

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

2 (2:50 p.m.)

3 CHAIRPERSON MILLER: Okay. Which
4 brings us to our case of the afternoon, which
5 is a Protest Hearing, Case No. 11-PRO-00093,
6 Matchbox located at 1901 14th Street, N.W.,
7 License No. 88258 in ANC-1B.

8 I see the parties have come to the
9 table. Be sure to sign-in on that sheet, so
10 that we get the spelling of your name correct
11 for the record. And when you are ready,
12 introduce yourselves for the record, please.

13 MR. FONSECA: Michael Fonseca,
14 counsel of the applicant.

15 MR. SMITH: Perry Smith from
16 Matchbox, managing partner.

17 MR. BROWNSTEIN: Craig Brownstein,
18 a resident of Wallach Place.

19 MR. MCKAY: And Daniel McKay,
20 resident of 1500 Block of T Street and a
21 designate for the group of five or more.

22 CHAIRPERSON MILLER: Okay. Mr.

1 McKay, are you the main advocate for the group
2 of five?

3 MR. MCKAY: Yes, ma'am, I am.

4 CHAIRPERSON MILLER: Okay. And
5 sorry, what's your name again, sir?

6 MR. BROWNSTEIN: Craig Brownstein.

7 CHAIRPERSON MILLER: Craig
8 Brownstein. Okay. And will you be
9 participating in the proceeding?

10 MR. BROWNSTEIN: Yes, briefly,
11 yes.

12 CHAIRPERSON MILLER: Okay. Why
13 don't we just start with some preliminary
14 matters? We can start with the applicant.
15 How many witnesses do you intend to call?

16 MR. FONSECA: We have five.

17 CHAIRPERSON MILLER: Five. And
18 are those listed on a PIF Form?

19 MR. FONSECA: Yes, they are.

20 CHAIRPERSON MILLER: Okay. And
21 how about the protestant?

22 MR. MCKAY: Including myself, two.

1 CHAIRPERSON MILLER: Two
2 witnesses. And those are the ones listed on
3 your --

4 MR. McKAY: Yes.

5 CHAIRPERSON MILLER: -- PIF?

6 MR. McKAY: Ms. Caroline Maritz
7 and Lisa was unable to make it.

8 MEMBER SILVERSTEIN: I'm sorry? I
9 can't hear you.

10 MR. McKAY: So there were two
11 other witnesses listed which are not in
12 attendance, Caroline and Lisa.

13 CHAIRPERSON MILLER: Okay. Okay.
14 Caroline Maritz will not be here?

15 MR. McKAY: That's correct.

16 CHAIRPERSON MILLER: Okay. Lisa
17 Kelly will be testifying? Is that what you
18 said?

19 MR. McKAY: No.

20 CHAIRPERSON MILLER: She is not
21 here either?

22 MR. McKAY: Not here at all.

1 CHAIRPERSON MILLER: Okay. Craig
2 Brownstein, you will be testifying. Will you
3 be testifying as well?

4 MR. McKAY: Yes, I will.

5 CHAIRPERSON MILLER: Okay. Okay.
6 Just the two of you. Okay. Good.

7 MR. McKAY: Yes.

8 CHAIRPERSON MILLER: Does anybody
9 want to invoke the Rule on Witnesses? Okay.
10 All right. And any preliminary matters you
11 want to raise before we start the case?

12 MR. McKAY: No, ma'am.

13 CHAIRPERSON MILLER: Okay. Then
14 we will start with applicant's opening
15 statement.

16 MR. FONSECA: This is an
17 application for a CR License with a sidewalk
18 cafe. The application originally had
19 approximately 299 interior occupancy load of
20 which we believe will be reduced by a smaller
21 number and the 56 seats in a public space
22 sidewalk cafe. This is a full-service

1 restaurant.

2 This will show that this is the
3 third Matchbox restaurant owned by the same
4 company to be located in the District of
5 Columbia and that this group of partners also
6 has another full-service restaurant on Capitol
7 Hill along with Matchbox called Ted's Bulletin
8 and a hot dog venue called DC-3 on Capitol
9 Hill.

10 We will show that its food ratio
11 is significant and upwards in the 75 percent
12 of food sales, that it is, as I said, a full-
13 service restaurant, a bistro and a heavy
14 concentration on its pizzas.

15 And we are asking the Board -- we
16 will also show and we will submit as evidence
17 the Advisory Neighborhood Commission 1B
18 entered into a voluntary agreement as part of
19 this application process early on and did not
20 protest.

21 With that, we would ask the Board
22 to approve the application as presented.

1 CHAIRPERSON MILLER: Thank you.

2 MR. McKAY: Yes. Hi, Dan McKay.

3 We are going to make it clear we're here
4 protesting hours and some of the other aspects
5 of the application. We are not protesting the
6 applicant themselves. We are not here for
7 that. We are not here to try to block them or
8 restrict them from the neighborhood.

9 What we are here to do is to
10 achieve some hours which we believe are a
11 representative of other CR Licenses in the
12 area and also respect for the residential
13 neighborhood, which a large part of the
14 restaurant outdoor space is abutting.

15 In fact, there are several
16 residences that are within a driveway away of
17 the outdoor space and directly across the
18 street from the restaurant itself. And, you
19 know, that in consideration with the size,
20 which is significantly different from their
21 other establishments and some experience with
22 other establishments in the area of this size

1 and with those hours, we would like to
2 respectfully request a more appropriate and
3 respectful hours for the neighborhood.

4 The hours that we are seeking,
5 currently they are at the full ABRA hours.
6 There was not protest from our ANC. In fact,
7 that process was, I'll say to be euphemistic,
8 feebly handled. And when they discovered that
9 there were a number of residents that were in
10 opposition to the hours, the VA which was
11 under process was quickly and expeditiously
12 executed and put into the ABRA file.

13 So that's just some background.
14 And there are 17 folks who have either
15 expressed an interest to protest or formally
16 protest it. And I have some documents
17 supporting that as well and I'll pass some of
18 that around.

19 CHAIRPERSON MILLER: Okay. What I
20 also want to tell you all is that you each
21 have an hour and a half. I don't think that
22 you will even need --

1 MR. McKAY: No.

2 CHAIRPERSON MILLER: -- that, but
3 just so you know that. And that includes your
4 witnesses and your crossing. And so we have
5 someone taking time, but I don't -- hopefully
6 I don't think we will approach that. All
7 right.

8 MR. FONSECA: I'll query to the--

9 CHAIRPERSON MILLER: Okay.

10 MR. FONSECA: -- Board, since the
11 Board started this three hour limit, I happen
12 to confirm because, frankly, I have been
13 fortunate not to have to have a full Protest
14 Hearing in quite some time.

15 But normally, the Board's witness,
16 which is an investigator, does not draw on the
17 time of the parties. Is that correct?

18 CHAIRPERSON MILLER: That's
19 correct.

20 MR. FONSECA: Okay.

21 CHAIRPERSON MILLER: But your
22 cross would. The time you are taking to cross

1 the witness would.

2 MR. FONSECA: All right.

3 CHAIRPERSON MILLER: I have yet to
4 see either party reach the maximum time. So
5 if we come across that problem, we can deal
6 with it then, but I don't think we will.

7 MR. FONSECA: Thank you.

8 CHAIRPERSON MILLER: Okay. And,
9 therefore, is our investigator here? Okay.
10 Why don't you come forward? Do you want to
11 raise your hand and I'll swear you in?
12 Whereupon,

13 INVESTIGATOR EARL JONES
14 was called as a witness by the ABRA Board, and
15 having been first duly sworn, assumed the
16 witness stand and was examined and testified
17 as follows:

18 CHAIRPERSON MILLER: Okay. Thank
19 you. Whenever you are ready.

20 INVESTIGATOR JONES: Thank you,
21 Madam Chair. And good afternoon to the Board
22 as well.

1 I conducted a protest
2 investigation at Matchbox 14th Street, LLC
3 which is located at 1904 14th Street, N.W.,
4 The establishment at 1904 14th Street, N.W.,
5 is bounded by T Street, N.W., Swann Street,
6 N.W., and S Street, N.W., to the south,
7 Wallach Street, N.W., to the north, 13th
8 Street, N.W., to the east and 15th Street,
9 N.W., to the west.

10 The new restaurant license
11 application for 1904 14th Street, N.W., was
12 protested by area citizens led by designated
13 representative, Mr. Daniel McKay.

14 There are 10 ABC establishments
15 within a block and a half of 1904 14th Street,
16 N.W., they include Cafe Collage, Cafe Saint-
17 Ex, Policy, Source, Masa 14, Black Cat, El
18 Centro DF, Cork Market and Tasting Room, Bar
19 Pilar and Black & Orange.

20 The protest issues of the area
21 citizens are: Adverse impact on the peace,
22 order and quiet of residents in the

1 surrounding area; residential parking and
2 vehicular and pedestrian safety; as well as
3 over-concentration.

4 On February 27, 2012, I spoke to
5 Mr. Smith, the proprietor of the
6 establishment, who stated the primary issues
7 with the new license application of Matchbox
8 14th Street, LLC was: Trash; over-saturation
9 of patrons in and around the area; dealing
10 with intoxication and parking; as well as
11 being concerned with the establishment turning
12 into a nightclub after dinner hours.

13 On March 26, 2012, I spoke with
14 Mr. McKay, designated representative, as well
15 as Ms. Kelly, who is a resident and
16 protestant, who stated the primary issues with
17 the new license application of Matchbox 14th
18 Street, LLC is: The over-saturation of
19 parking and intoxicated patrons in and around
20 the surrounding neighborhood areas; trash;
21 drug paraphernalia; and other illegal activity
22 taking place within the neighborhood during

1 the surrounding ABC establishments operation
2 hours; as well as the establishment possibly
3 turning into a nightclub due to its late hours
4 of operation.

5 The owner was asked to minimize
6 his operating hours daily by one hour in which
7 he refused.

8 The establishment at 1904 14th
9 Street, N.W., was monitored by ABRA personnel
10 a total of 17 times from February 23, 2012 to
11 March 24, 2012 with no violations found.

12 I monitored 1904 14th Street, N.W.,
13 on eight occasions and observed little to no
14 parking. I also observed crowd noise from
15 Saint-Ex, excuse me, Cafe Saint-Ex as well as
16 several of the other ABC establishments on the
17 1800 Block of 14th Street, N.W., but was not--
18 but the crowd noise, excuse me, was not loud
19 or unbearable.

20 There was also excessive vehicular
21 and foot traffic in the area, specifically on
22 the weekend nights. Also with Matchbox 14th

1 Street, LLC applying for a new license
2 application and being an abandoned building
3 thus far, there were no ABRA-relations --
4 excuse me, ABRA violations attached to this
5 location.

6 And finally, according to MPD
7 Crime Analysis Unit, there were no calls for
8 service for this location. Thank you.

9 CHAIRPERSON MILLER: Okay. Thank
10 you. Are there Board questions? I have one
11 question.

12 INVESTIGATOR JONES: Yes, ma'am.

13 CHAIRPERSON MILLER: I think that
14 in your report, if I'm not mistaken I don't
15 have my hands on it right this minute, but,
16 there is a little zoning analysis saying that
17 District this is in, etcetera. And I was
18 wondering if you also considered that it is in
19 the Arts Overlay?

20 INVESTIGATOR JONES: I am aware of
21 that, ma'am. I am aware that there is an Arts
22 Overlay of the C-3-A Zone and I am aware that

1 the Arts Overlay indicates that eating and
2 drinking establishments located on that ground
3 level or on a ground level floor of square
4 fronting 14th Street or U Street, they are
5 permitted to occupy only 50 percent of that
6 block or of that square.

7 CHAIRPERSON MILLER: Okay.

8 INVESTIGATOR JONES: So I am aware
9 of that, ma'am.

10 CHAIRPERSON MILLER: Okay. Good.
11 And does that regulation, to your knowledge,
12 address the issue of over-concentration of
13 eating establishments and drinking
14 establishments or intend to?

15 INVESTIGATOR JONES: As far as
16 eating establishments, that constitutes -- at
17 least if you look at the corner of T and 14th
18 Street where Matchbox is proposed to be
19 located, and if you take that squared block
20 over, there is only one other ABC
21 establishment within that block.

22 And so that doesn't even

1 constitute 50 percent, ma'am.

2 CHAIRPERSON MILLER: Okay. Thank
3 you. All right. Other questions? Yes, Mr.
4 Silverstein?

5 MEMBER SILVERSTEIN: Mr. Jones,
6 based on your extensive experience as an ABRA
7 Investigator, are there any red flags here?
8 Are there any things we should be looking at
9 that should be of concern to us?

10 INVESTIGATOR JONES: My only
11 concern and I don't think it is -- I wouldn't
12 necessarily say it was a red flag, but my
13 concern is that -- and I think from the
14 protestant side was they are very concerned
15 about the hours.

16 I know that the other
17 establishments that are going southbound on
18 14th Street they operate as taverns and they
19 operate late. And so I think if that can be
20 handled, I think that everything would be --
21 in my opinion, I think that it would be okay
22 if they could get the hours situation straight

1 and, you know, come to some kind of agreement.

2 MEMBER SILVERSTEIN: Do you have
3 experience with this particular licensee in
4 other locations?

5 INVESTIGATOR JONES: If you are
6 asking if I have been to other locations? I
7 have, yes.

8 MEMBER SILVERSTEIN: What is your
9 impression of them as an operator?

10 INVESTIGATOR JONES: I think that
11 I've been to the location on H Street, which
12 is in Chinatown. I have eaten there before.
13 I'm not trying to interject my opinion, but I
14 particularly like the establishment. I think
15 it is a very nice establishment. I think it
16 is more of an upscale establishment.

17 I haven't had any issues when I
18 was there, leaving, coming, you know. So I
19 don't -- as far as I'm concerned I haven't had
20 any issues, sir.

21 MEMBER SILVERSTEIN: Thank you.
22 No further questions, Madam Chair.

1 CHAIRPERSON MILLER: Thank you.

2 Other Board Members? Okay. Does the
3 applicant have questions?

4 MR. FONSECA: Yes.

5 CROSS-EXAMINATION

6 MR. FONSECA: Let's just clear the
7 record up. Throughout your introduction you
8 referred to the applicant being located at
9 1904 14th Street and looking at your report
10 again, would you say it's --

11 INVESTIGATOR JONES: Oh, 1901. I
12 apologize. I apologize.

13 MR. FONSECA: All right. To
14 follow-up on Board Member Silverstein's
15 questions of which I was going to also ask,
16 you have eaten at the H Street location. Have
17 you ever been there for purposes of doing an
18 inspection or a complaint?

19 INVESTIGATOR JONES: No, sir.

20 MR. FONSECA: Have you ever done
21 an inspection or complaint investigation for
22 their Capitol Hill location?

1 INVESTIGATOR JONES: No, sir.

2 MR. FONSECA: When you ate at --
3 how many times did you eat at the H Street
4 location?

5 INVESTIGATOR JONES: I would say
6 maybe three.

7 MR. FONSECA: Okay. What times do
8 you recall were you in there eating and when
9 did you leave?

10 INVESTIGATOR JONES: The times
11 varied from 5:00 p.m. all the way to about
12 11:30 at night.

13 MR. FONSECA: When you exited --
14 so you exited -- the latest occasion you
15 exited was about 11:30?

16 INVESTIGATOR JONES: Yes, sir.

17 MR. FONSECA: Do you have a recall
18 as to what activities were ongoing when you
19 were leaving the establishment --

20 INVESTIGATOR JONES: Well --

21 MR. FONSECA: -- with patrons?

22 INVESTIGATOR JONES: -- due to it

1 being in Chinatown, there are a lot of --
2 there is a lot of retail. There is a lot of
3 other ABC establishments in the area. That
4 area has really been -- it's a lot of hustle
5 and bustle in that area right now.

