and I have an email from the one time the

1 tenant asked me to put a chain lock on the door,
2 because she couldn't get in the gate. They were
3 congregating from in front of the garden to her
4 house. And she couldn't get in. She didn't feel
5 comfortable. She asked me to put a chain lock on
6 her door.

7 MEMBER SILVERSTEIN: Okay. Don't read
8 anything into this question, because this is a
9 question we always ask of someone. And that is
10 let's assume that they are going to get their
11 license. What do you need from us to make it
12 tolerable or okay? What are those conditions?
13 What is kind of like your baseline that you
14 really --

15 MR. RILEY: Okay.

16 MEMBER SILVERSTEIN: -- need?

17 MR. RILEY: What I would like to see
18 there, we have a 10:00 noise ordinance in the
19 Residential Zone, the whole block is residential.
20 And I would like to see that summer garden close
21 at 10:00. I can't be in my yard making noise and
22 drinking, so why should they be?

1 MEMBER SILVERSTEIN: Okay.

2 MR. RILEY: And not only that, they
3 are making noise on public space. They are
4 serving alcohol on public space, which they don't
5 have a permit for.

6 MEMBER SILVERSTEIN: Okay. Anything
7 as far as their inside? Inside you are okay
8 with?

9 MR. RILEY: Well, they need to
10 soundproof it, because I can hear music across
11 the street. They need to soundproof inside.
12 Right now, I see some house curtains up. They
13 are not for the commercial curtains like you see
14 in auditoriums. That's what they need to kind of
15 buffer the sound a little bit. They got house
16 curtains in the windows.

17 MEMBER SILVERSTEIN: Okay. Anything
18 else you want to add?

19 MR. RILEY: If they soundproof the
20 place.

21 MEMBER SILVERSTEIN: Pardon?

22 MR. RILEY: If they soundproof the

1 establishment, then -- and get out of the garden
2 at 10:00, like we have to stop making noise at
3 10:00.

4 MEMBER SILVERSTEIN: Yes.

5 MR. RILEY: And I would appreciate
6 that.

7 MEMBER SILVERSTEIN: Okay. No further
8 questions.

9 CHAIRPERSON MILLER: Mr. Short?

10 MEMBER SHORT: Good afternoon.

11 MR. RILEY: Good afternoon.

12 MEMBER SHORT: You know they say a
13 picture is worth 1,000 words. In a lot of cases
14 we do have people urinating in public or in
15 public space, making nuisances of themselves.
16 When we have video or pictures of something other
17 than just someone testifying, because it could be
18 considered just hearsay, which is allowed
19 somewhat in these hearings.

20 But pictures or some evidence of a
21 person abusing their right to sell alcohol in the
22 city, would go a long way with myself, as a Board

1 Member. I can't speak for the other Board
2 Members. But the bottom line is we should find a
3 way for businesses and communities to get along
4 well together.

5 And if what you are saying is true,
6 then someone is violating their trust in our
7 community. So the bottom line is we just need
8 you to help us help you. And maybe -- have you
9 sat down with the owner of Darnell's and have you
10 been able to talk with him or --

11 MR. RILEY: I have talked to him
12 before and I told him I said look, I'm not trying
13 to get you out of business. I understand that
14 you are trying to make a living, but all I'm
15 asking you to do is think about the hours and so
16 that's the way it has been with me and him ever
17 since.

18 And I have a picture in the exhibits
19 where he had a tent across the public space
20 without a permit. And somebody in his
21 establishment was blocking my garage and I called
22 the police on him. The police came and wouldn't

1 give him a ticket. He went in there trying to
2 find out who the car belonged to. And I asked
3 him did he have a permit for that tent? He went
4 in there and he told me that the owner told him
5 that he had a permit. And there is a picture in
6 the exhibit showing the tent coming across public
7 space.

8 MEMBER SHORT: There is an exhibit
9 with this, you said?

10 MR. RILEY: So in my opinion this is
11 what he want to do. He don't care about the
12 neighborhood. He has a negative impact on the
13 neighborhood.

14 MEMBER SHORT: You can't -- if the
15 neighborhood would --

16 CHAIRPERSON MILLER: It's not in those
17 exhibits, Mr. Short.

18 MEMBER SHORT: Not in the exhibits?

19 CHAIRPERSON MILLER: No, because it
20 would be protestant's exhibits. So they haven't
21 offered an exhibit on it. I think -- but they
22 have -- you have one. Is that right?

1 MR. RILEY: Yes, yes.

2 CHAIRPERSON MILLER: But they have
3 one.

4 MR. DUFFY: It's right here.

5 CHAIRPERSON MILLER: Okay.

6 MR. DUFFY: Would you like me to offer
7 it in?

8 MEMBER SHORT: You have to introduce
9 it into evidence before we can see it.

10 CHAIRPERSON MILLER: Is that something
11 you would like to introduce into evidence?

12 MR. DUFFY: Well, I would like to show
13 it to Mr. Riley, if that's the exhibit he is
14 talking about, then I would like to.

15 CHAIRPERSON MILLER: And Ms. Todd.
16 Have you shown it to Ms. Todd?

17 MR. RILEY: Yes. It blocking the
18 views of all the houses from one corner to the
19 other. It's on public space.

20 MR. DUFFY: And did you take that
21 picture?

22 MR. RILEY: My daughter took it.

1 MR. DUFFY: And when was that?

2 MR. RILEY: I think it was homecoming
3 for that one.

4 MR. DUFFY: Would you like me to --

5 MR. RILEY: Howard.

6 CHAIRPERSON MILLER: Can I see that?

7 MEMBER SILVERSTEIN: He is asking
8 questions.

9 CHAIRPERSON MILLER: He is the
10 attorney. Wait a second. Wait a minute. He is
11 the attorney. He is asking his witness a
12 question to one of the pictures.

13 MEMBER SILVERSTEIN: Okay.

14 (Off the record comments.)

15 CHAIRPERSON MILLER: Okay.

16 MR. DUFFY: So I would like --

17 CHAIRPERSON MILLER: Sorry.

18 MR. DUFFY: -- to admit this exhibit.

19 CHAIRPERSON MILLER: Could you say
20 what it is a picture of?

21 MR. DUFFY: Sure.

22 CHAIRPERSON MILLER: Okay.

1 MR. DUFFY: This is a picture of what?

2 MR. RILEY: This is the bar, the back
3 part bar behind the tent.

4 MEMBER SHORT: Would that be the
5 yellow building in the picture you are showing?

6 MR. RILEY: Yes.

7 MEMBER SHORT: That's Darnell's?

8 MR. RILEY: Yes. And the garden is
9 right behind this tent. The tent is coming from
10 this building back over to the sidewalk, which is
11 on public space. And I asked the police did he
12 have a permit to put that tent out there and he
13 didn't. And that's one example of doing whatever
14 he felt like doing.

15 MEMBER SHORT: Nothing was done about
16 the illegal tent?

17 MR. RILEY: I don't think he was
18 fined.

19 MR. DUFFY: So we admit this if the
20 Board would like it. I think it's an ancillary
21 issue, but --

22 CHAIRPERSON MILLER: Ancillary issue.

1 The issue -- what date is it?

2 MR. DUFFY: This was November or
3 October, you said, homecoming?

4 MR. RILEY: I think it was September.

5 CHAIRPERSON MILLER: That there was a
6 tent up and you didn't think they had a permit?

7 MR. RILEY: Police told me they
8 didn't. He went in and asked them. I asked the
9 police did they have a permit.

10 CHAIRPERSON MILLER: Okay.

11 MR. RILEY: Police said no.

12 MS. TODD: Madam Chair?

13 CHAIRPERSON MILLER: Yes?

14 MS. TODD: I don't know if it's
15 appropriate yet until they have admitted this,
16 trying to admit it into evidence, but --

17 CHAIRPERSON MILLER: No, he is trying
18 to admit it into evidence. Are you objecting?

19 MS. TODD: Yes. I am objecting. I
20 think, at this point, that there is not
21 information here for us to even substantiate when
22 this tent was put up, whether or not there was a

1 permit or not, since this was not listed on any
2 of the PIF forms, I could not prepare to even
3 rebut any of this information. And I think it's
4 too highly prejudicial for us to even have this
5 conversation and go forward and allow this
6 information to come in, at this point.

7 CHAIRPERSON MILLER: I need to see it
8 now. Can I see it?

9 MR. DUFFY: Sure.

10 CHAIRPERSON MILLER: Because I need to
11 look. I think that this was proffered maybe in
12 response to Mr. Short's question, but I'm not
13 sure that it really --

14 MR. DUFFY: Yes.

15 CHAIRPERSON MILLER: Does it go to
16 your question?

17 MEMBER SHORT: It goes to directly to
18 my question.

19 CHAIRPERSON MILLER: Okay. Then in
20 which case we probably should admit it, because
21 you -- it's relevant to a concern of yours.

22 MEMBER SHORT: My question, yes.

1 CHAIRPERSON MILLER: What was your
2 question?

3 MEMBER SHORT: My question was --

4 CHAIRPERSON MILLER: Did you say --
5 well, let's see it. Okay. I didn't rule yet.
6 I'm just saying that would be --

7 MEMBER SHORT: My question was --

8 CHAIRPERSON MILLER: -- a reason to.
9 Yes?

10 MEMBER SHORT: -- and what I directed
11 to the protestant was the fact that if we had
12 pictures of some of the activities he was
13 describing, that it would help his case. I
14 mentioned that a picture is worth 1,000 words.
15 And pretty much if someone is not telling the
16 truth, the picture can kind of decide and give me
17 a better understanding of what is going on there
18 in front of Darnell's.

19 CHAIRPERSON MILLER: I mean, I just
20 have some concerns, because I look at this
21 picture and I don't know if they don't have a
22 permit.

1 MS. TODD: And can I add?

2 CHAIRPERSON MILLER: Yes.

3 MS. TODD: With all due respect to the
4 Board's position, I can understand where he is
5 coming from, but I think when we are talking
6 about due process, I think we should offer up an
7 opportunity for, one, there is notice, so that we
8 both have a chance to prepare for whatever Mr.
9 Riley chooses to present, so that we can also
10 rebut it.

11 CHAIRPERSON MILLER: Right.

12 MS. TODD: Since I'm not prepared to
13 do any of that today, he can present a picture
14 and then if it's accepted, I have nothing to
15 present to counter that, because I wasn't given
16 the opportunity at all to see the picture, one,
17 to know it existed and then to even find out
18 whether or not there was a permit or not issued.

19 MEMBER SHORT: Okay. If I can address
20 that, Madam Chair?

21 CHAIRPERSON MILLER: Yes, all right.
22 Go ahead.

1 MEMBER SHORT: I know a little bit
2 about tents in public spaces. Yes, all tents
3 have to be inspected and they have to have a
4 sticker on them and the Fire Marshal's Office had
5 to sign off along with DCRA and Public Space. If
6 those things didn't take place, if Darnell can
7 testify that that is his tent and he did have
8 permits.

9 But I'll just simply say this.

10 CHAIRPERSON MILLER: Okay.

11 MEMBER SHORT: I think the picture
12 should be given the weight that it deserves.

13 CHAIRPERSON MILLER: Okay.

14 MEMBER SHORT: I have seen this panel
15 admit different things at different times for
16 different reasons. If this is not directly -- if
17 this picture is not -- that yellow building is
18 not Darnell's, he should tell us that. If that's
19 his tent, he should tell us if it is or was not
20 permitted. If it's being controversial with the
21 community, I think that the community doesn't
22 have a lawyer. They are doing the best they can

1 and I think if they want to present this, I think
2 it should be given the weight that it deserves.
3 Just my suggestion.

4 MEMBER RODRIGUEZ: We can get Mr.
5 Perkins to testify.

6 CHAIRPERSON MILLER: Yes, he can, he
7 is here.

8 MEMBER RODRIGUEZ: Yes, okay.

9 CHAIRPERSON MILLER: Okay. Okay. I
10 mean, I normally would be inclined not to accept
11 it, but the fact that a Board Member has
12 indicated that it's important to him somewhat--

13 MEMBER SILVERSTEIN: I'm a little
14 concerned with the --

15 CHAIRPERSON MILLER: I don't know how
16 prejudicial it is.

17 MEMBER SILVERSTEIN: -- precedent that
18 we are setting here that I have the opportunity
19 then to introduce evidence indirectly into a
20 case.

21 CHAIRPERSON MILLER: Yes, that's true.

22 MEMBER SILVERSTEIN: That one side or

1 the other side might not have the warning about
2 or be able to rebut.

3 CHAIRPERSON MILLER: I think that's
4 true. I mean, that's what we say.

5 MEMBER SILVERSTEIN: That's --

6 CHAIRPERSON MILLER: And that's --

7 MEMBER SILVERSTEIN: And I think that
8 is what we are worried about here.

9 CHAIRPERSON MILLER: Yes.

10 MEMBER SILVERSTEIN: It's not that we
11 want to or don't want to see this evidence, but
12 we want to be fair to both sides. And on one
13 hand the evidence is somewhat compelling and on
14 the other hand -- or appears to be and on the
15 other hand there is the issue of our being fair
16 to both sides.

17 MEMBER SHORT: I can accept that.

18 MEMBER SILVERSTEIN: And giving a
19 warning.

20 MEMBER SHORT: And I want to remember
21 this date. If this ever comes up again that
22 someone wants to introduce something that is

1 pertinent to the case, if this is the precedent
2 that this Board is setting that we are not going
3 to accept it --

4 MEMBER SILVERSTEIN: No, I don't.

5 MEMBER SHORT: -- or just take things
6 and just give it the weight that it deserves --

7 CHAIRPERSON MILLER: Well, we --

8 MEMBER SHORT: -- if we wait --

9 MEMBER SILVERSTEIN: Yes.

10 CHAIRPERSON MILLER: Yes.

11 MEMBER SHORT: -- then we don't accept
12 it.

13 CHAIRPERSON MILLER: That's often the
14 case. But what we also say is, at the status,
15 that we have these Exhibit Forms and they need to
16 be identified and that your exhibit may be
17 excluded if it hasn't been shared in advance with
18 the opposing party.

19 MEMBER SHORT: I understand.

20 CHAIRPERSON MILLER: And they may be
21 prejudiced and not have an opportunity to have
22 rebutted it. The only reason I have though is I

1 don't know -- Mr. Perkins is here, whether he
2 could rebut this.

3 MS. TODD: What year was that picture
4 taken? I mean, the issue then becomes --

5 CHAIRPERSON MILLER: That's true.

6 MS. TODD: -- also -- I mean --

7 MR. RILEY: Well, September. If not--
8 he knows his tent. Does he have a permit to
9 produce? That would be the question.

10 MS. TODD: Again, if it's -- if the
11 information that is going to be provided can't be
12 specific, because, again during this time, Mr.
13 Perkins was not the owner and the licensee of
14 this establishment. So the responsibility would
15 have been on the previous owner to have it.

16 I think again going back to imputing
17 some of this information to the new licensee and
18 he doesn't have specific dates as to what that
19 is, again, I'm not able to answer any of these
20 questions without going back and finding this
21 information out. And I'm just not prepared to do
22 that today.

1 CHAIRPERSON MILLER: Okay. Okay. All
2 right. I think that's compelling enough that,
3 number one, this could have been September by a
4 different owner. He doesn't -- and then Mr.
5 Perkins may not be expected to necessarily to
6 know about the permits or what day it was. And I
7 think I agree with Mr. Silverstein that we do
8 have a policy that has to mean something.