6 So there was always something
7 going on. I'm not saying that it was related
8 to the establishment. I'm not saying that it
9 was derogatory. I'm just saying that there
10 were always people on the street. Everybody
11 is coming and going.

12 MR. FONSECA: Where I wanted to
13 focus you is not on the outside as much as in
14 the interior. If you are exiting around
15 11:30, how full is the establishment?

16 INVESTIGATOR JONES: Oh, from that
17 standpoint, by the time, at my latest, there
18 were maybe 10 people in the establishment.

19 MR. FONSECA: And was food still
20 being served?

21 INVESTIGATOR JONES: As I was
22 walking out, I can't recall if food was being

1 served or not. I can't recall that, sir.

2 MR. FONSECA: And the other times
3 you were there, including this one which had
4 you there the latest until 11:30, did you ever
5 observe any activity that you would conclude
6 was that the establishment was acting more
7 like a lounge than a restaurant?

8 INVESTIGATOR JONES: Not at all.

9 MR. FONSECA: Thank you. On this
10 examination of the Overlay District, what --
11 when you were saying there were two ABC
12 establishments, are you taking the blocks from
13 going from the south being T Street to Wallach
14 or going all the way to U Street?

15 INVESTIGATOR JONES: I'm going
16 from T Street going north to U.

17 MR. FONSECA: To U?

18 INVESTIGATOR JONES: Yes, sir.

19 MR. FONSECA: Is that because the
20 square occupies both those lots?

21 INVESTIGATOR JONES: Yes, sir.

22 MR. FONSECA: Okay. To your

1 knowledge, how many eating or drinking
2 establishments are there then in this square?

3 INVESTIGATOR JONES: One.

4 MR. FONSECA: There is only one?

5 INVESTIGATOR JONES: I believe
6 there is only -- yes. There is only one,
7 Black & Orange.

8 MR. FONSECA: Black & Orange?

9 INVESTIGATOR JONES: Yes, sir.

10 MR. FONSECA: And this
11 establishment, which isn't open yet?

12 INVESTIGATOR JONES: Would be the
13 second.

14 MR. FONSECA: Okay. And what
15 about a non-ABC establishment?

16 INVESTIGATOR JONES: You have --
17 right next to the proposed Matchbox, you have
18 a Post Office which takes most of the block.
19 Next to that you have Yum's, which is a carry-
20 out.

21 MR. FONSECA: Okay.

22 INVESTIGATOR JONES: Which is a

1 non-ABC establishment. Crossing Wallach you
2 have a parking lot, a public parking lot which
3 is managed by U Street Parking.

4 MR. FONSECA: Is this on the same
5 side of the street?

6 INVESTIGATOR JONES: This is on
7 the exact same side of the street. And then
8 you have, I want to say you have, Black &
9 Orange and then you have JJ's, which is a sub
10 shop or something like that or Jr's, which is
11 a non-ABC establishment. And then I believe
12 it may be a -- there is another non-ABC
13 establishment. I want to say it's the Tennis
14 Shoe Store or something to that effect.

15 MR. FONSECA: Okay. But is that
16 sub shop an eating establishment?

17 INVESTIGATOR JONES: Yes.

18 MR. FONSECA: Okay. Do you
19 understand is the overlay does not address
20 whether an eating or drinking establishment
21 has an ABC license?

22 INVESTIGATOR JONES: Right.

1 MR. FONSECA: Okay. So are there
2 three then or are there four --

3 INVESTIGATOR JONES: So then --

4 MR. FONSECA: eating or drinking
5 establishments, including the carry-out.

6 INVESTIGATOR JONES: So with that
7 said, there would be three.

8 MR. FONSECA: There would be
9 three?

10 INVESTIGATOR JONES: Right.

11 MR. FONSECA: That's what I
12 thought was there when you said --

13 INVESTIGATOR JONES: Yes.

14 MR. FONSECA: And is it safe to
15 draw a conclusion that that's substantially
16 below 50 percent --

17 INVESTIGATOR JONES: Yes, sir.

18 MR. FONSECA: -- of that square?
19 All right. To your knowledge, do you know how
20 late Cafe Saint-Ex's sidewalk cafe operates?

21 INVESTIGATOR JONES: Not off hand,
22 sir.

1 MR. FONSECA: Are you aware that
2 they have a cafe on the T Street side of their
3 premises?

4 INVESTIGATOR JONES: I am aware of
5 that.

6 MR. FONSECA: So during this
7 investigation, there wasn't seating out there
8 during the evening, to your knowledge?

9 INVESTIGATOR JONES: There -- if
10 the weather is good, then there is seating out
11 on --

12 MR. FONSECA: Okay.

13 INVESTIGATOR JONES: -- the T
14 Street side.

15 MR. FONSECA: In the record, I
16 believe the Board -- I would ask if we could
17 get that confirmed, but ABRA's records would
18 indicate that they have a 1:00 a.m. approval
19 for their outdoor seating and they are a
20 tavern license.

21 Black & Orange, that does hold an
22 ABC license?

1 INVESTIGATOR JONES: Yes.

2 MR. FONSECA: Do you know what
3 class?

4 INVESTIGATOR JONES: Black &
5 Orange is a CR.

6 MR. FONSECA: I have no further
7 questions.

8 CHAIRPERSON MILLER: Okay. Thank
9 you. Protestants?

10 MR. McKAY: Yes, thank you for
11 your presentation. I have a couple of
12 questions. When you are monitoring the noise
13 on T and Wallach, what hour approximately was
14 that or hours? And where -- were you actually
15 on that corner where the restaurant is?

16 INVESTIGATOR JONES: The hours is
17 noted in the report, but they vary. They vary
18 from anywhere from afternoon hours to late at
19 night on the weekends, 1:00 a.m., 2:00 a.m.
20 Because we concentrate on the location, the
21 address of the location, that's why I
22 indicated that there were no violations per

1 this location.

2 MR. McKAY: Yes.

3 INVESTIGATOR JONES: I will say
4 that during observations, specifically over
5 the weekend, that there was an over-
6 concentration of cars, no parking --

7 MR. McKAY: Yes.

8 INVESTIGATOR JONES: -- on T and
9 Wallach, as well as Swann. Pedestrians
10 walking back and forth all hours of the night.
11 And again, it is because of what is going on
12 on the corner of, you know, U and 14th, that
13 type of thing.

14 MR. McKAY: Okay. And the -- some
15 questions regarding your experiences at the
16 Matchbox on H Street.

17 INVESTIGATOR JONES: Yes, sir.

18 MR. McKAY: The current location,
19 how would you characterize the difference in
20 the neighborhoods? You know, the proposed
21 location for this one versus that one? Is it,
22 you know -- you mentioned that it's a really

1 urban-style place there, not too many
2 residents around.

3 INVESTIGATOR JONES: Yes.

4 MR. McKAY: I understood. And
5 I've been there myself, so I can concur with
6 that. But I want to hear your thoughts. How
7 would you characterize the different
8 locations?

9 INVESTIGATOR JONES: There is a
10 difference in the locations. The location
11 that I had been a patron to on H Street, which
12 is Chinatown, again, is heavily saturated with
13 different types of establishments, whether
14 they be just regular eating establishments,
15 retail, ABC establishments. There are
16 essentially no residential buildings or
17 property in that area, unless you go a couple
18 of blocks west.

19 In this area where the proposed
20 Matchbox is, there are residents, residential
21 buildings to the rear and depending on how --
22 if you are looking face forward to the

1 building, there are residential buildings to
2 the right of the establishment as well.

3 And with a connecting alley to the
4 left on Wallach.

5 MR. McKAY: Okay. And one more
6 question about some of the -- you mentioned
7 several of the ABC establishments, Source,
8 Masa 14, Black Cat, Policy, those are, you
9 know, some of the reasons we have concern,
10 because right now there -- you know, the
11 concentration is pretty high and most of them
12 are taverns. Forgive me if I'm -- I don't
13 want to paint the picture wrong, but tavern
14 licenses, which means they are primarily there
15 to serve drinks and do entertainment.

16 So we already have quite a crowd
17 of late-night revelers there. Now, that's a
18 concern of just adding more to that. Have you
19 ever -- the first question is have you ever
20 visited one of those establishments along
21 14th, one of the ones that you listed or one
22 of the ones that I just mentioned? Have you

1 ever as an investigator or even Saint-Ex Cafe,
2 because I understand they actually have some
3 concerns or some complaints there.

4 INVESTIGATOR JONES: I can't say
5 that I have. The only one that I have visited
6 in a non-working capacity was Cafe Saint-Ex
7 and that was a number of years ago.

8 MR. McKAY: Yes, okay.

9 MR. FONSECA: Before the next
10 question, if I could put in a general
11 objection, because I think this is going to
12 continue, but the nature of testifying leading
13 up to a question of the witness is a bit of a
14 concern. I don't mind trying to bide my time
15 on that, but a lot of it is borderline
16 pejorative testimony of which he then never
17 elicits that response from the witness.

18 So Mr. McKay is going to have an
19 opportunity to testify in his own right, but
20 I would ask that he attempts to not frame his
21 questions with a lot of testimony before
22 placing the question.

1 CHAIRPERSON MILLER: Okay. I
2 would agree with that. Do you understand?

3 MR. McKAY: Yes, I understood.

4 CHAIRPERSON MILLER: You will have
5 an opportunity to testify.

6 MR. McKAY: Understood, okay.

7 I think just one more question.
8 There were several establishments mentioned
9 there and they all existing or are they the
10 ones that are new ones? Like Policy, Black &
11 Orange and Masa 14, are they -- have they been
12 in business for a while or are they pretty
13 new?

14 INVESTIGATOR JONES: From my
15 understanding, these establishments have been
16 in existence for a while.

17 MR. McKAY: Okay. I have no
18 further questions.

19 CHAIRPERSON MILLER: Okay. Are
20 there other Board questions before we move on?
21 Okay. I have a question. As I understand,
22 this case is going to be a lot about the

1 impact of hours, how late the establishment
2 stays open. And so I just would be interested
3 in your opinion with respect to whether it
4 makes a difference, I would assume it would,
5 but it would address what kind of license the
6 establishment has that is staying open to a
7 later hour or what other factors should the
8 Board be looking at?

9 INVESTIGATOR JONES: I think as
10 far as a restaurant license, and again with a
11 restaurant license you have the option. I
12 mean, if you are allowed, you can stop open,
13 but the thing is is that my issue would be how
14 long is your food service going to be?

15 I know the issue that the
16 protestants are having is that a lot of the
17 establishments, and granted there aren't a lot
18 of restaurants in the area, they are mostly
19 taverns, but they are concerned with, because
20 of the late hours, a lot of the restaurant
21 licenses or a lot of the establishments that
22 have restaurant licenses is morphing into

1 nightclubs, after dinner hours.

2 I understand that Mr. Smith
3 indicated that he will only have live music or
4 that type of thing during, you know, brunch
5 hours, that type of thing, so it won't be
6 anything that is at night.

7 And I think, in my opinion, if he
8 sticks with that, then that's fine. As long
9 as it doesn't, you know, creep into the night
10 hours, then I think that then there would be
11 an issue.

12 CHAIRPERSON MILLER: Thank you.
13 Are there any questions from the parties on
14 that subject?

15 MR. FONSECA: Just two recross
16 questions.

17 CHAIRPERSON MILLER: Okay.

18 RE-CROSS-EXAMINATION

19 MR. FONSECA: The last one being
20 the one that the Chair just asked about. To
21 reiterate, to your knowledge the application
22 presented to the Board and publicly noticed

1 had an entertainment endorsement.

2 INVESTIGATOR JONES: Yes, sir.

3 MR. FONSECA: And that was for
4 hours of Saturday and Sunday, 10:00 a.m. to
5 4:00 p.m.?

6 INVESTIGATOR JONES: Yes, sir.

7 MR. FONSECA: What I had inquired
8 as to whether you had been to the Matchbox on
9 Capitol Hill you said no. And I asked had you
10 either for pleasure or in your official
11 capacity ever been to the Barracks Row area to
12 eat or to inspect in the establishments on 8th
13 Street, S.E.?

14 INVESTIGATOR JONES: Yes, sir.

15 MR. FONSECA: Can you describe, if
16 you can, where the residential neighborhood
17 meets the commercial corridor there?

18 INVESTIGATOR JONES: On 8th Street,
19 S.E., you have -- on the street itself you
20 have several ABC establishments. There are a
21 couple of retail establishments or a few
22 retail establishments mixed in, but you have

1 residential property, essentially, all around
2 that.

3 You have it on the back end. You
4 have it on both sides of 8th Street behind the
5 ABC establishments. And so, essentially, it
6 would be the same thing. It would be you have
7 the ABC establishments that line 8th Street.
8 You have the residential property behind it.
9 You have the residential property on the other
10 side of 8th Street as well.

11 So the residential areas are all
12 around those establishments.

13 MR. FONSECA: Would they also then
14 be along the lettered streets --

15 INVESTIGATOR JONES: Yes, sir.

16 MR. FONSECA: -- that --

17 INVESTIGATOR JONES: That cross.

18 MR. FONSECA: Would it be fair for
19 it to be comparable to 14th Street being 8th
20 Street and T Street being G Street, S.E.,
21 where you have residential on either side of
22 8th Street and you have residential going

1 along G Street?

2 INVESTIGATOR JONES: I would say
3 so, yes.

4 MR. FONSECA: Thank you.

5 CHAIRPERSON MILLER: Okay. Mr.
6 McKay?

7 MR. MCKAY: Yes. I guess along
8 that same line you said it's comparable in
9 terms of that. In your experience has the
10 concentration and density of that area on 8th
11 Street that was mentioned the same as 14th or
12 is it different? How would you characterize
13 that?

14 INVESTIGATOR JONES: I guess the
15 only difference that I could quickly point out
16 is that that stretch of 8th Street, S.E.,
17 there is one huge block. And the one huge
18 block has a number of ABC establishments. I
19 can't think off the top of my head how many.

20 But there is one long block on 8th
21 Street that has a number of ABC
22 establishments. It's not broken up like it is

1 on 14th Street. That's the only difference
2 that I could see at this point.

3 MR. McKAY: Thank you.

4 CHAIRPERSON MILLER: Okay. Thank
5 you very much.

6 INVESTIGATOR JONES: Thank you,
7 ma'am.

8 CHAIRPERSON MILLER: Okay. Mr.
9 Fonseca, whenever you are ready.

10 MR. FONSECA: Okay. We call as
11 our first witness, Norman Metzger.

12 CHAIRPERSON MILLER: Actually, Mr.
13 Metzger, could you go over to the other one?

14 MR. METZGER: I'm sorry.

15 CHAIRPERSON MILLER: That's okay.
16 And could you raise your right hand? I'll
17 swear you in.

18 Whereupon,

19 NORMAN METZGER
20 was called as a witness by counsel for the
21 applicant, and having been first duly sworn,
22 assumed the witness stand and was examined and

1 testified as follows:

2 CHAIRPERSON MILLER: Okay. Thank
3 you very much.

4 DIRECT EXAMINATION

5 MR. FONSECA: Mr. Metzger, would
6 you give your full name for the record,
7 please?

8 MR. METZGER: Norman Metzger, M-E-
9 T-Z-G-E-R.

10 MR. FONSECA: And, Mr. Metzger,
11 where do you live? Where do you reside?

12 MR. METZGER: I live on Capitol
13 Hill at 638 G Street, S.E.

14 MR. FONSECA: Can you tell me, Mr.
15 Metzger, are you a Commissioner on the ANC in
16 that neighborhood?

17 MR. METZGER: Yes, I'm a
18 Commissioner of ANC-6B, specifically, Single
19 Member District 03.

20 MR. FONSECA: And if you'll give
21 me just one moment, please, Members of the
22 Board.

1 MR. METZGER: I can hold that
2 location up in a little bit because it
3 includes the block on which Matchbox and Ted's
4 Bulletin have establishments, specifically 8th
5 Street between G and E, S.E., on the west
6 side.

7 MR. FONSECA: So that's -- so
8 Matchbox on Capitol Hill is in your Single
9 Member District?

10 MR. METZGER: Yes. And Ted's
11 Bulletin is in my Single Member District. And
12 the third establishment that Matchbox has, DC-
13 3, is one block away also on 8th Street.

14 MR. FONSECA: Is that in another
15 SMD?

16 MR. METZGER: It's in another SMD.
17 Another Commissioner has responsibility for
18 it. I don't know whether it's proper to note
19 that this other Commissioner has reviewed my
20 proposed testimony and his name is Ivan
21 Frishberg and he fully endorses it.

22 MR. FONSECA: Thank you. To your

1 knowledge, does ANC-6B have a voluntary
2 agreement with the Capitol Hill Matchbox?

3 MR. METZGER: Yes.

4 MR. FONSECA: Have you had
5 occasion to review that?

6 MR. METZGER: Well, I --

7 MR. FONSECA: Are you familiar
8 with it?

9 MR. METZGER: -- maybe about 15
10 minutes ago.

11 MR. FONSECA: Well, prior to that,
12 were you familiar with its hours of operation?

13 MR. METZGER: I'm familiar with
14 the house, because they basically echo the
15 hours of other establishments in the area.

16 MR. FONSECA: Okay.

17 MR. METZGER: And so I can give
18 you those hours. 11:00 to 2:00 on Sunday
19 through Thursday and 11:00 to 3:00 Friday and
20 Saturday. For the outdoors, it's 1:00 p.m. --
21 1:00 a.m., I'm sorry, Sunday through Thursday
22 and 2:00 a.m. for Friday and Saturday for the

1 outdoor establishment. Those are hours of
2 operation.

3 MR. FONSECA: If I may, I'm
4 passing over to the protestant's table a copy
5 of what I did mark there -- of what I'm
6 marking as Applicant's Exhibit 1.

7 (Whereupon, the document was
8 marked as Applicant Exhibit 1 for
9 identification.)

10 MR. FONSECA: May I approach the
11 witness, please?

12 CHAIRPERSON MILLER: Yes.

13 MR. FONSECA: Mr. Metzger, can you
14 identify that for the record?

15 MR. METZGER: Let me put my
16 glasses on. It's an order of voluntary
17 agreement with Matchbox on 521 8th Street,
18 yes.

19 MR. FONSECA: And attached to that
20 is that the voluntary agreement?

21 MR. METZGER: Yes, it is.

22 MR. FONSECA: Okay. Without

1 objection, I would like to enter this as
2 applicant's Exhibit No. 1.

3 CHAIRPERSON MILLER: Mr. McKay,
4 any objection?

5 MR. McKAY: No objection.

6 CHAIRPERSON MILLER: Do you have a
7 copy?

8 MR. McKAY: I'm sorry?

9 CHAIRPERSON MILLER: Do you have a
10 copy?

11 MR. METZGER: Yes.

12 CHAIRPERSON MILLER: Okay.

13 Admitted.

14 (Whereupon, the document marked as
15 Applicant Exhibit 1 was received
16 in evidence.)

17 MR. FONSECA: Mr. Metzger, have
18 you had occasion to have to respond to any
19 community concerns regarding Matchbox on
20 Capitol Hill?

21 MR. METZGER: No. In fact, no
22 complaints from my constituents that apply

1 either to Matchbox or Ted's Bulletin. And
2 Commissioner Frishberg assures me that he also
3 has had no complaints from constituents.

4 If I may, I would add that I did
5 ask the Commanding Officer for 1st District
6 Substation, which has jurisdiction over that
7 area, and one, he noted that they have had no
8 problems that he is aware of with either
9 Matchbox or Ted's Bulletin or DC-3. And two,
10 in fact, he patronizes that place.

11 MR. FONSECA: Thank you for that.

12 MR. METZGER: And also I did
13 inquire maybe I'm going too far, I did talk
14 with the ABRA record and there have been
15 several citations and fines against Ted's
16 Bulletin and Matchbox. You know, all for a
17 late filing for quarterly statements.

18 MR. FONSECA: Which is not a very
19 good thing to do. We acknowledge that. Are
20 you aware of what their percentages were on
21 those late filings of food over alcohol?

22 MR. METZGER: I'm sorry?

1 MR. FONSECA: Are you familiar
2 with the percentages of their food over
3 alcohol?

4 MR. METZGER: Well, I don't know.

5 MR. FONSECA: On those late
6 filings.

7 MR. METZGER: I'm not --

8 MR. FONSECA: We're sorry for
9 that. We will concede that and stipulate that
10 the only violations have been for late filings
11 of quarterly statements. We will get other
12 matters on the record as to the food
13 percentages.

14 Lastly, to your knowledge, has
15 this Matchbox ever morphed into a late hours
16 nightclub or lounge scene on Barracks Row?

17 MR. METZGER: No, not to my
18 knowledge. We have had an issue with another
19 establishment, not a Matchbox establishment,
20 which is now closed. I'm not sure whether it
21 is for ABRA issues or tax issues or possibly
22 both.

1 MR. FONSECA: Thank you. No
2 further questions.

3 CHAIRPERSON MILLER: Okay.
4 Protestant?

5 MR. McKAY: Yes, thank you. I
6 have a couple of questions.

7 CROSS-EXAMINATION

8 MR. McKAY: The first question is
9 you mentioned your address is 38 G Street?

10 MR. METZGER: 638.

11 MR. McKAY: What proximity is that
12 to the restaurant?

13 MR. METZGER: Oh, it's a block and
14 a half away.

15 MR. McKAY: Block and a half away?

16 MR. METZGER: About a block and a
17 half. I walk by the place quite often on the
18 way to the Metro, diversion from my favorite
19 coffee place, stuff like that.

20 MR. McKAY: Okay. And is there
21 any personal relationship that you have with
22 the applicant here?

1 MR. METZGER: I'm not sure how to
2 characterize personal relationships. I have
3 known Mr. Smith quite a long time and so we
4 see each other. I have been to his place, so
5 we are certainly friendly.

6 MR. McKAY: Okay.

7 MR. METZGER: But I think that is
8 the extent of it.

9 MR. McKAY: Okay. And the hours
10 of operation here in the voluntary agreement
11 say from 11:00 until 2:00 and 11:00 until
12 3:00. Typically, are those hours
13 operationally utilized in your experience? Is
14 it open until 2:00 in the morning on a weekday
15 for example?

16 MR. METZGER: In my experience,
17 no. When I have gone by there late at night,
18 11:00, 11:30 or so, generally, the place is
19 empty.

20 MR. McKAY: Yes.

21 MR. METZGER: So they are not full
22 at that point. They certainly are full before

1 then, because it's a very popular area.

2 MR. McKAY: Yes. And are there --
3 in the area you mentioned one other
4 establishment which had morphed from a
5 restaurant into a nightclub. Are there any
6 other taverns/nightclubs that are open and
7 have many patrons at that hour in the morning?

8 MR. METZGER: Well, I can't fairly
9 answer the question. I really haven't done a
10 survey --

11 MR. McKAY: All right.

12 MR. METZGER: -- of all these
13 places.

14 MR. McKAY: All right.

15 MR. METZGER: My impression is
16 walking up late at night it doesn't really
17 become an issue. I should mention that the
18 ANC-6B has had a de facto policy of not
19 supporting applications for tavern licenses.

20 MR. McKAY: Okay.

21 MR. METZGER: So --

22 MR. McKAY: Thank you.

1 MR. METZGER: -- but I can't fully
2 answer your question.

3 MR. McKAY: All right. No, that's
4 fine. I guess the investigator had
5 characterized the neighborhood. I'm just
6 trying to do comparisons since we are moving
7 that way, as busy, you know, bustling and much
8 traffic. Would you characterize it as that,
9 the Matchbox, where you have the most
10 experience? How busy in the morning?

11 MR. METZGER: I'm sorry, I didn't
12 hear.

13 MR. McKAY: That's all right.
14 There are many cars, many people walking and
15 things like that?

16 MR. METZGER: Yes, there are
17 certainly traffic issues. There are parking
18 violation issues. You know, and late at night
19 we are talking about 8:00 to 11:00 or
20 something of that sort. A lot of people there
21 even though that has become a very, very
22 popular area. It has boomed. And so it's

1 that block and also the block immediately
2 south and the block immediately north that has
3 become very busy blocks. Lots of people.

4 MR. McKAY: To clarify, at 1:00,
5 2:00, 3:00 in the morning, it does quiet down?
6 Is that correct?

7 MR. METZGER: Well, I'm generally
8 not in the area then, so I can't answer the
9 question.

10 MR. McKAY: Okay.

11 MR. METZGER: Again, all I can say
12 is --

13 MR. McKAY: That's fine.

14 MR. METZGER: -- we have really
15 had no complaints made to me directly.

16 MR. McKAY: Okay. And one last
17 question. The -- what is the closest
18 residential house to or maybe house or
19 apartment?

20 MR. METZGER: Well, it's quite
21 close. That particular block we are talking
22 about, the 500 Block of 8th Street, where

1 Ted's Bulletin and Matchbox are backs up to a
2 residential street. Let me put "residential"
3 in quotes, because that block also includes a
4 Mormon Temple, a Karate studio and a couple of
5 other places. Also a lot of residences.

6 And it backs up against it. What
7 the actual space between them is, it's
8 conventional space. I can't really tell you.
9 There is an alley and it's big enough for
10 trash trucks to go through and stuff like
11 that, yes.

12 MR. McKAY: Okay. Thank you. I
13 have no more questions.

14 CHAIRPERSON MILLER: Thank you.
15 Board questions? Any redirect?

16 MR. FONSECA: Yes, just one line
17 of questioning.

18 REDIRECT EXAMINATION

19 MR. FONSECA: Traffic on 8th Street
20 on weekend nights, vehicular traffic, does
21 that go on until very late in the evening?

22 MR. METZGER: I believe so.

1 Again, these are my terms, because again at
2 1:00 and 2:00 in the morning or at night.
3 But, you know, even at 11:00, it's still
4 lightening up a bit, which is an issue for the
5 neighborhood because we also have a fire
6 station there. So it has become an issue, but
7 it's not -- you know, it's bearable at this
8 point.

9 MR. FONSECA: Do people use the
10 Metro, Eastern Market Metro, for example, to
11 visit Barracks Row?

12 MR. METZGER: Heavily, heavily.

13 MR. FONSECA: Okay. What are --

14 MR. METZGER: People are streaming
15 in and out.

16 MR. FONSECA: What occurs after a
17 National's evening game? Does Barracks Row
18 liven up?

19 MR. METZGER: Business booms, yes,
20 yes.

21 MR. FONSECA: Thank you. No
22 further questions.

1 CHAIRPERSON MILLER: Mr. McKay, do
2 you have anything else?

3 MR. McKAY: Just a comment --

4 CHAIRPERSON MILLER: Just on what
5 Mr. --

6 MR. McKAY: -- I would ask my
7 colleague here not to lead him.

8 CHAIRPERSON MILLER: Not to lead
9 him?

10 MR. McKAY: Lead questions, yes.

11 CHAIRPERSON MILLER: Okay.

12 MR. McKAY: He is probably better.
13 He's a lawyer.

14 MR. FONSECA: That was a leading
15 question. I'll acknowledge that, but I'll
16 still take the answer.

17 MR. BROWNSTEIN: Am I allowed to
18 ask questions of the witnesses?

19 CHAIRPERSON MILLER: Well, you are
20 supposed to work closely together.

21 MR. BROWNSTEIN: You do it.

22 CHAIRPERSON MILLER: For the most

1 part, we like to have one person.

2 MR. BROWNSTEIN: Or I could just
3 whisper to my colleague over here.

4 MR. McKAY: Yes, right.

5 MR. FONSECA: Ask to refer to his
6 previous question.

7 MR. McKAY: Yes, that's a good
8 thought. Is the traffic pattern for the folks
9 walking from the Barracks Row area through
10 residential streets or is it more commercial?
11 What is the pathway?

12 MR. METZGER: Well, they do park.
13 I mean, there's some restriction on parking,
14 because it's Zone 6 on one side and it's
15 restricted to two hours. So they would park
16 wherever they have to.

17 MR. McKAY: I'm sorry, Mr. --

18 MR. METZGER: Maybe I
19 misunderstood your question.

20 MR. McKAY: Yes, the question is
21 about the folks that are taking the Metro and
22 when they return from Barracks Row onto the

1 Metro, what is the path? Is it through the
2 neighborhood? Is it on a busy street?

3 MR. METZGER: No, they generally
4 walk straight up 8th Street and then they
5 cross through what we call Metro Plaza.

6 MR. McKAY: Okay.

7 MR. METZGER: And some are
8 jaywalking all the way.

9 MR. McKAY: Okay. No more
10 questions.

11 CHAIRPERSON MILLER: Thank you
12 very much.

13 (Whereupon, witness excused.)

14 MR. FONSECA: Our next witness is
15 Tanya Evans.

16 CHAIRPERSON MILLER: Good
17 afternoon. Would you raise your right hand?
18 I'll swear you in.

19 Whereupon,

20 TANYA EVANS

21 was called as a witness by counsel for the
22 applicant, and having been first duly sworn,

1 assumed the witness stand and was examined and
2 testified as follows:

3 CHAIRPERSON MILLER: Okay. Thank
4 you.

5 DIRECT EXAMINATION

6 MR. FONSECA: Would you state your
7 full name for the record, please?

8 MS. EVANS: Sure.

9 MR. FONSECA: And your address?

10 MS. EVANS: Yes. Tanya Evans, T-
11 A-N-Y-A E-V-A-N-S. And I live at 1914 13th
12 Street, N.W., which is just on the corner of
13 14th and Wallach, so essentially catty-corner
14 to the property.

15 MR. FONSECA: Did you say 1410
16 Wallach or 1310?

17 MS. EVANS: 13th. So it's 1914--

18 MR. FONSECA: Right.

19 MS. EVANS: -- 13th Street.

20 MR. FONSECA: Right. And how long
21 have you resided there?

22 MS. EVANS: Almost three years.

1 MR. FONSECA: And Wallach -- is it
2 Wallach Place or --

3 MS. EVANS: It's Wallach Place,
4 yes.

5 MR. FONSECA: Wallach Place. Now,
6 Wallach Place is -- is that a short distance
7 from U Street? Is that a full block?

8 MS. EVANS: It's not a full block.
9 The block -- it's just a one block street that
10 is in between U and T, just for that block,
11 and it's yes, a half block down from U.

12 MR. FONSECA: I think most people
13 are probably familiar, because it's right
14 here, but would that then be at the corner
15 where the Rite Aid is on U Street? Is Wallach
16 right behind that?

17 MS. EVANS: Yes.

18 MR. FONSECA: Okay.

19 MS. EVANS: Yes.

20 MR. FONSECA: So you reside there.
21 What --

22 MS. EVANS: So it's Rite Aid and

1 then one residence on that block.