9 And in some cases it doesn't matter if
10 you come up with an exhibit. The other party
11 doesn't have a concern with it, but when it
12 raises an issue that could be prejudicial and
13 it's really not even well-substantiated as to
14 when this occurred, I think all things being
15 said, that we not accept this into evidence.

16 Okay. Next?

17 MR. DUFFY: Does the Board have any
18 other questions?

19 MEMBER SHORT: Well, again, a picture
20 is worth 1,000 words. And if you are having this
21 kind of history with this business, maybe you
22 would think the next time before you come before

1 this Board you would be better prepared with
2 dates and times of pictures, who took the picture
3 and if you want to admit it into evidence, then
4 it has to be done properly.

5 And, Madam Chair, you are correct. I
6 have to yield to Madam Chair and the rules that
7 we have in this body. Thank you. So you can see
8 that it would have been helpful to you had you
9 had the dates, times and places and put it on
10 your PIF.

11 I know you're not an attorney, so you
12 don't have the idea, because you're not
13 represented the way the person that has the
14 business is, but you need to do the best you can
15 to help your case.

16 There is a way around businesses that
17 do not follow the rules or regulations and what
18 happens when protestants come in properly
19 prepared, then the Board will help you as much as
20 we possibly can. That's all I have, Madam Chair.

21 CHAIRPERSON MILLER: Okay. Others?
22 I wanted to ask you has there always been a

1 restaurant in that spot? Well, you have lived on
2 the block how many years?

3 MR. RILEY: I came down in 1945. I'm
4 70 years-old now. I came down in 1945, it was a
5 laundry mat.

6 CHAIRPERSON MILLER: There was a
7 laundry mat there?

8 MR. RILEY: Yes.

9 CHAIRPERSON MILLER: Okay.

10 MR. RILEY: But since then, there was
11 a little lounge there, but my question is because
12 that whole block is residential, they didn't have
13 a conforming use there ever legally.

14 CHAIRPERSON MILLER: That's your
15 question? That's a zoning question.

16 MR. RILEY: That's a question.

17 CHAIRPERSON MILLER: Yes. But so how
18 long has there been a restaurant there?

19 MR. RILEY: They had a little lounge
20 there for awhile, maybe a year. So then Mr.
21 Kidane came and talked to me and I supported him.

22 CHAIRPERSON MILLER: Okay.

1 MR. RILEY: He never opened it not one
2 day. So that's what is in the question.

3 CHAIRPERSON MILLER: Yes.

4 MR. RILEY: And what I'm asking, and
5 I have asked before, the only way to tell the
6 true owner if Darnell claimed he was the manager,
7 it's like I read an argument about Court and
8 asked for Federal Tax Returns or withholding tax
9 there.

10 CHAIRPERSON MILLER: Okay. That --

11 MR. RILEY: Okay.

12 CHAIRPERSON MILLER: We --

13 MR. RILEY: I understand.

14 CHAIRPERSON MILLER: Yes, that's an
15 issue.

16 MR. RILEY: Okay. I'm just saying.

17 CHAIRPERSON MILLER: Okay. But you
18 know what, we really want to focus on you and
19 it's like make sure if we are convinced to give
20 you that chance, that there is something this
21 Board should do, as Mr. Silverstein has indicted,
22 that would make living next to this establishment

1 more tolerable or more whatever, that's what we
2 want to focus on.

3 MR. RILEY: Okay. Well, the only way
4 they can do that is follow the same rules that
5 the residents have to follow. 10:00.

6 CHAIRPERSON MILLER: Okay. Well, let
7 me ask you about that.

8 MR. RILEY: Close it down.

9 CHAIRPERSON MILLER: So you could have
10 a party in your backyard if you have a backyard
11 or a front yard after 10:00, right?

12 MR. RILEY: Well, you can't have a
13 noise ordinance. What I'm saying is why should
14 establishment be allowed to operate after 10:00?

15 CHAIRPERSON MILLER: Well, are they
16 violating the noise ordinance?

17 MR. RILEY: They violate the noise.
18 I mean, he been cited how many times?

19 CHAIRPERSON MILLER: I don't know. Do
20 you think that he should be able to stay open a
21 little later on a weekend versus the weekday?

22 MR. RILEY: Not in the garden.

1 CHAIRPERSON MILLER: Not in the
2 garden.

3 MR. RILEY: Not in the garden.

4 CHAIRPERSON MILLER: Okay.

5 MR. RILEY: I think the garden should
6 close at 10:00.

7 CHAIRPERSON MILLER: How many people
8 are in the garden usually?

9 MR. RILEY: Well, in just my opinion,
10 I'm speculating, but --

11 CHAIRPERSON MILLER: Okay.

12 MR. RILEY: -- the only time that I
13 feel like that he is doing anything is when he
14 hosts parties. He advertises to host parties and
15 the age range is not 40 like his witness said.
16 They are like 20-something, 30-something and
17 rowdy.

18 CHAIRPERSON MILLER: What kind of
19 parties?

20 MR. RILEY: Where you can hear that
21 boom, boom, boom. I'm laying in my bed and I can
22 hear that boom, boom, boom.

1 CHAIRPERSON MILLER: Inside? Inside?
2 The noise is inside then?

3 MR. RILEY: Yes, inside.

4 CHAIRPERSON MILLER: The bass?

5 MR. RILEY: And I can hear it.

6 CHAIRPERSON MILLER: Okay.

7 MR. RILEY: Across the street.

8 CHAIRPERSON MILLER: When he has those
9 parties?

10 MR. RILEY: Yes.

11 CHAIRPERSON MILLER: How often are
12 those parties? How often does he do that?

13 MR. RILEY: I guess as often as he
14 can.

15 CHAIRPERSON MILLER: Well, how often?

16 MR. RILEY: Well, it has been going on
17 for the last five years.

18 CHAIRPERSON MILLER: How frequently?

19 MR. RILEY: Maybe two or three times
20 a week.

21 CHAIRPERSON MILLER: So do you ever
22 call ABRA to complain?

1 MR. RILEY: I called so many times, I
2 just stopped calling. They don't come out. They
3 wouldn't answer the complaints. I stopped
4 calling.

5 CHAIRPERSON MILLER: When is the last
6 time you called?

7 MR. RILEY: I haven't called in a good
8 little while.

9 CHAIRPERSON MILLER: I mean, a year
10 ago or less?

11 MR. RILEY: ABRA, I call the police
12 noise complaint. And like I said, they haven't
13 been doing anything. Ms. Poole even sent a
14 letter to Johnnie Jackson and sent one to the
15 DCRA about the noise. That's like two or three
16 years ago.

17 CHAIRPERSON MILLER: Two or three
18 years ago?

19 MR. RILEY: Yes. We got copies on it
20 and Darnell was still the manager. He -- Mr.
21 Kidane has never operated that place one day.

22 CHAIRPERSON MILLER: Okay.

1 MR. RILEY: And I went to testify on
2 his behalf. He has not operated one day.

3 CHAIRPERSON MILLER: Okay. So we are
4 talking about this license. Okay. This is the
5 license before us and they have had it since
6 November or something. Have you had -- have you
7 complained about noise since they have had the
8 license?