2 MR. FONSECA: And that's where you
3 are. Okay.

4 MS. EVANS: And then I'm on the
5 other side, yes.

6 MR. FONSECA: Okay. You're on the
7 other side.

8 MS. EVANS: Yes.

9 MR. FONSECA: So you are south of
10 Wallach on --

11 MS. EVANS: Yes.

12 MR. FONSECA: -- 13th Street?

13 MS. EVANS: Yes. It's a corner
14 property, so it is on Wallach, but the
15 entrance is on 13th Street.

16 MR. FONSECA: Okay. What is your
17 experience with night life and its impact on
18 you there at that address?

19 MS. EVANS: So the neighborhood is
20 certainly a vibrant, bustling neighborhood.
21 A little more so on the weekends. If I'm
22 outside of my property, I can certainly hear

1 and see the goings on, but once I retire to
2 the inside, to the inside for the evening,
3 then it's quiet enough.

4 MR. FONSECA: Okay. For a
5 bustling neighborhood?

6 MS. EVANS: For a bustling
7 neighborhood, yes.

8 MR. FONSECA: All right.

9 MS. EVANS: I sleep through the
10 night pretty well.

11 MR. FONSECA: Okay. Since you
12 have only been there three years, I mean, to
13 your knowledge at the time this was still --
14 it was a bustling neighborhood when you moved
15 here?

16 MS. EVANS: Yes. I haven't seen
17 much of a change in the last three years now.

18 MR. FONSECA: Okay. Do you find
19 that to be a positive for your living
20 experience?

21 MS. EVANS: Oh, absolutely. It's
22 a great neighborhood to live in. It has easy

1 access to transportation to the rest of the
2 city. There are plenty of great restaurants
3 and things to do around the neighborhood. So,
4 yes.

5 MR. FONSECA: Have you ever had an
6 experience with dining in a Matchbox
7 restaurant?

8 MS. EVANS: Um-hum. I have been
9 to the Matchbox in Chinatown and I have been
10 to DC-3 as well as Ted's Bulletin on 8th
11 Street.

12 MR. FONSECA: And could you share
13 with us your experience?

14 MS. EVANS: Absolutely. Also, the
15 Matchbox in Chinatown I have been there for
16 dinner, probably twice. One, probably an
17 earlier dinner, one at a later dinner, so 6:00
18 p.m. and 8:00 p.m., respectively. I have been
19 in the establishment until probably between
20 10:00 and 11:00 p.m. DC-3 I was there in the
21 evening to get frozen yogurt probably at about
22 8:00 p.m. and I have been to Ted's Bulletin

1 probably about half a dozen times mostly for
2 brunch, but once for dinner and once to get
3 pick-up.

4 MR. FONSECA: It's a long way from
5 home for take-out.

6 MS. EVANS: Poppers for take-out.

7 MR. FONSECA: Thank you. In your
8 experience later in the evening at the
9 Chinatown Matchbox --

10 MS. EVANS: Yes.

11 MR. FONSECA: -- what did you find
12 on the interior as far as activity going on
13 around 11:00 p.m.?

14 MS. EVANS: Around 11:00?
15 Definitely dying down. Primarily just people
16 going there for dinner and people are there at
17 10:00 or 11:00, they were maybe having after
18 dinner drinks, but certainly not that many
19 people in the restaurant.

20 MR. FONSECA: Is it predominately
21 table service still?

22 MS. EVANS: Oh, yes, absolutely.

1 MR. FONSECA: Is the kitchen still
2 open?

3 MS. EVANS: I'm sure.

4 MR. FONSECA: Okay. Were diners
5 still eating?

6 MS. EVANS: Probably finishing
7 eating, but, yes, still --

8 MR. FONSECA: Okay. Okay. Was
9 there any other activity? Was it loud? Was
10 it --

11 MS. EVANS: No.

12 MR. FONSECA: No?

13 MS. EVANS: No.

14 MR. FONSECA: Okay. No, that's
15 fine. Can you tell us why you are supporting
16 or why you are even here? Presumably
17 supporting the Matchbox 14th Street? Let me
18 rephrase that.

19 MS. EVANS: I'm just definitely in
20 favor of having good food, good restaurants in
21 the neighborhood. The building is currently
22 under renovation where Matchbox is going to

1 be. It was an abandoned building and now
2 there is restoration to it. I imagine that is
3 where the patio is going to be, a lovely place
4 to sit.

5 MR. FONSECA: Have you seen any
6 renderings of the -- what the building is
7 going to look like after the construction?

8 MS. EVANS: I haven't, no.

9 MR. FONSECA: Okay. Stick around.

10 MS. EVANS: Yes.

11 MR. FONSECA: No further -- one
12 more question. Do you have an opinion as to
13 any of the establishments in the neighborhood
14 that are, for lack of a better objective term,
15 but, you know, maybe subjective, that are bad
16 or that are --

17 MS. EVANS: So bad?

18 MR. FONSECA: Non-neighborly shall
19 we say.

20 MS. EVANS: So taverns and that
21 kind of thing, etcetera? I mean, to be
22 honest, I think some of the greatest amount of

1 foot traffic that happens in the late hours in
2 the neighborhood is because we have very, very
3 late night kind of drunk food establishments.
4 So like Ben's Chili Bowl is right across the
5 street. There is pizza places. So no matter
6 where people are frequenting to have their
7 drinks in the evening hours, they will often
8 congregate late in the evening to get their
9 late food, munchies.

10 MR. FONSECA: And those are on U
11 Street?

12 MS. EVANS: Right on -- yes, U
13 Street between 13th and 12th, 11th.

14 MR. FONSECA: All right. Thank
15 you. No further questions.

16 CHAIRPERSON MILLER: Before we go
17 to the protestant, I just want to follow-up on
18 that.

19 MS. EVANS: Sure.

20 CHAIRPERSON MILLER: Because I
21 didn't really understand your answer, because
22 I thought that Mr. Fonseca asked if there were

1 any like establishments that you thought were
2 bad. And then I thought you responded with
3 these places that sounded like they weren't
4 bad establishments. They weren't like --

5 MS. EVANS: Right.

6 CHAIRPERSON MILLER: So maybe you
7 could clarify what you meant by that.

8 MR. FONSECA: Yes. Are there any
9 establishments that you prefer, liquor license
10 establishments --

11 MS. EVANS: Not to be --

12 MR. FONSECA: -- not to be in the
13 neighborhood?

14 MS. EVANS: Um, so there is a club
15 on U between 13 and 14. I don't know the name
16 of it. I have never been in it. There is a
17 bright neon light in front of it.

18 CHAIRPERSON MILLER: That's okay.

19 MR. FONSECA: Okay.

20 CHAIRPERSON MILLER: We don't need
21 the name.

22 MR. FONSECA: No, that's fine. So

1 it's on U Street?

2 MS. EVANS: Yes.

3 MR. FONSECA: Is there anything on
4 14th Street?

5 MS. EVANS: On 14th Street that I
6 would consider bad? So Saint-Ex is an
7 interesting place, because they, I think,
8 cross this bridge between restaurant/tavern
9 and then club. I know they have like a
10 basement club that they have until the late
11 hours. But bad, I don't think --

12 MR. FONSECA: So --

13 MS. EVANS: -- there are --

14 MR. FONSECA: Any bad
15 establishments.

16 MS. EVANS: Right.

17 MR. FONSECA: That's fine. This
18 is just trying to get a barometer showing
19 this.

20 MS. EVANS: Okay.

21 MR. FONSECA: Thank you.

22 CHAIRPERSON MILLER: Okay. Thank

1 you. Mr. McKay?

2 CROSS-EXAMINATION

3 MR. MCKAY: Yes, thank you. So
4 you are on T -- sorry, on 13th Street?

5 MS. EVANS: Yes.

6 MR. MCKAY: And you have been
7 there. Where are you? Are you above-ground,
8 below-ground, at-ground?

9 MS. EVANS: So for a year and a
10 half I was in the property above.

11 MR. MCKAY: Yes.

12 MS. EVANS: And now I'm in an
13 English basement below.

14 MR. MCKAY: Okay.

15 MS. EVANS: But at the same
16 property.

17 MR. MCKAY: Yes. And you know,
18 you pretty much like every place that is
19 there. The question that I have is you
20 thought that the, what your word was, patio
21 would be lovely. If the patio were adjacent
22 to the driveways that is there and there is a

1 corner of condo buildings, Queen Anne style --

2 MS. EVANS: Okay.

3 MR. McKAY: On the corner, you
4 know what I'm talking about. Imagine that the
5 restaurant was right there and --

6 MS. EVANS: Right.

7 MR. McKAY: -- that patio that the
8 folks want to build is right next to your
9 bedroom.

10 MS. EVANS: Yes.

11 MR. McKAY: Or kitchen. Would you
12 be as excited about the lovely surrounding as
13 you are now?

14 MS. EVANS: So to be honest, I
15 live close to -- I mean, my bedroom window
16 sits on the sidewalk of Wallach. And we get
17 foot traffic and I certainly think that any
18 one that lives in or moves into this
19 neighborhood is pretty aware of the dynamic.
20 And I was when I came in. So I think I would
21 be, yes.

22 MR. McKAY: Okay. So you would be

1 happy to have that.

2 CHAIRPERSON MILLER: Mr. McKay?

3 Mr. McKay?

4 MEMBER ALBERTI: Mr. McKay?

5 CHAIRPERSON MILLER: Excuse me.

6 MR. MCKAY: I'm sorry.

7 CHAIRPERSON MILLER: The court
8 reporter is having some trouble hearing you.

9 MR. MCKAY: I'm sorry.

10 CHAIRPERSON MILLER: So if you --

11 MR. MCKAY: I'm sorry.

12 CHAIRPERSON MILLER: Yes, if you
13 could just speak a little louder?

14 MR. MCKAY: No, that's fine. So I
15 think that's all I have. The owner of -- oh,
16 sorry, one more question.

17 CHAIRPERSON MILLER: Yes.

18 MR. MCKAY: The owner rents your
19 place or --

20 MS. EVANS: I rent.

21 MR. MCKAY: You rent.

22 MS. EVANS: Yes.

1 MR. MCKAY: So if you were an
2 owner, would you have a different opinion
3 about the new --

4 MS. EVANS: I don't think so. I
5 think establishments such as Matchbox who are
6 coming in, renovating buildings and bringing
7 good business to the neighborhood are doing
8 nothing but increasing property values.

9 MEMBER JONES: Could you speak a
10 little louder, please?

11 CHAIRPERSON MILLER: I think --

12 MR. MCKAY: No, I think we're -- I
13 think that's it.

14 CHAIRPERSON MILLER: Okay. You,
15 too. If there are more questions for you --

16 MS. EVANS: Sorry.

17 CHAIRPERSON MILLER: -- I guess if
18 you can speak up a little bit?

19 MS. EVANS: Okay.

20 CHAIRPERSON MILLER: That will
21 help the court reporter.

22 MS. EVANS: Yes, absolutely.

1 CHAIRPERSON MILLER: So you are
2 finished?

3 MR. McKAY: I have no more
4 questions. Thank you.

5 CHAIRPERSON MILLER: Okay. All
6 right. Let me just see if there are Board
7 questions before we go to redirect. Are there
8 Board questions? Okay. No Board questions.

9 MR. FONSECA: Just one redirect.

10 CHAIRPERSON MILLER: Yes.

11 REDIRECT EXAMINATION

12 MR. FONSECA: Taking the
13 subjective, if you had a sidewalk cafe near
14 you and their hours terminated at midnight,
15 would that be acceptable to you?

16 MS. EVANS: Absolutely.

17 CHAIRPERSON MILLER: I'm sorry, I
18 didn't hear the question.

19 MS. EVANS: Absolutely. Oh, the
20 question, okay.

21 CHAIRPERSON MILLER: Okay. No,
22 you were finished.

1 MR. FONSECA: I'm finished.

2 CHAIRPERSON MILLER: Okay. Would
3 this be the closest ABC establishment to you
4 or do you live near any -- as close to any
5 other ABC establishments?

6 MS. EVANS: The closest to me? I
7 guess -- no -- yes, it would be the closest.

8 CHAIRPERSON MILLER: Okay.

9 MS. EVANS: Is there anything else
10 on 13th? Sorry. I mean, if I -- I guess,
11 technically, I'm closer to U Street if I would
12 hop around. That place is just on U.

13 CHAIRPERSON MILLER: Okay.

14 MR. FONSECA: If I may, my guess
15 would be Alero may be closest to you.

16 MS. EVANS: Right, right, yes.

17 MR. FONSECA: Which is at the
18 north corner of --

19 MS. EVANS: 13th.

20 MR. FONSECA: -- U and 13.

21 CHAIRPERSON MILLER: So you do
22 live as close to another ABC establishment

1 now?

2 MS. EVANS: Yes.

3 CHAIRPERSON MILLER: So you can

4 compare --

5 MS. EVANS: Yes.

6 CHAIRPERSON MILLER: -- what it

7 would be like?

8 MS. EVANS: Yes. And is Alero
9 about the same size as this? It's pretty big.

10 MR. FONSECA: It's pretty big. I
11 don't know.

12 MS. EVANS: Yes.

13 CHAIRPERSON MILLER: Okay. That's
14 all right. Okay. That's it, unless there is
15 anything else on my last question. All right.

16 MR. FONSECA: No.

17 CHAIRPERSON MILLER: Thank you
18 very much.

19 MS. EVANS: Thank you.

20 MR. FONSECA: Thank you.

21 (Whereupon, witness excused.)

22 MR. FONSECA: David Tracz. How do

1 you pronounce it?

2 MR. TRACZ: Tracz.

3 MR. FONSECA: That's spelled T-R-
4 A-C-Z, pronounced Tracz.

5 CHAIRPERSON MILLER: Okay. Could
6 you raise your right hand?

7 Whereupon,

8 DAVID TRACZ

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

13 CHAIRPERSON MILLER: Okay. Thank
14 you.

15 DIRECT EXAMINATION

16 MR. FONSECA: Could you state your
17 name for the record, please?

18 MR. TRACZ: David Tracz.

19 MR. FONSECA: Spell that.

20 MR. TRACZ: T-R-A-C-Z.

21 MR. FONSECA: Okay. And what is
22 your relationship to the applicant?

1 MR. TRACZ: I'm the architect.

2 MR. FONSECA: Okay.

3 MEMBER MOBLEY: I'm sorry?

4 CHAIRPERSON MILLER: We couldn't
5 hear that.

6 MR. TRACZ: I am the architect.

7 CHAIRPERSON MILLER: Okay.

8 MEMBER MOBLEY: Okay.

9 MR. FONSECA: All right. If you
10 could, I'm going to allow you, if the Board
11 doesn't object, since he is the architect,
12 shall we say do a very short presentation of
13 the design and what is being done to this
14 lovely building that doesn't appear that way
15 at this moment.

16 CHAIRPERSON MILLER: Okay.

17 MR. TRACZ: Okay.

18 MR. McKAY: I'm going to ask that
19 you keep it short, because I don't see how
20 this pertains to noise, trash and --

21 MR. FONSECA: Well, it will
22 include the sidewalk cafe.

1 MR. McKAY: I just made that point
2 for the record.

3 CHAIRPERSON MILLER: Okay. Mr.
4 Fonseca, do you want to respond to that at all
5 as to how it does pertain?

6 MR. FONSECA: Yes, I don't think
7 this will take more than three minutes. Plus,
8 it does include the sidewalk cafe.

9 CHAIRPERSON MILLER: Okay.

10 MR. FONSECA: Which is a
11 significant component.

12 CHAIRPERSON MILLER: All right.

13 MR. TRACZ: Correct. Okay. So as
14 everybody can see here, this is actually --
15 these are photographs of the existing
16 location. You can see that is as the building
17 was previously. It has already begun work on
18 the exterior, so previously it was sort of --
19 not abandoned isn't really the right term, but
20 an unused property. It definitely had fallen
21 into some disrepair.