9 MR. RILEY: Friday. I didn't, but Mr.
10 Duffy complained Friday.

11 CHAIRPERSON MILLER: What happened
12 Friday?

13 MR. RILEY: Police came on Friday.

14 CHAIRPERSON MILLER: What kind of
15 noise? What time was it?

16 MR. RILEY: You could hear the music.
17 The inside music, you could hear the music from
18 there.

19 CHAIRPERSON MILLER: Okay.

20 MR. RILEY: He lives up there near the
21 corner 924.

22 CHAIRPERSON MILLER: Okay.

1 MR. RILEY: W Street. He could hear
2 the music.

3 CHAIRPERSON MILLER: What time?

4 MR. RILEY: Oh, 11:00. 10:30, about
5 11:00, wasn't it?

6 MR. DUFFY: 11:00.

7 MR. RILEY: About 11:00.

8 CHAIRPERSON MILLER: Okay. You didn't
9 call ABRA about that?

10 MR. RILEY: Mr. Duffy called.

11 CHAIRPERSON MILLER: It was Mr. Duffy.
12 He is not on the stand right now. Okay.

13 MR. RILEY: Okay.

14 MEMBER SHORT: Madam Chair, if I could
15 just interject real quick? I think it was the
16 testimony of Investigator Vick that he said once
17 this year that they were cited for noise and that
18 would have been in January.

19 CHAIRPERSON MILLER: Okay. But I'm
20 asking this witness.

21 MEMBER SHORT: Okay. I understand.

22 CHAIRPERSON MILLER: Okay. Okay. But

1 we don't know who called them in that one or
2 anything. Who -- you are across the street from
3 the summer garden?

4 MR. RILEY: Yes.

5 CHAIRPERSON MILLER: Okay. So you are
6 not an abutting resident?

7 MR. RILEY: I'm an abutting property
8 owner.

9 CHAIRPERSON MILLER: You're an
10 abutting owner. You're an abutting owner.

11 MR. RILEY: My tenants affect my
12 income.

13 CHAIRPERSON MILLER: And in the
14 property that abuts the establishment are
15 tenants?

16 MR. RILEY: Yes.

17 CHAIRPERSON MILLER: How many tenants?

18 MR. RILEY: Four.

19 CHAIRPERSON MILLER: Four, okay. And
20 have they complained to you as the landlord about
21 this?

22 MR. RILEY: Yes. The previous tenants

1 moved out, because they couldn't stand the noise.

2 CHAIRPERSON MILLER: When was that?

3 MR. RILEY: Two years ago.

4 CHAIRPERSON MILLER: Okay. Has there
5 been an improvement?

6 MR. RILEY: No.

7 CHAIRPERSON MILLER: Okay. So do you
8 think that something needs to be done about the
9 music that would -- the music, either some kind
10 of soundproofing, improve soundproofing?

11 MR. RILEY: Soundproofing, yes.

12 CHAIRPERSON MILLER: Okay. So you
13 don't care -- do you care about the hours if they
14 are soundproofed and you don't hear the noise
15 inside?

16 MR. RILEY: Inside? No. Outside?

17 CHAIRPERSON MILLER: Outside.

18 MR. RILEY: I'm really concerned about
19 outside.

20 CHAIRPERSON MILLER: Okay. Okay.
21 Okay. Anything, anybody else have questions?
22 All right. Any questions on Board questions?

1 MS. TODD: I have a couple follow-up
2 questions.

3 CHAIRPERSON MILLER: Yes.

4 RECROSS-EXAMINATION

5 MS. TODD: Mr. Riley, when you say you
6 hear noise in the summer garden, are you
7 referring to voices?

8 MR. RILEY: Well, voices, loud
9 screams. Screams, yes, loud noise, screams,
10 trying to sing along with the music that they
11 hear from inside.

12 MS. TODD: So primarily when your
13 tenants are complaining, are they complaining
14 about people's voices when they hear?

15 MR. RILEY: They are complaining about
16 the noise.

17 MS. TODD: I'm asking a very specific
18 question. Are the complaining about the voices?

19 MR. RILEY: Noise. They -- noise is
20 noise.

21 MS. TODD: They didn't say whether
22 they heard people's voices versus them hearing

1 music? They just said noise?

2 MR. RILEY: They said, you know, it's
3 too loud. We are hearing a lot of noise over
4 there.

5 MS. TODD: But they didn't -- they
6 weren't specific as to what noise they were
7 hearing. Is that what -- I'm asking you that.

8 MR. RILEY: I don't think they had.

9 MS. TODD: You didn't think they had
10 to?

11 MR. RILEY: No.

12 MS. TODD: So you assumed that --

13 MR. RILEY: I hear it myself, so I --

14 MS. TODD: So are you hearing voices
15 or are you hearing --

16 MR. RILEY: I'm hearing voices and
17 music.

18 MS. TODD: You're hearing voices and
19 music?

20 MR. RILEY: Yes, screams.

21 MS. TODD: You are hearing screams.

22 MR. RILEY: And singing.

1 MS. TODD: And singing.

2 MR. RILEY: Trying to sing.

3 MS. TODD: And trying to sing.

4 MR. RILEY: Yes.

5 MS. TODD: So you are hearing people
6 singing?

7 MR. RILEY: Yes.

8 MS. TODD: That are --

9 MR. RILEY: Intoxicated people trying
10 to sing.

11 MS. TODD: Okay. So are you aware
12 that Mr. Perkins has put up signs in the summer
13 garden asking patrons to keep the noise down in
14 an effort to appease residents?

15 MR. RILEY: He don't have any control
16 over those people. I have seen them. I have --
17 I live right there across. I stay up late. I go
18 out there and I sit on my front in the
19 summertime. People don't have no regard for the
20 neighborhood period.

21 MS. TODD: You are saying --

22 MR. RILEY: You are not there. I'm

1 there.

2 MS. TODD: You are ask -- you are
3 saying Mr. Perkins has no control over the
4 patrons?

5 MR. RILEY: No. He don't have no
6 control over these people.

7 MS. TODD: So then, in essence, you
8 don't see a way to resolve the voices --

9 MR. RILEY: No.

10 MS. TODD: -- being lowered, even if
11 the --

12 MR. RILEY: They are not going to --
13 intoxicated people, young people like that go-go
14 music, they are going to do what they want to do.
15 Mr. Perkins don't have no control over the
16 people. And I'm saying that if people are inside
17 and out of the garden at 10:00, which a lot of
18 places have people out the sidewalk cafe at
19 10:00, why can't he?

20 This is strictly a residential area.
21 And it's possible that he don't have a conforming
22 use.

1 CHAIRPERSON MILLER: Okay. We are not
2 going to get -- that's zoning.

3 MR. RILEY: Oh, I'm sorry.

4 CHAIRPERSON MILLER: As I said before.

5 MR. RILEY: Okay. I'm sorry.

6 CHAIRPERSON MILLER: Okay.

7 MS. TODD: No further questions of Mr.
8 Riley.

9 CHAIRPERSON MILLER: Okay. Any other
10 questions? Okay.

11 MR. DUFFY: No.

12 CHAIRPERSON MILLER: All right. Thank
13 you very much, Mr. Riley.

14 MR. RILEY: Thank you.

15 CHAIRPERSON MILLER: You can take a
16 seat out there.

17 (Whereupon, the witness was excused.)

18 CHAIRPERSON MILLER: Any other
19 witnesses?

20 MR. DUFFY: I was going to call
21 Josephine Poole, who is --

22 CHAIRPERSON MILLER: Okay.

1 MR. DUFFY: -- another abutting
2 property owner.

3 CHAIRPERSON MILLER: Okay. I'm going
4 to swear you in, Ms. Poole.
5 Whereupon,

6 JOSEPHINE POOLE
7 was called as a witness by Counsel for the
8 Protestant, and having been first duly sworn,
9 assumed the witness stand and was examined and
10 testified as follows:

11 MS. POOLE: Yes, ma'am.

12 CHAIRPERSON MILLER: Okay. Thank you.

13 DIRECT EXAMINATION

14 MR. DUFFY: Ms. Poole, could you just
15 introduce yourself to the Board and Ms. Todd?

16 MS. POOLE: My name is Josephine
17 Poole. I live at 907 W Street, N.W., above
18 Darnell's bar.

19 MR. DUFFY: And how long have you
20 lived there?

21 MS. POOLE: I lived there for almost
22 15 years.

1 MR. DUFFY: And how long or I guess
2 during that 15 years, how much of that have you
3 lived above it while it was operated as a bar?

4 MS. POOLE: Well, it been several bars
5 there. It was three people operating. Some guy
6 with a store first. To my knowledge when I was
7 there, it was a guy owning a little restaurant
8 running a store. Then three guys came in. They
9 ran it as a bar and grill. There was a daughter
10 and a mother came in, they ran it as a
11 restaurant.

12 Then Darnell came in, he run it as a
13 bar/grill. It's supposed to be a restaurant,
14 that's what I thought. That's what we talked
15 when Darnell presents himself to me, it's just
16 supposed to be a bar and grill, that's all. No
17 dance hall, no nothing. Just a bar and grill
18 where people can go down enjoy theirsself and, you
19 know, have a sip and just enjoy yourself. Not no
20 music or nothing like that.

21 But I have been there asked Darnell,
22 my daughter, my mother, my mother is 87 years-

1 old, want to go down there and confront Darnell.
2 I told my mother she is too old to go down there.
3 Darnell just a child to her. I said I'll go and
4 I asked him and he didn't -- he don't say
5 nothing. I said okay. I got another
6 alternative. I said I'll call the police.

7 I called the police. Instead of the
8 police coming to me, they go to Darnell. I don't
9 want to talk to the police. And I told police
10 that's the only thing I want him to do is cut the
11 noise down, because the noise goes straight up to
12 my vent. The summer garden is right there at my
13 back bedroom window. That's what I see.

14 Got the wall bouncing, picture off the
15 wall, the kitchen floor bouncing and God is my
16 witness, that is so true. People come to my
17 house where is all that noise come from? I say
18 it's coming from downstairs. I said I'm just one
19 person. I emailed. I can do both. I asked him
20 nicely will you, please, cut the noise down?

21 I called the police. The police go to
22 him. They cut the music down. Before the police

1 got to their car, the music back up again. I
2 mean, I called police so many times, I'm tired.
3 They don't do nothing. ABRA came out. They did
4 nothing. Two cars came. They outside, I said
5 look here, if your owner come down with unmarked
6 car, they don't know who is who.

7 Then I asked Ms. Todd would she,
8 please, come down on the weekend and she can see
9 for herself what I'm talking about is about the
10 noise. She never came. ABRA never came. No one
11 came to my apartment to see how the noise was
12 going on. And the noise is still going on.

13 Friday night, I had to leave my home
14 until they close, so I can get rest. I can't
15 sleep. I have to stay awake until he close up.
16 And that's not fair.

17 MR. DUFFY: Ms. Poole?

18 MS. POOLE: Yes?

19 MR. DUFFY: How many years or how long
20 have you have been trying to work with Darnell
21 personally to try to get him to quiet the noise?

22 MS. POOLE: Over five or six years.

1 Ever since he has been there now.

2 MR. DUFFY: Okay. No other questions.

3 MS. TODD: No further questions?

4 Okay.

5 CROSS-EXAMINATION

6 MS. TODD: Hi, Ms. Poole, how are you?

7 MS. POOLE: I'm fine.

8 MS. TODD: I see you mentioned me in
9 your testimony.

10 MS. POOLE: Yes, of course.

11 MS. TODD: I appreciate that. Do you
12 recall when we went to mediation to discuss some
13 of the issues that you raised right now during
14 this hearing?

15 MS. POOLE: Yes. We came here in
16 January or February for mediation.

17 MS. TODD: Yes. And do you recall
18 that Ms. Fletcher, the mediator, spoke about
19 bringing ABRA as well as myself to come and set
20 up a meeting so we could have a discussion as to
21 what would be the appropriate noise level that
22 would be suitable for you? Do you recall that?

1 MS. POOLE: Yes, I did, but did you
2 came?

3 MS. TODD: Well, I wasn't going to
4 show up. There is --

5 (Laughter)

6 CHAIRPERSON MILLER: She asks the
7 questions, you have to answer them.

8 MS. POOLE: I'm trying through my
9 heart. I'll tell the truth.

10 MS. TODD: Did you ever hear from any
11 of the ABRA employees regarding that meeting?

12 MS. POOLE: No.

13 MS. TODD: Okay. Do you have email,
14 Ms. Poole?

15 MS. POOLE: No.

16 MS. TODD: Okay. Do you have
17 voicemail on your phone?

18 MS. POOLE: No.

19 MS. TODD: So it might be difficult
20 for someone to reach you then if we were trying
21 to?

22 MS. POOLE: No. It's not difficult.

1 I have a telephone and it got an answer service
2 on it.

3 MS. TODD: Okay. So you have an
4 answering machine. Okay. So but in any event,
5 typically, it might be somewhat difficult to then
6 reach you at times? Have you ever experienced
7 that as a problem?

8 MS. POOLE: You know, at times, they
9 said they will come. If you are the head of
10 something, if you say you are going to do
11 something, prove to me that you can do it. Just
12 hearsay, hearsay.

13 MS. TODD: Okay. Ms. Poole, so would
14 you be open, Ms. Poole, to an ABRA employee
15 coming out and doing the type of assessment that
16 we had discussed during mediation that did not
17 occur? Would you be amenable to that?

18 MS. POOLE: For everything that I say
19 occur, if you will call, if you will come and can
20 promise me still going to Mr. Darnell Perkins'
21 bar first come to me, don't go to him first. You
22 come to my house and you listen for yourself.

1 Have you done that?

2 CHAIRPERSON MILLER: No. You can't
3 ask her a question.

4 MS. POOLE: Well, how do I --

5 CHAIRPERSON MILLER: Here, you can't.

6 MS. POOLE: Okay. I'm so sorry.

7 CHAIRPERSON MILLER: That's okay.

8 MS. POOLE: You know.

9 CHAIRPERSON MILLER: There are special
10 rules for witnesses.

11 MS. POOLE: I'm so sorry.

12 CHAIRPERSON MILLER: That's okay. So
13 but can you answer her question?

14 MS. POOLE: Ask me the question again,
15 maybe I can.

16 MS. TODD: So my question was
17 previously we discussed ABRA employee and myself
18 during a mediation about coming out and doing an
19 assessment of the noise to see what would be
20 acceptable for you. That did not occur for
21 reasons outside of my control.

22 What I'm saying now, would you be open

1 to that as an option considering that you stated
2 clearly that it didn't happen, would you be open
3 to that happening again?

4 MS. POOLE: Yes, you can come there
5 any time. Just let me know when you are coming,
6 so I can be home, so you can't say I wasn't home.

7 MS. TODD: Well, no, understood.

8 MS. POOLE: Just let me know.

9 MS. TODD: Understood. No further
10 questions.

11 CHAIRPERSON MILLER: Board questions?
12 Mr. Silverstein?

13 MEMBER SILVERSTEIN: Thank you, Ms.
14 Poole.

15 MS. POOLE: Yes.

16 MEMBER SILVERSTEIN: Good day. How
17 are you?

18 MS. POOLE: I'm fine.

19 MEMBER SILVERSTEIN: Okay. First, you
20 say you live at 909?

21 MS. POOLE: 907.

22 MEMBER SILVERSTEIN: 907. And they

1 are at?

2 MS. POOLE: 944 Florida Avenue.

3 MEMBER SILVERSTEIN: Now --

4 MS. POOLE: I'm at 907 W Street.

5 MEMBER SILVERSTEIN: Oh, okay. So --

6 MS. POOLE: I'm right above the bar.

7 MEMBER SILVERSTEIN: You are on the
8 same building or?

9 MS. POOLE: No. They downstairs. I'm
10 on the second floor.

11 MEMBER SILVERSTEIN: I'm sorry?

12 MS. POOLE: They are on the first
13 floor and I'm on the second floor.

14 MEMBER SILVERSTEIN: Of the same
15 building?

16 MS. POOLE: In the same building.

17 MEMBER SILVERSTEIN: Okay. Describe
18 to me what you are hearing? Are you hearing from
19 inside? Is this a soundproofing thing or are you
20 hearing from the --

21 MS. POOLE: I --

22 MEMBER SILVERSTEIN: Tell me about

1 what you are hearing, first, from inside. And
2 then let's talk about outside.