22 So this is the context of what we

1 are working within. And then what this board
2 shows you is we have done a fair amount of
3 research into what the property was at its
4 origination and then what iterations it went
5 through. It was a billiard hall, a car
6 dealership as well as it was a nightclub for
7 a brief period.

8 And this -- these two renderings
9 here indicate the changes to the building. We
10 are doing some significant improvements on the
11 building. We've worked very hard with the
12 HPRB to make sure that the property meets the
13 requirements of HPRB.

14 We've taken great pains actually
15 and a fair amount of expense, probably about
16 \$4 million, all in to renovate the building
17 and bring it back really to its, pretty much,
18 former glory.

19 And we are spending some time
20 around on the outside, the outer sidewalk cafe
21 component. You can see plantings as well as
22 some amounts of trellising over top of the

1 outdoor cafe, just to get a little bit of
2 shade, sort of a porch with beams and columns.
3 And then that would be described as the
4 outdoor seating component.

5 And then on the interior, we are
6 really taking a fair amount of the floor out
7 of the second floor and then making an open
8 space.

9 MEMBER JONES: I can't hear you.

10 CHAIRPERSON MILLER: Yes, your
11 voice drops.

12 MR. TRACZ: Oh, I'm sorry.

13 CHAIRPERSON MILLER: So could you
14 repeat that?

15 MR. TRACZ: We are taking out a
16 little bit of the second floor to make it a
17 little bit more of an open space, which will
18 actually reduce the seating.

19 CHAIRPERSON MILLER: What's the
20 last thing you said?

21 MR. TRACZ: It will reduce the
22 seating total.

1 CHAIRPERSON MILLER: Reduce the
2 seating?

3 MR. TRACZ: Yes.

4 MR. FONSECA: You can take a seat
5 now, that will amplify your voice --

6 MR. TRACZ: That will make it
7 easier.

8 MR. FONSECA: -- also.

9 CHAIRPERSON MILLER: Okay.

10 MR. TRACZ: Yes. Sorry. I don't
11 enunciate very well when I'm all nervous.

12 MR. FONSECA: Before I ask any
13 questions, is that -- did I interrupt you as
14 far as finishing?

15 MR. TRACZ: No, that pretty much--
16 I mean, I think that covers really the
17 magnitude of the changes that we are making to
18 the property and the improvements.

19 MR. FONSECA: Okay. So you
20 referenced, approximately, \$4 million is going
21 into the renovations.

22 MR. TRACZ: Right. That is

1 correct.

2 MR. FONSECA: Okay. And the
3 exterior, you referenced on the sidewalk cafe
4 both the trellising and the planting. Were
5 there any efforts made to do any kind of sound
6 attenuation for the outdoor seating?

7 MR. TRACZ: The intent is really
8 with the planting and the amount of planting
9 and the trellising really help to keep that
10 down. I think the density of the seating out
11 there also helps. It's not that dense out
12 there as far as the seating plan goes.

13 MR. FONSECA: And do your
14 knowledge, has the Public Space Committee
15 approved the cafe and the exterior open space
16 elements?

17 MR. TRACZ: They have, yes.

18 MR. FONSECA: And to your
19 knowledge, what was the seat count that were
20 approved? Notes are accepted.

21 MR. TRACZ: For the public space,
22 the outside cafe is 56 seats.

1 MR. FONSECA: And what is the
2 status of permit drawings or the zoning
3 permit?

4 MR. TRACZ: The building is in
5 review. We have received the first round of
6 comments and we are expecting our last and
7 final round in the next day or so.

8 MR. FONSECA: As of this time, do
9 you know what your approximate occupant load
10 is going to be? Interior --

11 MR. TRACZ: On the interior?

12 MR. FONSECA: -- and exterior.

13 MR. TRACZ: Interior is 250 seats,
14 that's including bar seating. And then
15 outside is 56, as I mentioned earlier.

16 MR. FONSECA: Okay. That's all
17 the questions for now.

18 CHAIRPERSON MILLER: Okay. Mr.
19 McKay?

20 MR. MCKAY: Yes.

21 CROSS-EXAMINATION

22 MR. MCKAY: You mentioned the

1 conforming to all the historical requirements.
2 Is it true or not true that anyone who
3 purchased and renovated the building would be
4 subject to the same requirements?

5 MR. TRACZ: Well, most likely.

6 MR. McKAY: Okay. And the \$4
7 million spent on the building, you think
8 personally that has something to do with the
9 ability or the -- I'm sorry.

10 Do you think that that is --
11 should be able to buy the right to have hours
12 consideration, which are longer than others?
13 Do you think that the investment in the
14 community is required of that?

15 CHAIRPERSON MILLER: I have to
16 just remind you not to drop your voices,
17 because the court reporter --

18 MR. McKAY: Okay.

19 CHAIRPERSON MILLER: So will you
20 repeat that?

21 MR. McKAY: I'm saying what --

22 CHAIRPERSON MILLER: And the

1 Board.

2 MR. McKAY: Okay. Let me ask the
3 question a different way. The \$4 million that
4 is spent on the building to follow the
5 historical code and bring it up, we're all
6 excited about that, but does that have
7 anything to do with the ABRA license that we
8 are here to talk about today?

9 MR. TRACZ: I can't really speak
10 to that.

11 MR. McKAY: Okay. One question
12 about the building. The cafe you said that
13 there is some green space here created to --

14 MR. TRACZ: Correct.

15 MR. McKAY: -- help muffle the
16 noise, separate the space. Is there any data
17 that says that that works? I mean, we have
18 some noise. We have true technology here in
19 the room to kind of -- is there any indication
20 of what reduction that is? Like a DB level or
21 something?

22 MR. TRACZ: I can't speak to that.

1 MR. McKAY: Okay.

2 MR. TRACZ: I mean, I know that,
3 you know, there are other areas where trees
4 are used for that type of thing.

5 MR. McKAY: Okay. And one more.
6 At the end of this there is, in fact, an alley
7 and then a home. Okay. So this section here
8 where the outdoor space is, there is a house
9 there. And just some conjecture, if there is
10 watering of the grass and patrons watered at
11 the entrance here --

12 MR. TRACZ: I don't -- if you have
13 those.

14 MR. McKAY: All right.

15 MEMBER BROOKS: I really can't
16 hear. You have --

17 MR. McKAY: I'm sorry. I'm sorry.
18 I'm talking to the witness here. The question
19 was if --

20 CHAIRPERSON MILLER: Much better.

21 MR. McKAY: -- the next house over
22 was -- on this drawing here is just to the

1 right of the green space, there is an alley
2 and then there is a home. If the gentleman
3 who owns the home was watering his grass,
4 could he water the patrons? And the answer
5 was probably yes.

6 MR. TRACZ: The hose --

7 MR. McKAY: Yes, okay.

8 MR. TRACZ: I mean, for --

9 MR. McKAY: Okay. Not a problem.

10 MR. TRACZ: It's 20 foot.

11 MR. McKAY: 20 foot. Thank you.

12 That was a good point. Also, approximately,
13 how many houses are within 100 feet of the
14 building, approximately? Residential homes.

15 MR. TRACZ: You know, I haven't
16 really --

17 MR. McKAY: You haven't thought
18 about that?

19 MR. TRACZ: -- surveyed that.

20 CHAIRPERSON MILLER: Okay. I have
21 to -- I know you all are talking to each
22 other, but you need to talk into the mikes,

1 otherwise --

2 MR. TRACZ: I apologize.

3 CHAIRPERSON MILLER: -- we miss --

4 MR. McKAY: Okay.

5 MR. TRACZ: I have not surveyed
6 that.

7 MR. McKAY: Okay. Okay. Thank
8 you. No more questions. Thank you.

9 MR. FONSECA: One follow-up?

10 CHAIRPERSON MILLER: We're going
11 to do the Board and then you can do follow-up
12 on the Board.

13 MEMBER ALBERTI: Mr. Tracz?

14 MR. TRACZ: Yes.

15 MEMBER ALBERTI: Have you designed
16 the inside also?

17 MR. TRACZ: Yes.

18 MEMBER ALBERTI: Okay. Describe
19 the seating plan. I mean, are there booths,
20 tables, sort of the layout if you can sort of,
21 no pun intended, lay that out for me.

22 MR. TRACZ: Sure. It's a --

1 actually, Michael has a copy of the floor
2 plan. It is a mix of predominantly booths and
3 tables. I will say that most of the -- if
4 there are a series of two-tops or if you are
5 familiar with two-seat tables, they are
6 typically against the banquette.

7 So they won't really increase
8 density in that regard. So the bulk of it is
9 booths or tables against the banquette.

10 MEMBER ALBERTI: Do the booths run
11 along the walls?

12 MR. TRACZ: Yes.

13 MEMBER ALBERTI: Are there any
14 booths in the center aisle?

15 MR. TRACZ: There are booths in
16 the center and then tables along the
17 perimeter.

18 MEMBER ALBERTI: Okay. Well, yes,
19 let's step back. So where are the booths
20 located?

21 MR. TRACZ: If you were to enter
22 the restaurant, you will immediately be facing

1 a row of booths. To your right hand side,
2 there would be a couple of four-top tables.
3 I believe there is three or four. There is a
4 step up and then there are a couple of, I want
5 to say, 12 two-top tables that are all
6 banquette on one side, table on the other
7 side.

8 For those of you who aren't
9 familiar with banquettes, essentially, that is
10 just a row of booths along the wall with
11 seating on one side and then tables on
12 another.

13 MEMBER ALBERTI: On which side?

14 MR. TRACZ: They are actually
15 aligned, so you can walk between them.

16 MEMBER ALBERTI: Okay.

17 MR. TRACZ: And then when you get
18 up to the upper level, there are a series of
19 booths along the exterior wall and then a
20 series of four-tops. Since we, as I mentioned
21 earlier, cut back part of the floor, probably
22 about a third of the floor for the second

1 floor, that has allowed us to put a series of
2 four-tops along the railing there. And that's
3 really the second floor.

4 MEMBER ALBERTI: And the booths on
5 the second floor, are they along the wall,
6 both sides?

7 MR. TRACZ: They are on the one.
8 They are along one wall, because of --

9 MEMBER ALBERTI: And what's the
10 other side?

11 MR. TRACZ: The other side is a
12 railing, because it's overlooking our bar, the
13 bar area.

14 MEMBER ALBERTI: Oh. So the
15 balcony, the upstairs overlooks the downstairs
16 on two sides?

17 MR. TRACZ: Yes, actually, so.

18 MEMBER ALBERTI: So towards the
19 front of the building and I'm just guessing
20 here, is one side?

21 MR. TRACZ: Yes. Well, if -- yes.
22 Yes, exactly.

1 MEMBER ALBERTI: Because I'm
2 assuming the bar is along one side?

3 MR. TRACZ: It is along a long
4 side of the --

5 MEMBER ALBERTI: Okay.

6 MR. TRACZ: -- restaurant.

7 MEMBER ALBERTI: Okay. So where
8 I'm going with this, if they got rid of all
9 the tables, how much open space would there
10 be? Because you can't -- the booths, I
11 assume, are stationary, right?

12 MR. TRACZ: Yes, very built in.
13 Actually, there typically are planters between
14 them. So there is no moving the booths.

15 MEMBER ALBERTI: Okay.

16 MR. TRACZ: And they are -- like I
17 said, on the first floor in particular, they
18 are right down the middle of the space. So
19 they are not --

20 MEMBER ALBERTI: Okay.

21 MR. TRACZ: -- easy to move them
22 around.

1 MEMBER ALBERTI: Okay. Okay. I
2 gotcha. Thank you. That's been helpful.
3 Thank you.

4 MR. TRACZ: Um-hum.

5 CHAIRPERSON MILLER: Mr.
6 Silverstein?

7 MEMBER SILVERSTEIN: Mr. Tracz?

8 MR. TRACZ: Yes, sir.

9 MEMBER SILVERSTEIN: Is any part
10 of the structure bordering on sharing a party
11 wall with another place next door?

12 MR. TRACZ: I believe it shares --
13 currently, it abuts a post office.

14 MEMBER SILVERSTEIN: I'm sorry?

15 MR. TRACZ: It abuts a post
16 office.

17 CHAIRPERSON MILLER: Post office.

18 MEMBER SILVERSTEIN: Oh. It's not
19 an issue then. Okay. So there is no reason
20 that any neighbor would be affected by noise?
21 Are you doing anything in the way of
22 soundproofing or is that simply something that

1 would be a waste in this neighborhood, because
2 of all of the existing noise?

3 Tell me about what you are doing
4 to keep the noise down.

5 MR. TRACZ: You know, I think in
6 particular, you are -- are you talking about
7 on the outside or inside translation of noise?

8 MEMBER SILVERSTEIN: Both.

9 MR. TRACZ: On the --

10 MEMBER SILVERSTEIN: Bothering any
11 neighbor.

12 MR. TRACZ: On the interior, the
13 kitchen is towards the back of the restaurant,
14 so most of the seating is put towards the more
15 populated section, 14th Street. At the
16 outdoor seating, the outdoor seating is sort
17 of cut back a little bit. There is actually
18 a rear entrance to the kitchen that keeps the
19 outdoor seating a little bit back from the
20 alleyway.

21 And as you can see in the
22 rendering, there is some plantings along that

1 end. We have also incorporated some taller
2 planting at that area as sort of to hide it
3 from the visual aspect as well.

4 MEMBER SILVERSTEIN: Thanks.

5 MR. TRACZ: Does that answer your
6 question?

7 MEMBER SILVERSTEIN: Yes.

8 MR. TRACZ: Excellent.

9 CHAIRPERSON MILLER: Other Board
10 questions? Mr. Nophlin?

11 MEMBER NOPHLIN: You mentioned in
12 your plan, maybe I didn't hear it, you are
13 contemplating on putting a patio?

14 MR. TRACZ: A patio?

15 MEMBER NOPHLIN: Yes.

16 MR. TRACZ: There is. That
17 outdoor space along there, that's an outdoor
18 cafe.

19 MEMBER NOPHLIN: And that is
20 facing 14th Street?

21 MR. FONSECA: No.

22 MR. TRACZ: T Street.

1 MEMBER NOPHLIN: T Street. Okay.

2 And the residents would be on the other side
3 where the turning is right there on the --

4 MR. TRACZ: Yes.

5 MEMBER NOPHLIN: -- side?

6 MR. TRACZ: Correct.

7 MEMBER NOPHLIN: Okay. Okay.

8 Okay. Thank you. Thank you.

9 CHAIRPERSON MILLER: Ms. Mobley?

10 MEMBER MOBLEY: Good afternoon,
11 Mr. Tracz.

12 MR. TRACZ: Good afternoon.

13 MEMBER MOBLEY: Would you explain
14 the trash system? I think that may have been
15 taken care of. There is something that has
16 been built, so that would be a concern.

17 MR. TRACZ: Actually, the -- well,
18 I think what we have elected to do is the
19 trash will come out and be removed immediately
20 is what the -- it's stored in -- within the
21 space and then removed.