3 MS. POOLE: -- can go in my living
4 room, my living room from Florida Avenue to W
5 side, I can hear the music. I can go on the W
6 side and I still can hear the music. I go on the
7 W side the music is louder, because the bar is
8 beneath my bedroom. And I can hear them talking
9 and everything. I heard some -- they say when
10 they were down there Friday night, but you all
11 might not want me heard -- you all might not want
12 me to say it, but I know I heard and God as my
13 witness, I heard. You want to hear what they
14 say?

15 MEMBER SILVERSTEIN: What do you hear
16 from outside?

17 MS. POOLE: Outside the noise outside
18 and everything, I got to go and pick up beer. I
19 don't drink. I don't smoke. And I try to keep
20 up cleanness around me. I pick up the beer
21 bottle, the wine bottle, the paper and
22 everything. And it ain't come from my territory.

1 It come from their establishment because they got
2 their -- I know most times -- I have been in his
3 bar before and I know the material they use in
4 the bar. And I pick up the stuff, but that's not
5 my problem to try to keep -- pick their mess up.
6 They are supposed to clean their own mess up.

7 MEMBER SILVERSTEIN: Now, I'm going to
8 ask you the same question I asked the gentleman,
9 Mr. Riley.

10 MS. POOLE: Okay.

11 MEMBER SILVERSTEIN: Let's assume just
12 for the sake of argument that they are going to
13 get their license. What do you need to make life
14 good again, whole again for you?

15 MS. POOLE: They got to put a sound --

16 MEMBER SILVERSTEIN: Pardon?

17 MS. POOLE: He put the soundproof up
18 and cut the music down. He got that music cut
19 down to a certain level. I don't mind. I'm not
20 trying to knock nobody their job or nothing. If
21 he had that music cut down at a certain level, it
22 would be okay, but you don't -- they don't need

1 that music that loud, because it's right there on
2 the floor. They ain't got that much space. You
3 don't need that music that loud.

4 MEMBER SILVERSTEIN: And as far as --
5 that's all you need is just the --

6 MS. POOLE: Soundproof and the noise--
7 the summer garden is right up underneath my
8 window.

9 MEMBER SILVERSTEIN: Okay. Tell me
10 about the summer garden. What do you need there?

11 MS. POOLE: They -- I seen all kind of
12 stuff right there, but I don't say nothing. They
13 been making love. They been cursing stuff
14 sometimes. I bang on the window and ask them can
15 you be quiet and stuff. You know, like I say
16 when they get their alcohol, they do anything.

17 So I said but I don't want to be no
18 part of no thing. I just want to live as long as
19 I can and I don't want to be no confrontation or
20 nothing. I know one time I went there to Mr.
21 Perkins and he was the manager, I guess, because
22 they call count. I don't know what's going on.

1 But met one of cliental, we was going
2 to get into it. I said oh, no, it's not. I'm
3 too old a woman to get in a fight. I said I went
4 there just to ask him to cut the music down. And
5 she say he can play music loud as he wants. I
6 said excuse me, Miss, you ain't got nothing to do
7 with down here. I said I just want him to cut
8 the music down. I said because I have my mother
9 upstairs. My mother is 87 years-old. My mother
10 ain't got no business hear no noise like that.
11 She won't even come to my house no more on
12 account of the bar. It make too much noise.

13 MEMBER SILVERSTEIN: Okay. No further
14 questions.

15 CHAIRPERSON MILLER: Mr. Short?

16 MEMBER SHORT: Hello, Ms. Poole.

17 MS. POOLE: Hi.

18 MEMBER SHORT: I hear you and hear you
19 loud and clear. Let me ask you a question. Now,
20 are you familiar with your Ward Council person?

21 MS. POOLE: I even went to the ward
22 when -- I haven't been to the ward this year

1 with, what's his name, the Ward Council last year
2 before they ran for this year. I went to him.
3 He told me he will go check into it, but he never
4 did.

5 MEMBER SHORT: But you have a new
6 Council Member now.

7 MS. POOLE: Yes, I got a new one. I
8 haven't been to the new Council. I haven't been
9 to, no.

10 MEMBER SHORT: Are you familiar with
11 your ANC?

12 MS. POOLE: I don't know. I'm not
13 familiar with ANC, no.

14 MEMBER SHORT: Okay. Well, some time
15 I would suggest every one of your neighbors get
16 your politicians involved. They might even be
17 better than an ABRA Investigator come out. If
18 they come hear the noise in the middle of the
19 night and if you get somebody to come out,
20 somebody from their staff.

21 But the bottom line is we want our
22 businesses in our communities. We -- I'm not one

1 trying to knock business. But I think businesses
2 need to be respectful of the community and the
3 community has to be respectful of the business.

4 MS. POOLE: Right.

5 MEMBER SHORT: And if we have
6 businesses that don't comply with that, then
7 something should be done. But the bottom line
8 again, as I understand earlier, we need stronger
9 evidence than just your testimony.

10 MS. POOLE: Yes.

11 MEMBER SHORT: Now, I see where there
12 had been one ABRA violation found already, but
13 again, that's just one. And again, if you said
14 Darnell here he has been the manager for five
15 years. Now, he is the owner.

16 MS. POOLE: Yes.

17 MEMBER SHORT: But even as the
18 manager, that should count some toward his
19 business practice in this particular business.
20 If he was a manager running the place and now
21 owns it, nothing is going to change, unless we
22 get the Government involved, ABRA, their partners

1 and I'm going to suggest that maybe ABRA makes a
2 little more visits and works with you a little
3 closer.

4 MS. POOLE: Yes. I think so.

5 MEMBER SHORT: That would be my
6 personal recommendation to the Board --

7 MS. POOLE: I appreciate that.

8 MEMBER SHORT: -- to ABRA. Thank you.
9 That's all I have, Madam Chair.

10 CHAIRPERSON MILLER: Okay. Others?
11 Mr. Jones?

12 MEMBER JONES: Thank you, Madam Chair.
13 So just to make sure, I guess I'm trying to
14 fundamentally grasp the experiences that you are
15 having. There's an issue, Board Member
16 Rodriguez?

17 CHAIRPERSON MILLER: No, I don't think
18 so, Mr. Jones.

19 MEMBER JONES: Oh.

20 CHAIRPERSON MILLER: Continue.

21 MEMBER RODRIGUEZ: No.

22 MEMBER JONES: You are hearing noise

1 from the establishment at all times when it's in
2 operation. Is that a fair statement?

3 MS. POOLE: No. The people in the
4 restaurant in the front no noise at all.

5 MEMBER JONES: Okay. So the only time
6 you hear noise is when?

7 MS. POOLE: The loud music. Darnell
8 got his bar open.

9 MEMBER JONES: Okay. So you mentioned
10 earlier in your testimony that you could actually
11 hear people talking and you could tell us what
12 they said on Friday. Not that I want to hear
13 what they said.

14 MS. POOLE: Yes.

15 MEMBER JONES: But it sounds to me
16 like it's more than just music --

17 MS. POOLE: Music.

18 MEMBER JONES: -- that you are hearing
19 that disturbs you. It sounds like there is other
20 things that is taking place.

21 MS. POOLE: Yes, sir.

22 MEMBER JONES: So even if they had no

1 music going on and they had several people in
2 there and they were having conversations, would
3 that disturb you or --

4 MS. POOLE: Yes.

5 MEMBER JONES: -- well, maybe disturb
6 is not the right word. Would you hear it?

7 MS. POOLE: Yes, I would still hear
8 because the vent is right up in there. They
9 don't have -- the vent is right there. I mean,
10 if I was nosey enough, I could take the vent off
11 and look right down in the bar and see what's
12 going on, if I -- that knows, right, that knows.

13 MEMBER JONES: No understood. But
14 just to make sure I'm clear --

15 MS. POOLE: Yes.

16 MEMBER JONES: -- so even if there is
17 no music going on --

18 MS. POOLE: You can hear the talk.

19 MEMBER JONES: Now, does that talking
20 disturb you?

21 MS. POOLE: Sometimes. Sometimes it
22 do, sometimes it don't.

1 MEMBER JONES: All right. And just
2 what's the frequency of when you are disturbed?
3 Do you get disturbed every time the establishment
4 is in operation? Is it only on Friday and
5 Saturday nights?

6 MS. POOLE: In operation.

7 MEMBER JONES: Every time, any time
8 it's in operation?

9 MS. POOLE: Any time in operation.

10 MEMBER JONES: Okay.

11 MS. POOLE: When Darnell's is running
12 is okay, but the restaurant in the front, the
13 people they cooperate with me and they play the
14 music or something, I go and I ask them would
15 they cut it down? They cut it down.

16 MEMBER JONES: And one last thing.
17 Have you ever had an opportunity to interact with
18 Darnell as the owner of the establishment to make
19 a request for him to turn down the music or to
20 make any modifications to the nature of his
21 operations that were disturbing to you?

22 MS. POOLE: No, I haven't went to

1 Darnell.

2 MEMBER JONES: You have not. Okay.
3 That's fine. The reason I was asking that
4 question to see if you had, what was the nature
5 of his response to you? Did he cooperate? Was
6 he respectful or did he just ignore your
7 concerns? But you didn't do that, so that's not
8 really on the table.

9 MS. POOLE: But I still -- no, he
10 didn't do, but I still can tell you it would be
11 the same problem.

12 MEMBER JONES: Understood. I just
13 wanted -- that's fine. Thank you very much.

14 MS. POOLE: Any time.

15 CHAIRPERSON MILLER: No, no, no. He
16 is just saying thank you. I have a few questions
17 for you. I don't know if any other Board Member
18 has any more questions.

19 MS. POOLE: Okay.

20 CHAIRPERSON MILLER: Because we care
21 really, so we really want to get --

22 MS. POOLE: I hope so.

1 CHAIRPERSON MILLER: -- to really what
2 is going on and what might work.

3 I wasn't sure if you were making some
4 distinctions. You were talking about the
5 restaurant in front is okay, but something else
6 isn't.

7 MS. POOLE: I said the restaurant in
8 the front, the people may run the restaurant from
9 6:00 to 5:00.

10 CHAIRPERSON MILLER: It's a restaurant
11 in the front? The same -- owned by Perkins?

12 MS. POOLE: Yes, Darnell's is in the
13 back, in the rear.

14 CHAIRPERSON MILLER: Oh, two
15 establishments?

16 MS. POOLE: The restaurant in front.
17 Two establishments.

18 CHAIRPERSON MILLER: Okay.

19 MS. POOLE: A restaurant in the front
20 and Darnell's bar is in the back.

21 CHAIRPERSON MILLER: Oh, okay.

22 MS. POOLE: But I don't hear no noise

1 from the people in the front. But it's in the
2 back.

3 CHAIRPERSON MILLER: So are you over
4 both establishments?

5 MS. POOLE: Yes, I'm on the whole back
6 of the upstairs.

7 CHAIRPERSON MILLER: So your floor is
8 the ceiling for the two establishments?

9 MS. POOLE: Yes.

10 CHAIRPERSON MILLER: Oh, okay. So the
11 front is no problem?

12 MS. POOLE: Front is no problem.

13 CHAIRPERSON MILLER: So how is it that
14 you hear voices from Darnell's, but not the
15 restaurant?

16 MS. POOLE: Oh, the vent is right
17 there on the floor.

18 CHAIRPERSON MILLER: The Vent?

19 MS. POOLE: I got vents on the floor.
20 Not in the ceiling, in the -- and you can heard
21 it when they talk and God as my witness, you can
22 smell the alcohol come up through the vent.

1 CHAIRPERSON MILLER: Oh, okay.

2 MS. POOLE: I mean, I can smell all
3 that stuff. If you think I'm lying, God can
4 smack me right now.

5 CHAIRPERSON MILLER: Are you --

6 MS. POOLE: I don't tell no tale about
7 -- but it's true.

8 CHAIRPERSON MILLER: -- the owner?

9 MS. POOLE: I wish someone would call
10 me back and found out for themselves what I'm
11 talking about.

12 CHAIRPERSON MILLER: Yes, okay. So we
13 can't come out and visit personally.

14 MS. POOLE: I know. Okay.

15 CHAIRPERSON MILLER: ABRA can. I
16 mean, other staff can.

17 MS. POOLE: I mean, ABRA would.

18 CHAIRPERSON MILLER: So that's why we
19 are trying to, you know, get information so --

20 MS. POOLE: So you send ABRA out.

21 CHAIRPERSON MILLER: -- we can
22 understand it. Oh, are you the owner?

1 MS. POOLE: No.

2 CHAIRPERSON MILLER: You're a tenant?

3 MS. POOLE: I'm a tenant.

4 CHAIRPERSON MILLER: Okay. Who is the
5 owner?

6 MS. POOLE: Tyler Home.

7 CHAIRPERSON MILLER: Okay. Have you
8 complained to the owner?

9 MS. POOLE: Yes, I have.

10 CHAIRPERSON MILLER: And what
11 happened?

12 MS. POOLE: And he tell Darnell that
13 he have to cut the music down. And sometime the
14 owner, I talked to the owner and the owner and
15 said he going down there to the bar sometime and
16 said he can't hurry, he have to talk.

17 CHAIRPERSON MILLER: Okay. Have you
18 asked him to do something about your vent?

19 MS. POOLE: No, that's all the vent --
20 that's all the vent in the floor for the heat to
21 come up here. What can you do?

22 CHAIRPERSON MILLER: I don't know. I

1 don't know whether it can be, you know --

2 MS. POOLE: I mean, you can't fix the
3 vent, because that is the heating system.

4 CHAIRPERSON MILLER: Okay. So you
5 don't think that can be changed. Okay.

6 MS. POOLE: But if you put that
7 soundproofing, it probably can slightly lower
8 some or he can cut the music a certain level. I
9 mean, noise is noise. You can hear some noise,
10 but you don't want the noise to go screams,
11 pictures bouncing off the walls, your walls
12 shaking, the kitchen floor bouncing. You don't
13 need to go through with that.

14 CHAIRPERSON MILLER: How old is the
15 building?

16 MS. POOLE: Well, I guess real old.

17 CHAIRPERSON MILLER: Pretty old.
18 Okay. And how long have you lived in it?

19 MS. POOLE: I've been there almost 16
20 years.

21 CHAIRPERSON MILLER: 16 years. Okay.

22 MS. POOLE: Almost.

1 CHAIRPERSON MILLER: So were you
2 bothered by any of the other establishments that
3 were there?

4 MS. POOLE: Nope.

5 CHAIRPERSON MILLER: No. Okay.

6 MS. POOLE: I know I had a problem
7 with the first, the third person that ran the
8 thing, and that we call ABRA. And ABRA came out.
9 They had three guys. They came out. One went
10 downstairs. And two were upstairs and told him
11 to cut the music as loud as he can get it and
12 they want to see how loud the music come
13 upstairs. So they said the music was too loud.