22 MEMBER MOBLEY: Okay.

1 MR. TRACZ: As needed.

2 MEMBER MOBLEY: I thought I read
3 somewhere where it was supposed to be some
4 sort of special MIB system.

5 MR. TRACZ: Right. You're talking
6 about a digester for the trash?

7 MEMBER MOBLEY: Yes.

8 MR. TRACZ: Yes. We have
9 integrated that on the inside.

10 MEMBER MOBLEY: Okay. So okay, so
11 then the recyclables? You are taking care of
12 all of that?

13 MR. TRACZ: The same way.

14 MEMBER MOBLEY: Okay. And then
15 back to the question about noise. There is
16 not going to be any music on the outside for
17 the sidewalk cafe?

18 MR. TRACZ: I can't answer that.

19 MEMBER MOBLEY: Okay.

20 MR. TRACZ: I don't know.

21 MEMBER MOBLEY: We will get to
22 that question. Thank you. Thank you, Madam

1 Chair.

2 CHAIRPERSON MILLER: Okay. Other
3 questions? I have a few. Mr. Tracz?

4 MR. TRACZ: Yes.

5 CHAIRPERSON MILLER: How far away
6 is the residence that you have been referring
7 to?

8 MR. TRACZ: I would say --

9 CHAIRPERSON MILLER: Down near the
10 outdoor cafe.

11 MR. TRACZ: -- it's across an
12 alley.

13 CHAIRPERSON MILLER: Across an
14 alley. Okay. And are there any trees or
15 fences or anything in front of that residence?

16 MR. TRACZ: In front of?

17 CHAIRPERSON MILLER: Between the
18 residence and your --

19 MR. TRACZ: Yes.

20 CHAIRPERSON MILLER: -- cafe?

21 MR. TRACZ: Yes. Actually, if you
22 refer to the bottom drawing, the series of

1 trees here and then the fencing actually
2 continues straight back at that point. So the
3 seating actually stops at that location.

4 CHAIRPERSON MILLER: So the
5 fencing is on your property?

6 MR. TRACZ: Correct.

7 CHAIRPERSON MILLER: I was
8 wondering if they had fencing or trees on
9 their property?

10 MR. TRACZ: Oh, on their's? I
11 actually don't know.

12 CHAIRPERSON MILLER: Okay. And
13 are they protesting this? Are they protesting
14 the license, that residence? The residence is
15 the one that is most impacted, I assume.

16 MR. FONSECA: I can't speak to
17 that for certain if that residence is one of
18 the individuals or not.

19 MR. McKAY: We have three that are
20 on the opposite side of the street, which are
21 directly facing the restaurant, so if you walk
22 across the street, yes, there are some. But

1 that residence in particular, I'm not sure if
2 they are on the list.

3 CHAIRPERSON MILLER: Okay. So not
4 to your knowledge?

5 MR. McKAY: Not that one.

6 CHAIRPERSON MILLER: Okay. Well,
7 let me ask you since this is your diagram.
8 Mr. McKay has just referred to three other
9 residences that are nearby. Where are they in
10 proximity to the sidewalk cafe?

11 MR. TRACZ: Above Saint-Ex. I'm
12 assuming you are talking about the residents
13 that are above Saint-Ex.

14 CHAIRPERSON MILLER: What's Saint-
15 Ex?

16 MR. TRACZ: It's another
17 restaurant.

18 CHAIRPERSON MILLER: Oh, they are
19 above. Okay.

20 MR. TRACZ: Adjacent.

21 CHAIRPERSON MILLER: Are they
22 closer or further away than the resident that

1 we were talking about?

2 MR. TRACZ: Further away.

3 CHAIRPERSON MILLER: Further away.

4 Okay.

5 MR. FONSECA: We could stipulate.

6 I don't think -- Saint-Ex would be directly
7 across T Street, the same side of 14th Street,
8 but on the south side. So it would be
9 equivalent in depth, although I think this
10 establishment will go farther back, because it
11 goes to the alley and Saint-Ex ends a little
12 closer. So there may be one unit -- two units
13 before it gets to the alley.

14 CHAIRPERSON MILLER: Okay. And
15 I'm sorry, because, you know, my questions are
16 kind of bouncing off this drawing. But if you
17 are going to be addressing this, Mr. McKay,
18 later in the --

19 MR. MCKAY: May I say something?

20 CHAIRPERSON MILLER: I --

21 MR. MCKAY: Permission to either
22 do that or we can move on.

1 CHAIRPERSON MILLER: Okay. So why
2 don't we move on, if you are going to be
3 addressing it, we will come back to it.

4 You made a remark earlier when you
5 were showing the drawings about how you took
6 out a floor and, therefore, you have less
7 seating. So were you saying that this
8 restaurant or this building could have had,
9 under the laws, more seating?

10 MR. TRACZ: Correct.

11 CHAIRPERSON MILLER: Okay. How
12 much? What's the difference? Do you know?

13 MR. TRACZ: I don't.

14 CHAIRPERSON MILLER: Okay.

15 MR. TRACZ: No.

16 MR. FONSECA: Chair? Our
17 application had 299 on the application.

18 CHAIRPERSON MILLER: Okay. And
19 that has dropped to 250?

20 MR. FONSECA: That is correct.

21 CHAIRPERSON MILLER: Okay.

22 MR. FONSECA: Exclusive of the 56

1 on the outside.

2 CHAIRPERSON MILLER: Right.

3 MR. FONSECA: For the interior.

4 CHAIRPERSON MILLER: Right. Okay.

5 So and then I think someone asked you this
6 question before, but I was kind of surprised
7 by your answer. And i just want to make sure
8 that I understood you right or you understood.

9 The question went to the
10 plantings, whether or not they diminished
11 sound or were used, you know, for that reason
12 or partially for that reason. And I think you
13 said no. And I was -- or maybe you said you
14 didn't have any data that showed that worked.

15 MR. TRACZ: Correct. I couldn't
16 speak to exact reductions that specific
17 plantings have to sound reduction.

18 CHAIRPERSON MILLER: Right.

19 MR. TRACZ: I just --

20 CHAIRPERSON MILLER: Okay. So is
21 it that you can't speak specifically to it,
22 but that in general they are used to reduce

1 sound?

2 MR. TRACZ: Yes. In general, the
3 planting is generally used to reduce sound and
4 provide a separation, yes.

5 CHAIRPERSON MILLER: Okay. I
6 don't have any further questions.

7 MEMBER ALBERTI: Can I --

8 CHAIRPERSON MILLER: Yes, Mr.
9 Alberti?

10 MEMBER ALBERTI: A real quick
11 question, because it came up just earlier.
12 Going along the building in the outdoor space,
13 you said that the seating does not go all the
14 way to the back of the building. How far from
15 the alley does it end, would the last seating
16 be?

17 MR. TRACZ: I'm not sure of the
18 specific dimension, but I want to say it's
19 between 10 and 12 feet.

20 MEMBER ALBERTI: Okay. And what
21 would be in that space, the way it's designed?

22 MR. TRACZ: It's actually how you

1 access the rest of -- how you access the
2 kitchen from -- so deliveries and things like
3 that would go in the back.

4 MEMBER ALBERTI: Oh, so that's an
5 egress for the kitchen there?

6 MR. TRACZ: Correct.

7 MEMBER ALBERTI: Okay. Very good.
8 Thank you very much.

9 MR. TRACZ: Um-hum, thank you.

10 CHAIRPERSON MILLER: Other Board
11 questions? Okay. Redirect?

12 REDIRECT EXAMINATION

13 MR. FONSECA: I'm trying to get
14 back to this distance. Is it fair to say that
15 from the end of the sidewalk cafe to the end
16 of the alley touching the abutting property of
17 the alley, it's approximately 20 feet?

18 MR. TRACZ: Correct.

19 MR. FONSECA: Thank you. No
20 further questions.

21 CHAIRPERSON MILLER: Mr. Fonseca,
22 so were you talking about the end of the

1 alley, which would abut the resident's
2 property? So you would cross the alley,
3 correct?

4 MR. FONSECA: That is correct.

5 CHAIRPERSON MILLER: And that
6 would be 20 feet total between the sidewalk --
7 between the cafe and the person's property?

8 MR. FONSECA: That is correct.

9 CHAIRPERSON MILLER: Okay. Mr.
10 McKay, do you have anything else?

11 MR. McKAY: Yes, I just had one to
12 confirm.

13 RECROSS-EXAMINATION

14 MR. McKAY: You mentioned that the
15 deliveries for the kitchen. Is it the plan to
16 have the -- where would the truck be parked to
17 deliver food to the kitchen? What is the plan
18 for that?

19 MR. TRACZ: It's hard to direct a
20 delivery truck.

21 MR. McKAY: I guess they do what
22 they want, but what is the -- is there a plan?

1 Where --

2 CHAIRPERSON MILLER: Excuse me.

3 Can I ask Mr. -- that doesn't sound like an
4 architect question.

5 MR. FONSECA: Yes, and it isn't.

6 CHAIRPERSON MILLER: So --

7 MR. FONSECA: And I would object,
8 because the next witness is going to discuss
9 all of those types of questions.

10 CHAIRPERSON MILLER: Okay.

11 MR. FONSECA: And it's fair game
12 to cross-examination.

13 CHAIRPERSON MILLER: Right. Okay.

14 MR. McKAY: No more questions.

15 Thank you.

16 CHAIRPERSON MILLER: All right.

17 Thank you very much.

18 MR. FONSECA: Thank you, sir.

19 MR. TRACZ: Okay. Thank you.

20 MR. FONSECA: Thank you.

21 (Whereupon, witness excused.)

22 MR. FONSECA: All right. We have

1 got two more. I think what we are going to do
2 is I'm going to call Perry Smith, who can do
3 much more global details as to this particular
4 site. And then our last witness, the vice
5 president of operations, will discuss how
6 Matchbox operates in general. And
7 specifically to Capitol Hill, which is at
8 least more comparable than any of the others
9 to this location.

10 So I'll call Perry Smith now.

11 CHAIRPERSON MILLER: Okay.

12 MR. FONSECA: And hopefully we can
13 wrap this up within 30 minutes between the
14 two.

15 CHAIRPERSON MILLER: Good. Okay.

16 Do you want to raise your right hand?

17 Whereupon,

18 PERRY SMITH

19 was called as a witness by counsel for the
20 applicant, and having been first duly sworn,
21 assumed the witness stand and was examined and
22 testified as follows:

1 CHAIRPERSON MILLER: Okay. Thank
2 you. Have a seat.

3 DIRECT EXAMINATION

4 MR. FONSECA: Would you state your
5 name for the record and your title?

6 MR. SMITH: Yes. I'm Perry Smith,
7 the managing partner of Matchbox Food Group.

8 MR. FONSECA: Thank you. I would
9 like to early on try to get in evidence. What
10 I'm marking now is applicant's Exhibit No. 2.
11 I'm giving a copy to the protestant's table.

12 (Whereupon, the document was
13 marked as Applicant Exhibit 2 for
14 identification.)

15 MR. FONSECA: Would you identify
16 that for the record, please?

17 MR. SMITH: This is the executed
18 voluntary agreement that we came up with with
19 the ANC for this address for Matchbox.

20 MR. FONSECA: Would that be
21 Advisory Neighborhood Commission 1B?

22 MR. SMITH: It is.

1 MR. FONSECA: And that's for 1901
2 14th Street?

3 MR. SMITH: 14th Street, correct.

4 MR. FONSECA: Hang on to that.
5 Could you tell us what are the interior hours
6 that are authorized under this agreement?

7 MR. SMITH: The interior hours
8 that we negotiated were 11:00 a.m. until 2:00
9 a.m., Monday through Thursday. Friday 11:00
10 a.m. until 3:00 a.m. Saturday 10:00 a.m.
11 until 3:00 a.m. Sunday 10:00 a.m. until 2:00
12 a.m. or as designed by ABRA.

13 MR. FONSECA: And is there a set
14 of hours that are for the outdoor or sidewalk
15 cafe service?

16 MR. SMITH: There are. We
17 negotiated 11:00 p.m. close. I'm sorry, it's
18 12:00 seven days a week.

19 MR. FONSECA: And does it permit
20 live entertainment out there?

21 MR. SMITH: No.

22 MR. FONSECA: Music, stereo

1 speakers?

2 MR. SMITH: No.

3 MR. FONSECA: Okay. Without
4 objection, I would ask this be moved in as
5 applicant's Exhibit No. 2.

6 CHAIRPERSON MILLER: Any
7 objection? Okay. Admitted.

8 (Whereupon, the document marked as
9 Applicant Exhibit 2 was received
10 in evidence.)

11 MR. FONSECA: If we could, and I
12 think it may be helpful, walk through what is
13 going to be going on here in this development.
14 I'm getting -- I asked the Board Members, we
15 may not enter this into evidence. There are
16 four here if they could be shared, it may help
17 that you have what he may be discussing.

18 And it shows miraculously how they
19 put together these Matchboxes and their other
20 establishments. And if you would, Mr. Smith,
21 identify what you are looking at and how you
22 are going to walk through this?

1 MR. SMITH: Sure. This is a
2 history that does not include Matchbox 14th
3 Street or the proposed Matchbox 14th Street
4 that begins -- there is a time line on the
5 second sheet here in 2003. And the time line
6 actually ends with our other concept that has
7 been mentioned before called DC-3 in 2010.

8 If I can walk through this and
9 I'll be somewhat brief on this. We started in
10 2002 at our original location in Chinatown.
11 It was a 75 seat restaurant. With that
12 location, I'll skip a little bit. We did
13 expand that to about 250 seats in 2006.

14 The pictures you see from the
15 beginning show that we are very, very
16 involved. We, all four partners, are noted in
17 these pictures in the very, very beginning, a
18 few pages here. We built the restaurant from
19 scratch under budget and, essentially, were in
20 charge of every single detail of the building.

21 As we moved through it, it does
22 detail our other locations and it goes through

1 the time line. There is other pictures. I
2 wish I had page numbers. I can't show you.
3 But it does show the expansion of Chinatown.

4 It shows food items. You can get
5 some background of the food items. And then
6 if we get to -- there is a page specifically
7 for Matchbox Capitol Hill almost a third of
8 the way in to it. Again, that was our second
9 D.C. location. We started pretty much from
10 nothing there as well. And you can see it did
11 turn into a very nice space.

12 And there is, specifically without
13 page numbers, if you notice the Capitol Hill
14 before and after picture of the bar area.

15 It's a little bit out of sequence. We had a
16 licensing deal that we did do in Palm Springs,
17 California. Actually, we finished that
18 restaurant in 2005 and it is still open and
19 operated by -- recently operated by partners
20 of ours out there and we are taking over
21 active operations.

22 But just on the design reference

1 point, pretty much identical to what we do
2 here in D.C.

3 Again, turning pages, the newest
4 location of Matchbox 2010 was Matchbox
5 Rockville. This is a 450 seat restaurant with
6 indoor/outdoor patios located on Rockville
7 Pike. The interior seating is around 350 and
8 then the outdoor adds up to that 450. A very
9 much larger establishment than what we are
10 talking about at Matchbox 14th Street.

11 Some of the before and after
12 pictures. And then if we do move forward
13 here, just so again you have the visual
14 reference, Commissioner Metzger testified --
15 he mentioned Ted's Bulletin. I guess this
16 went on the record, recently visited by
17 President Obama and there are some shakes and
18 things that detail Ted's Bulletin.

19 And then we end with our fun
20 concept, which we call DC-3, which is about a
21 20-seat hot dog stand on Capitol Hill as well.
22 And that would simply take us to the end of

1 the book.

2 The last page are the four
3 partners and somewhat wacky photos about how
4 we do things.

5 MR. FONSECA: Mr. Smith, I noted
6 in the photos of the Matchboxes there is a lot
7 of open space. And particularly with
8 Rockville, which is much larger. But that one
9 shows a space -- would that be comparable to
10 the way the second floor is open to the first
11 floor and you look right down to the seating?

12 MR. SMITH: Absolutely. Although
13 they will not be identical. If you -- for the
14 Board Members, if you do look at the page that
15 says Matchbox Rockville, you -- as you open
16 that up, the page to the left actually details
17 that mezzanine level that our architect had
18 mentioned.

19 And that mezzanine level is what
20 we are looking for again in this space. We
21 could have extended it out over the dining
22 area, but what we decided, you know, again is

1 that aesthetically this is what we look for,
2 so that people can have an opportunity to sit
3 a little bit further back, less noise and then
4 they can look down over the rest of the dining
5 room. So it's very similar.

6 MR. FONSECA: All right. Thank
7 you. Let's go through the development here
8 and issues that would deal with trash,
9 deliveries, distances, impacts and whatnot
10 inside and out. So let's just start with the
11 outside, because we have dealt with that a
12 bit.

13 This outside seating. To your
14 knowledge, what's the distance from the
15 seating to the neighboring property line on
16 the other side of the alley?

17 MR. SMITH: I measured the alley
18 between our wall and the back wall of the
19 building that has been referenced, that
20 residential building. To the best of my
21 knowledge, I believe, the measurement was 11
22 feet between those two walls.

1 Now, when you add the -- I'll
2 reference that, if you can hear me, the taller
3 bushes in the back which is where the trash
4 would be, the trash compactor would actually
5 be, if you push that all the way back to that
6 initial seating area right there, that's
7 approximately -- it has to be about 17 to 20
8 feet.

9 MR. FONSECA: Actually, the
10 seating view is where my front is here and
11 this is the kitchen.

12 MR. SMITH: Oh, I'm sorry, yes, I
13 can see that, yes. Oh, that's even further.

14 MR. FONSECA: So the seating is
15 here?

16 MR. SMITH: Yes, that's right.
17 Yes, forgive me.

18 MR. FONSECA: The seating ends
19 there. And then would this be, approximately,
20 where the kitchen goes?

21 MR. SMITH: In all honesty, it has
22 changed a little bit. I believe that that is

1 an early rendering. The kitchen would be
2 somewhere right around the vicinity of those
3 four trees there or that back stair, yes.

4 MR. FONSECA: Okay.

5 MR. SMITH: Yes.

6 MR. FONSECA: So recapping --

7 MR. SMITH: May I expand on that
8 answer?

9 MR. FONSECA: Okay.

10 MR. SMITH: The reasoning behind
11 that, as one of our initial needs was with
12 public space, it was actually one of our first
13 meetings, and we had presented our initial
14 plan. And the changes that they talked about
15 at Public Space were specifically that.

16 Reduce the amount of seating,
17 create more space between dining and the exit
18 there where garbage would be taken out, wall
19 that off. They were concerned about smells,
20 obviously, and then, you know, the potential
21 for rodents.

22 In addition, their comments on the

1 design were specific. Shall I get up on this
2 one?

3 MR. FONSECA: Yes.

4 MR. SMITH: If you can hear me,
5 they specifically told us that they wanted
6 more green space up front here. So this area
7 right here actually, in their notes, would
8 actually consider more green space right here.

9 MEMBER ALBERTI: Oh.

10 CHAIRPERSON MILLER: Okay.

11 MR. SMITH: Without these railings
12 and this railing. So those were specific
13 design changes that they asked for and that we
14 acquiesced to.

15 MR. FONSECA: Did you acquiesce on
16 anything as to Historic Preservation?

17 MR. SMITH: I can't answer that.
18 I don't know that.

19 MR. FONSECA: Okay. I was just
20 wondering whether any of the build-out space,
21 so that you mask anything, where you're
22 putting the refuse, anything like that.

1 MR. SMITH: No, no.

2 MR. FONSECA: Can you tell us
3 where deliveries are going to be made? To and
4 from.

5 MR. SMITH: I covered that in one
6 of the earlier ABC meetings and they -- I'm
7 sorry, the ANC meetings and they specifically
8 asked that deliveries would be taken -- all
9 trucks would be stopped on 14th Street and not
10 come down T and we agreed to that.

11 MR. FONSECA: And how are you
12 handling disposal of trash?

13 MR. SMITH: Originally, we had
14 talked about -- we are still in the final
15 permitting. I can't qualify this answer.
16 Originally, we had talked about the idea about
17 putting dumpsters in the back. We have had
18 significant interactions with the neighbors
19 and it became clear to us, in fact, one of the
20 protestants and I had a number of
21 conversations about this directly, Lisa Kelly,
22 and it was clear, they didn't want garbage in

1 the back alley.

2 So we pushed as hard as we can --
3 could and we have permission for a garbage
4 compactor there again in that back alcove
5 space there. We had a significant design
6 change for the front of the building where we
7 are putting a, in essence, trap door toward
8 the front of the building which will go down
9 to the basement and so all recyclables will be
10 coming out of the basement by way of a chain
11 lift, which will actually end up being part of
12 the aesthetic.

13 MR. FONSECA: And the renovations
14 both exterior and interior of this building,
15 but particularly the exterior, in your
16 opinion, is this going to negatively impact
17 the real property values in the neighborhood?

18 MR. SMITH: No. I don't think it
19 would.

20 MR. McKAY: Objection. I don't
21 think there is expertise in this without data.

22 MR. FONSECA: Continue.

1 MR. MCKAY: Conjecture objection.

2 MR. FONSECA: Is the \$4 million
3 going to add to that value?

4 MR. SMITH: I would say so, yes.

5 MR. FONSECA: What efforts have
6 you either committed to or are you willing to
7 advise your patronage of methods of
8 transportation to and from the location?

9 MR. SMITH: We have had
10 significant conversations with a number of
11 groups in the neighborhood. To directly
12 answer that question, and I see him sitting
13 here, Commissioner Estrada, he and I had
14 spoken about that before at U Street
15 Neighborhood Association meetings specifically
16 where we appeared also with our director of
17 operations, excuse me, Vice President of
18 Operations, Fred Herman.

19 And let me just take a look here.
20 The -- on January 12th we stood up before the
21 U Street Neighborhood Association and I was
22 asked the same question. The answer to that

1 question, what was your parking plan, my
2 immediate response is that parking is bad in
3 this neighborhood and we know that.

4 Initially, what we had -- we had
5 talked to our landlord, who is JBG. I reached
6 out to them before that meeting and asked
7 about -- they had a particular parking lot
8 that they had been into leasing and I asked
9 whether or not we might be able to transition
10 and lease that parking lot. It was only --
11 it's at the corner of 14th and Swann and
12 wouldn't really have made that much of a
13 difference, but I wanted to look at it. I
14 think it helps with maybe 10 to 12 spaces, I
15 think, total.

16 You know, unfortunately, the
17 number on that was very, very high for a
18 monthly lease and they wouldn't -- and it just
19 wouldn't make any sense for us to do that.

20 The other thing that we talked
21 about at that particular meeting is what we
22 would do is we would integrate as best we

1 could on our social media websites, you know,
2 various sites that identify parking in the
3 neighborhood.

4 We have a huge following on social
5 media, as far as getting information out. And
6 my intent at the meeting was to -- it concerns
7 us as well and what we would like to do is
8 send the message about parking before people
9 even come down. They find us on social media
10 websites, a number of thousands of people a
11 month for our current locations and so they
12 are looking.

13 And we also have been tracking
14 that through analytics and they look for where
15 to park. You know, how to get to us.

16 So what we agreed to there is that
17 there are a couple of portals. One is called
18 parkapu.com, which directs people to local
19 parking in the neighborhood. And we are going
20 to put a page on -- for these links.

21 And then we also -- I reached out
22 to -- there is another organization called

1 goDCgo.com and we partner with them. We are
2 going to cross link with them as well and they
3 also direct people to public parking in the
4 area. Reed Center is one of those and then
5 there is the Mew Street parking lot on 14th
6 Street right a bit north of us.

7 And then we also agreed to put
8 signage in our spaces as well for parking.
9 And, you know, things like point of sale or
10 tail sense, things like that for customers to
11 see.

12 MR. FONSECA: What about --

13 MR. SMITH: And Metro.

14 MR. FONSECA: I was going to say
15 efforts as to public transportation.

16 MR. SMITH: Yes. Again, what we
17 hear from Capitol Hill and I would, you know,
18 reaffirm what Commissioner Metzger had said,
19 people get off the Metro, they come down 8th
20 Street. We thought about that and that was
21 part of our early decision to look into this
22 neighborhood about the proximity to the Metro.

1 MR. FONSECA: Can you tell us what
2 are the food percentages and alcohol
3 percentages for your respective existing
4 Matchbook sites?

5 MR. SMITH: Matchbox.

6 MR. FONSECA: Box, sorry.
7 Matchbox, right.

8 MR. SMITH: I -- yes. The answer
9 is I did present this to the protestants an we
10 pulled these numbers and they were very
11 consistent. According to Matchbox Capitol
12 Hill, food sales for 2011 the percentage was
13 73.8 percent food, beverage which would also
14 include any beverage we call non-alcoholic
15 beverage, but total beverage was 26.2 percent.

16 And then for Matchbox Chinatown,
17 which again was mentioned before, food sales
18 were 74.1 percent and then beverage sales were
19 25.9 percent.

20 MR. FONSECA: And what would your
21 -- what's your projection for this Matchbox
22 percentages?

1 MR. SMITH: I would assume it
2 wouldn't deviate from that by much more than
3 a point or two.

4 MR. FONSECA: Okay. And the
5 offering of entertainment has been brought up
6 by other witnesses. What is the extent of
7 that offering at this site?

8 MR. SMITH: Again, to mimic the
9 operations at Capitol Hill, we have a jazz
10 band, a provision for a jazz band that would
11 play just on the weekends.

12 MR. FONSECA: During what hours?

13 MR. SMITH: Oh --

14 MR. FONSECA: Is it for brunch
15 only?

16 MR. SMITH: I'm sorry. I'm
17 stumbling because it's basically when a band
18 shows up. I would say roughly about 11:00,
19 from about 11:00 to 3:00, depending on what
20 gig they had the night before.

21 MR. FONSECA: All right. They
22 don't arrive the night before though, right?

1 MR. SMITH: No, that's correct.

2 MR. FONSECA: Okay. And it's
3 usually done by 3:00?

4 MR. SMITH: By 3:00.

5 MR. FONSECA: 3:00 in the
6 afternoon?

7 MR. SMITH: Yes.

8 MR. FONSECA: Okay. Is that music
9 offered on the sidewalk cafe?

10 MR. SMITH: No, no.

11 MR. FONSECA: Again, to reiterate,
12 is there any music offered on the sidewalk
13 cafe?

14 MR. SMITH: No.

15 MR. FONSECA: Did you agree to
16 that in the voluntary agreement?

17 MR. SMITH: No. That was a
18 provision of the voluntary agreement, no live
19 or amplified music.

20 MR. FONSECA: Okay. I don't want
21 to overlap what we do with the next witness,
22 but is there any other larger picture process

1 type area that you need -- feel you need to
2 touch on?

3 MR. SMITH: There is. We -- I'll
4 stop looking at my notes. We began working on
5 this project and looking into the neighborhood
6 way back in 2010/2011. The space became
7 available. We did our homework on it and
8 looked at -- I don't have the exact language
9 or understanding, exact language, but the
10 Overlay area and real property and realized
11 that we would be able to get a liquor license,
12 you know, for this area, based on the fact
13 that it abuts a post office.

14 I actually began actively coming
15 to and being more involved in the ANC meetings
16 back in June, that was my first meeting. And
17 the word had already gotten out about Matchbox
18 coming in this area. I made a mistake of
19 wearing a Matchbox shirt to one of these -- to
20 the ANC meeting then and it was blogged about
21 immediately. So people began to have
22 information that we were coming to this area.

1 From there, we went through our
2 process, HPRB, attending regular ANC meetings,
3 alcohol review by NC, architectural review by
4 NC and then we came to an agreement of a
5 voluntary -- or we came to the voluntary
6 agreement and it mimicked, for the most part,
7 our Capitol Hill location.

8 We were able to sign-off on that.
9 And then a number of days before the actual
10 ABRA hearing, the protest came up. We didn't
11 stop listening and trying to work as hard as
12 we could, you know, to deal with the concerns
13 of the neighborhood. I can say that.

14 We mentioned things like the
15 parking. Every concern that has been brought
16 up to us, we have dealt with and I can say
17 swiftly I believe efficiently from trimming
18 our tree out front to the type of mulch that
19 we are using around the roots of the tree and
20 we would expect to do that, if we are granted
21 a license.

22 From the bigger picture

1 standpoint, this is probably going to be our
2 last location in Washington, D.C. We -- with
3 three locations, you know, this would be our
4 third location. The thing that we are moving
5 into is the impact of being able to become a
6 strategic partner in the community.

7 And we have talked about that over
8 and over again. I've talked about with the
9 various groups. We give thousands of dollars
10 in gift certificates to charities every single
11 year. We attend charity events and provide
12 free food to charity events, gift cards,
13 things like that.

14 Almost \$20,000 raised in the past
15 two and a half years for the UNICEF Tap
16 Project, clean drinking water for children in
17 third world countries.

18 MR. FONSECA: Are you done?

19 MR. SMITH: Yes. Forgive me for
20 that.

21 CHAIRPERSON MILLER: It can be an
22 emotional experience going through this

1 process.

2 MR. SMITH: No, it really has
3 nothing to do with that.

4 CHAIRPERSON MILLER: Oh, okay.

5 MR. SMITH: You know, for us, you
6 know, I could get up here and I could just
7 talk about, you know, give us a license. It's
8 as simple as that. It's not.

9 MR. FONSECA: We know you poured
10 your heart out into this process.

11 MR. SMITH: Well, you know, we
12 have been doing this a long time. And I think
13 really, you know, what it comes down to is
14 it's about impact and connections. And, you
15 know, I -- we don't -- you know, I think for
16 us we don't just put restaurants in any more.
17 You know, we wouldn't do it, you know, coming
18 from what we came from, if we didn't have an
19 impact.

20 MR. FONSECA: Thank you. No
21 further questions.

22 CHAIRPERSON MILLER: Why don't we

1 take a 10 minute break.

2 MR. FONSECA: Thank you.

3 CHAIRPERSON MILLER: And then
4 we'll come back for further testimony.

5 (Whereupon, at 4:40 p.m. a recess
6 until 4:53 p.m.)

7 CHAIRPERSON MILLER: Okay. We're
8 back on the record. And I think, at this
9 point, it was the protestant's turn to ask any
10 questions.

11 MR. FONSECA: If we could since
12 we --

13 CHAIRPERSON MILLER: Oh, I'm
14 sorry. Were you not finished?

15 MR. FONSECA: We -- well, I think
16 we did terminate to give Mr. Smith an
17 opportunity -- obviously, 10 minutes, but if
18 I could just let him close?

19 CHAIRPERSON MILLER: Okay.

20 MR. SMITH: Yes. Just -- I'm
21 sorry, go ahead.

22 MR. FONSECA: I'm not sure if Mr.

1 Jones had --

2 MEMBER JONES: Just if I may,
3 Madam Chair, a point of information? The
4 licensee has, approximately, 18 minutes total
5 left and the protestant has, approximately, 72
6 minutes left.