14 So he told him to cut the music down
15 some and he asked me and I said that's okay. No
16 problem right there, but he got the thing to the
17 fullest it can go. And he don't have no ceiling
18 like this. Look like he got ten at bar and you
19 know when you -- it's going to bounce. I try to
20 be nice to everybody, but --

21 CHAIRPERSON MILLER: Okay. Well, we
22 will see what we can do. And I would suggest to

1 you in the future to try calling ABRA again if
2 you have a noise problem, because we have a
3 really good staff here now. So if you didn't
4 have a good experience a few years ago, I don't
5 know about that, but I know these people and they
6 are very good.

7 MS. POOLE: Okay.

8 CHAIRPERSON MILLER: You might give
9 them one more chance and hopefully you won't have
10 to, because you won't have any problems.

11 MS. POOLE: Okay. I done called ABRA
12 before and they don't never show up.

13 CHAIRPERSON MILLER: Okay. We will
14 have to look into that.

15 MS. POOLE: Okay. Thank you.

16 CHAIRPERSON MILLER: Okay. All right.
17 Any other questions? Any questions based on
18 Board questions? All right. Thank you very
19 much. You can go down there.

20 (Whereupon, the witness was excused.)

21 CHAIRPERSON MILLER: Okay. Does that
22 complete your witnesses?

1 MR. DUFFY: Yes.

2 CHAIRPERSON MILLER: Does that
3 complete your case or are there any other
4 exhibits we are going to deal with?

5 MR. DUFFY: No, that's our case.

6 CHAIRPERSON MILLER: Okay. Good.

7 MR. DUFFY: Would it be possible just
8 to have a five minute recess?

9 CHAIRPERSON MILLER: Yes, yes.

10 MR. DUFFY: Or three minutes. I just
11 want to --

12 CHAIRPERSON MILLER: Okay. We will
13 take a five minute break. Okay.

14 (Whereupon, the above-entitled matter
15 went off the record at 4:53 p.m. and resumed at
16 5:01 p.m.)

17 CHAIRPERSON MILLER: Okay. So we have
18 a quorum here, but we are missing how many Board
19 Members, two, but they can read the closing if
20 they don't come in soon and the transcript,
21 because that comes out in just a few weeks on
22 this. Okay. All right.

1 Are you ready then to -- we are done
2 with the evidence and everything. Are you ready
3 to go with your closing?

4 MS. TODD: Yes.

5 CHAIRPERSON MILLER: Okay.

6 MS. TODD: The Board may approve an
7 application to renew a Retailer CT License when
8 the proposed establishment shows that it is
9 appropriate for the neighborhood that it is
10 located in.

11 Specifically, the question in this
12 matter is whether the establishment will have an
13 impact on the peace, order and quiet of the
14 neighborhood. The protestant brings this case
15 today arguing that the establishment operates
16 past Board-approved hours.

17 Although the protestant attempts to
18 impute previous owners past records to the new
19 owner, the Board should not -- should know that
20 the establishment has taken adequate steps to
21 address concerns of the community.

22 Additionally, there is no evidence in

1 the investigative history of Manchester Bar &
2 Grill or Darnell's ever operating past Board-
3 approved hours.

4 Understanding that Darnell's abuts
5 several residential homes, the applicant and the
6 ANC worked diligently to resolve these issues.
7 It is important to note that the ANC and the
8 applicant addressed the concerns brought before
9 the Board today when it entered into the
10 voluntary agreement.

11 The Applicant agreed to keep its
12 windows closed during operating hours, to install
13 curtains in the back of the establishment to
14 dampen noise transmission and to increase trash
15 pickup on days it is open to address the issues
16 of rodents in the community.

17 In addition, the applicant has also
18 placed signs in the summer garden encouraging its
19 patrons to keep their voice down so not to
20 disturb nearby residents.

21 Further it should be noted to the
22 Board that the applicant already operates under

1 Board mandate limited hours under Board Order
2 2008-001 and 2008-071, as amended, which greatly
3 restricts the hours the establishment may
4 operate. The current hours places a huge
5 financial burden on the licensee and to place
6 further restrictions would ultimately result in
7 the business being forced to close.

8 Therefore, we, the applicant, believes
9 that the evidence presented today clearly shows
10 that Darnell's does not operate beyond Board-
11 approved hours and the renewal of the application
12 should be approved without further restriction.

13 Thank you.

14 CHAIRPERSON MILLER: Okay. Thank you.

15 Okay.

16 MR. DUFFY: Okay. Well, I just wanted
17 to thank the Board for their time. I think most
18 of the witnesses are just very happy that they
19 had their proverbial "day in court" and had a
20 chance to speak their mind.

21 Also I just want to add that I -- we
22 are looking at a very narrow issue here of

1 whether this is -- this particular license
2 renewal is going to adversely impact the peace
3 and quiet of the neighborhood. But I don't think
4 the Board has to put on blinders and ignore the
5 five years that this establishment has been
6 operated by Mr. Perkins.

7 There is no common sense reason to
8 believe that after five years of operating the
9 establishment, he is suddenly going to change
10 course now that the name of a piece of paper is
11 different. He -- all the issues you have heard
12 about from Mr. Riley and Ms. Poole go back years.
13 And those are years when Mr. Perkins was the
14 person directly involved in owning and operating
15 -- I'm sorry, operating and managing Darnell's
16 Bar/Manchester Bar & Grill.

17 CHAIRPERSON MILLER: Okay. Thank you.
18 Okay. I'm going to close the record in this
19 case, that means we are not going to take in any
20 other evidence and you know that already.

21 Do the parties wish to file proposed
22 findings of fact and conclusions of law or waive

1 their right to do so? And if you need me to
2 explain what that is, let me know.

3 MS. TODD: We will waive.

4 CHAIRPERSON MILLER: Okay.

5 MR. DUFFY: The same.

6 CHAIRPERSON MILLER: Okay. Good.

7 Okay. Then the Board is going to deliberate this
8 in closed session. And we will be issuing a
9 decision in writing within 90 days. And I am
10 going to just take a vote, a roll call vote by
11 the Board Members to deliberate this matter in
12 closed session.

13 As Chairperson of the Alcoholic
14 Beverage Control Board for the District of
15 Columbia and in accordance with DC Official Code
16 Section 2-574(b) of the Open Meetings Act, I move
17 that the ABC Board hold a closed meeting for the
18 purpose of seeking legal advice from our counsel
19 on Case No. 15-PRO-00002, Darnell's, pursuant to
20 Section 2-574(b)(4) of the Open Meetings Act and
21 deliberating upon this case for the reasons cited
22 in Section 2-574(b)(13) of the Open Meetings Act.

1 Is there a second?

2 MEMBER SILVERSTEIN: Second.

3 CHAIRPERSON MILLER: Mr. Silverstein
4 seconded the motion. I'll now take a roll call
5 vote on the motion before us now that it has been
6 seconded.

7 Mr. Brooks?

8 MEMBER BROOKS: I agree.

9 CHAIRPERSON MILLER: Mr. Rodriguez?

10 MEMBER RODRIGUEZ: I agree.

11 CHAIRPERSON MILLER: Ms. Miller
12 agrees.

13 Mr. Silverstein?

14 MEMBER SILVERSTEIN: I agree.

15 CHAIRPERSON MILLER: Mr. Jones?

16 MEMBER JONES: I agree.

17 CHAIRPERSON MILLER: It appears that
18 the motion has passed by a 5-0-0 vote.

19 I hereby give notice that the ABC
20 Board will hold this aforementioned closed
21 meeting in the ABC Board conference room pursuant
22 to Section 2-574(b) of the Open Meetings Act and

1 we will issue a decision in writing within 90
2 days. Okay.

3 MS. TODD: Thank you.

4 CHAIRPERSON MILLER: Thank you.

5 MR. DUFFY: Thank you.

6 MR. RILEY: Thank you.

7 CHAIRPERSON MILLER: Have a good
8 evening.

9 (Whereupon, the Protest Hearing in the
10 above-entitled matter was concluded at 5:07 p.m.)
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