7 MR. FONSECA: I think we will be
8 able to keep it in that time. Go ahead, since
9 you brought that up.

10 CHAIRPERSON MILLER: It doesn't
11 include closing though.

12 MR. FONSECA: That includes your
13 closing, so be very quick.

14 CHAIRPERSON MILLER: It doesn't
15 include closing.

16 MR. FONSECA: Oh, it doesn't
17 include closing.

18 MEMBER JONES: No, right.

19 MR. FONSECA: I think it still
20 will be quick.

21 CHAIRPERSON MILLER: Okay.

22 MR. FONSECA: Mr. Smith?

1 CHAIRPERSON MILLER: Thank you,
2 Mr. Fonseca.

3 MR. FONSECA: Mr. Smith, final
4 question. I didn't give you the opportunity
5 to make remarks as to what positive
6 contributions do you believe that this
7 Matchbox will provide for the neighborhood?

8 MR. SMITH: Sure. You know, part
9 of the reason for my pause, we had a great
10 meeting with Councilman Graham a number of
11 weeks ago and we talked about the opportunity
12 of creating jobs in the neighborhood. And,
13 you know, potentially upwards of 175 to 200
14 jobs for people in this neighborhood who need
15 jobs. That's it.

16 MR. FONSECA: Okay.

17 MR. SMITH: Very possible.

18 MR. FONSECA: Okay.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. Mr. McKay?

21 MR. MCKAY: Yes.

22 CROSS-EXAMINATION

1 MR. McKAY: Thank you, Perry. My,
2 again, focus is pretty narrow. We're excited
3 to have Matchbox. Don't miss that point.
4 It's really a little subtle, the -- on the
5 hours and the ABRA process for alcohol you
6 said you were involved with the ANC since June
7 time frame. Can you walk through that a
8 little bit?

9 You know, what I would like to
10 hear about is who you talked to in the
11 neighborhood that is adjacent to the building
12 and how you are sure that you captured the,
13 you know, issues that were involved with the
14 direct neighbors in talking about T, Wallach,
15 S, 13th Street, you know, 14, right around
16 there, the immediate area.

17 MR. SMITH: Sure. I can answer
18 that. From the time line standpoint, when I
19 said we first became involved with the ANC,
20 that was, you know, informally attending the
21 ANC meeting. I believe the first one was June
22 2, 2011.

1 An additional ANC meeting in
2 October, information began to be posted of our
3 activities with the ANC based on, I believe,
4 the Design Committee review of our plans. The
5 Design Committee meeting was on November 3rd.
6 Again, publicly posted. It is Alexandra
7 Lewin-Zwerdling is our Commissioner and she
8 began putting information out about us.

9 The Design Committee or a design
10 presentation for the full ANC was on November
11 17th where we also fielded questions from the
12 community. That was followed by the Alcohol
13 ANC Committee presentation, December 1st.

14 And from there, we were directed
15 by -- I had talked to Commissioner Lewin-
16 Zwerdling about sending out postcards and we
17 did send out postcards to -- I can't give you
18 the exact number, but it was hundreds of
19 postcards that were sent out to postal
20 addresses with -- on the 14th and T area.

21 Again, forgive me, my boundaries
22 are -- I'm not quite sure of the boundaries.

1 From there, we were granted the --
2 we were actually granted the ANC voluntary
3 agreement and I had showed -- there was an ANC
4 meeting in December where we first met. And
5 we also talked on the record at the ANC
6 meeting about the -- we would set up an email
7 address, Matchbox or
8 mbl4info#@matchbox369.com. We didn't receive
9 much traffic on that, but we had set that up
10 as well and put that on the record at a number
11 of these meetings and also talked about that
12 at the U Street Neighborhood Association
13 meeting.

14 MR. McKAY: Thank you. So the
15 dates that popped out were, I think, November
16 the 17th, December 1st and around to mid-
17 December. In terms of the review, you know,
18 I'll say the presentation of the license, the
19 voting and the approval and was it well-
20 attended? Were a lot of folks there on
21 November 17th, December 1st, were there a lot
22 of people at those meetings?

1 MR. SMITH: The design
2 presentation meeting, I don't -- I can't tell
3 you exactly how many people were there. I
4 mean, it was not more than a handful. The
5 full meetings they were -- the room was always
6 pretty full.

7 MR. McKAY: Right.

8 MR. SMITH: And the alcohol
9 meeting that we had, I don't recall how many
10 other people were there, three or four, a
11 handful.

12 MR. McKAY: Okay. I guess the --
13 in the meeting, the full ANC meeting, there
14 was a total -- there were some questions
15 raised about parking, which I believe we have
16 discussed already a bit. And also about the
17 hours. And Can you explain how that went,
18 that meeting? There are some neighbors and
19 I'm sorry, there was another neighbor asking
20 about security issues as well on the full ANC.
21 And I guess folks here are familiar with that
22 whole process.

1 CHAIRPERSON MILLER: We are
2 familiar with the process.

3 MR. McKAY: I hope so.

4 CHAIRPERSON MILLER: Yes. We have
5 some ANC Commissioners on our Board. So --

6 MR. McKAY: I'm learning, so --

7 CHAIRPERSON MILLER: Okay.

8 MR. McKAY: -- it will probably --

9 CHAIRPERSON MILLER: We are
10 wondering where you are going with this?

11 (Whereupon, at 5:00 p.m. the
12 Protest Hearing continued into the evening
13 session.)

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E-V-E-N-I-N-G S-E-S-S-I-O-N

(5:00 p.m.)

MEMBER SILVERSTEIN: Yes, what does this have to do with peace, order and quiet, residential parking?

MR. McKAY: Okay. Well, I'm trying to establish that sort of the applicant is claiming that they have the full support of the ANC. What I'm trying to establish here is that the ANC did not receive full commentary, full input and represent the neighborhood because of when the meetings were held and the subsequent follow-up. So that's what it has to do with.

That -- the VA, you know, has been negotiated here and it was submitted to your Committee. It was negotiated with a handful of people.

CHAIRPERSON MILLER: Can I interrupt you for a second? You are going to have an opportunity to --

MR. McKAY: Yes, I'll have an

1 opportunity --

2 CHAIRPERSON MILLER: -- present
3 your case.

4 MR. McKAY: Well, can I get to the
5 question, at least?

6 CHAIRPERSON MILLER: Yes, I'm not
7 sure that this is the best witness for those
8 questions, that's my point. So maybe you can
9 zero in better.

10 MR. McKAY: Well, okay.

11 CHAIRPERSON MILLER: I think so.

12 MR. McKAY: I just wanted to
13 establish that there were very few folks
14 participating in those meetings, that's all
15 I'm trying to establish. All right.

16 CHAIRPERSON MILLER: Okay.

17 MR. McKAY: A couple of -- yes, i
18 guess a couple more here. The -- you know,
19 you mentioned also that the trucks on 14th
20 Street, that's not actually in the VA, but you
21 said that was agreed to with Alex and the
22 folks there. Is that something you could add

1 to that or she could add if that's met?

2 MR. SMITH: I have no objection to
3 that. Specifically, I believe that was
4 brought up. That was brought to the alcohol
5 approval process at that meeting, yes.

6 MR. McKAY: At that meeting.
7 Okay. Yes, it's just something for everyone.

8 MR. SMITH: Sure.

9 MR. McKAY: So that's fine. Then
10 a couple more things. Prior to this meeting,
11 I think it was a good start to a possible
12 solution and not end up here. We had some
13 discussions about, you know, how to address
14 concerns of the protestants. And we met
15 several times. And you explained your
16 operational model for the restaurant, which is
17 comforting I'll say.

18 But can you confirm, this is what
19 I heard in our conversation, that the plans
20 for the restaurant on 14th Street are to
21 during the week have last seatings at about
22 10:30, two hours for dinner and with the

1 expectation that folks would be out the door
2 in a couple of hours, so 11:30, 12:30.

3 On weekends, the last seating is
4 11:30 and --

5 MR. FONSECA: Is there a question?
6 Objection. Is there a question here?

7 MR. McKAY: I'm confirming what we
8 talked about.

9 MR. FONSECA: Well, I object. I
10 mean, negotiations aren't part of the protest.
11 I mean, ask a question as to when he is
12 willing to close, but I don't know where you
13 are going, if you are trying to get into what
14 was discussed in negotiations, which normally
15 the Board --

16 CHAIRPERSON MILLER: That is not
17 admissible. So if you are discussing
18 negotiations, that isn't admissible.

19 MR. McKAY: Okay.

20 CHAIRPERSON MILLER: If you want
21 to ask a question about --

22 MR. McKAY: Okay.

1 CHAIRPERSON MILLER: -- specific
2 hours --

3 MR. McKAY: I'll ask the -- the
4 question is can you, please, explain
5 operational hours for last seatings and
6 expectations to close down the restaurant in
7 terms of number of patrons at certain hours?

8 MR. SMITH: Sure. Briefly, I
9 would track back to comments that were made
10 about how the restaurant is closed down. The
11 restaurant is closed down progressively. You
12 don't spill 200 people out onto the street
13 like a college bar at the end of the night.

14 The restaurant is closed down
15 section-by-section. People are let go
16 section-by-section. And in general, there was
17 kind of a combination of the operating
18 practices, which are almost identical between
19 Capitol Hill and Chinatown Matchbox, where we
20 would seat patrons in the restaurant up until
21 a certain point.

22 Generally speaking, 11:00-ish to

1 midnight during the week, a bit later on
2 weekends. As people began to leave, you know,
3 we would reseal, if necessary, but what we
4 really are talking about is we're talking
5 about a flow and a gradual decrease so that at
6 any given time, mimicking Commissioner
7 Metzger's comments, 10 to 15 people at the
8 very end of the night.

9 I hope I answered your question.
10 It is progressive. It is gradual. We release
11 employees progressively. We clear the
12 restaurant progressively. And then in terms
13 of, you know, the operating hours, we just
14 operate within the limit of the law.

15 MR. MCKAY: Okay. So there is --
16 well, what is the typical time for the
17 restaurant to do an operation to be shut down,
18 last person out the door?

19 MR. SMITH: During the week --
20 Capitol Hill a bit different from Chinatown.
21 During the week, we might wind it down 12:30-
22 ish, 1:00 as far as people leaving the

1 restaurant. And then push that a bit further
2 for the weekends. But it's hard to say.

3 MR. McKAY: Um-hum. So you --

4 MR. SMITH: That would vary also
5 with special events and things like that,
6 especially downtown and Chinatown, you know,
7 for New Year's Eve or something to that
8 effect.

9 MR. McKAY: And so you feel that
10 you will fully use the 2:00 a.m./3:00 a.m.
11 hours that you have in ABRA and there will be
12 people leaving at 2:00 in the morning on
13 weekdays and 3:00 in the morning on weekends
14 from the restaurant? Is that a fair statement
15 or that's not a fair statement?

16 MR. SMITH: Is that a statement or
17 a question.

18 MR. McKAY: Will there be more
19 than half the time people leaving the
20 restaurant at 2:00 in the morning or 3:00 in
21 the morning half the time from the restaurant?

22 CHAIRPERSON MILLER: Don't drop

1 your voice, okay?

2 MR. McKAY: Okay.

3 CHAIRPERSON MILLER: Thanks.

4 MR. SMITH: At our current
5 restaurants, potentially.

6 MR. McKAY: Not the current ones.

7 MR. SMITH: You asked about the
8 current restaurants.

9 MR. McKAY: Right.

10 MR. SMITH: Potentially.

11 MR. McKAY: Okay. Okay. So one
12 more I think is -- we did the kitchen one
13 already. You mentioned some of the parking
14 solutions that you had. Did most of those
15 direct people to solutions that are pay for
16 parking or those are directing people to
17 probably parking on the street?

18 Well, the one you mentioned is
19 goDC.

20 MR. SMITH: Yes.

21 MR. McKAY: And park, I'm sorry, I
22 didn't get --

1 MR. SMITH: Parkapu.

2 MR. McKAY: Parkapu. Are they
3 directing folks only to pay lots or are they
4 directing people to, you know, where you can
5 find a spot on the street or where you might
6 not find a spot on the street?

7 MR. SMITH: To the best of my
8 recollection, parkapu is really about pay
9 lots. And then the other goDCgo.com actually
10 incorporates parking available, paid parking
11 as well as other options for transport.

12 MR. McKAY: And what -- do you
13 have an idea what percentage of your clients
14 in your current stores drive and park?

15 MR. SMITH: The only -- I can't
16 tell you for certain. I have heard a figure
17 of less than 50 percent for Capitol Hill, at
18 one point. But I can't confirm that. I'm
19 sorry.

20 MR. McKAY: That's fine. Okay.
21 The last one here is the role -- what role do
22 you have at your property that's encouraging

1 good social behavior when folks leave? I
2 think that's one of the biggest issues of the
3 hours is what people do when they go out at
4 night, even at midnight that can be an issue.

5 CHAIRPERSON MILLER: Don't -- I
6 don't want you to just drop your voice too
7 much, because of the court reporter.

8 MR. McKAY: Okay.

9 CHAIRPERSON MILLER: So what is
10 your question? What is your question?

11 MR. McKAY: The question is what
12 role do your properties have in encouraging
13 good behavior when patrons leave?

14 CHAIRPERSON MILLER: Okay.

15 MR. McKAY: What activities do you
16 do? What do you find successful or do you do
17 anything?

18 MR. SMITH: It starts with our
19 operations modeling -- the operations model
20 focuses on very strong manager interaction of
21 people coming and going into the restaurant.
22 If we feel like people are rambunctious coming

1 in, in some cases they won't be seated. If we
2 feel like they are rambunctious coming out,
3 hopefully we will have caught that before
4 hand. The managers being on the floor
5 communicating with servers about people being
6 over-served and that is a strong policy, you
7 know, for us that that doesn't happen.

8 Cutting people off if we have to.
9 We also had some discussions with members of
10 the community as well about that partnership
11 issue that I talked about about putting
12 signage in the restaurant. We are willing to
13 do that as well, talking about your exiting in
14 the neighborhood.

15 It's not an urban, you know,
16 environment so to speak, but a neighborhood,
17 so let's be cognizant of that. And again, you
18 know, it's about communication for that. And,
19 you know, also, you know, posting things in
20 the restrooms as well reminding people that
21 they are in a neighborhood.

22 MR. McKAY: Okay. No further

1 questions.

2 CHAIRPERSON MILLER: Okay. Board
3 questions? All right. I have a few. Oops,
4 go. You can go, Mr. Nophlin.

5 MEMBER NOPHLIN: Sir, you
6 mentioned in your testimony that you received
7 a lot of assistance from the ANCs based on
8 your meetings with them occasionally. What
9 was the one or two things that were
10 outstanding in terms of their issues? What
11 problems they had.

12 MR. SMITH: The problems they had
13 with Matchbox or problems they had in the
14 neighborhood that were identified?

15 MEMBER NOPHLIN: Well, let's do
16 them both.

17 MR. SMITH: They -- generally, it
18 was a cross -- it was in reference to what I
19 heard was really in reference to what was
20 happening at Saint-Ex across the street. And
21 some of the issues that came up were about
22 people occupying the patio space at Saint-Ex

1 even after it had closed.

2 And in response to those issues,
3 again, that became part of our design, about
4 enclosing the patio, so people couldn't get to
5 it, so that was an issue that we heard over
6 and over again. And then setting -- in
7 response to that, again setting the patio back
8 from the sidewalk as opposed to Saint-Ex. It
9 came up.

10 Late night hours again referenced
11 Saint-Ex with people spilling out into the
12 street at 3:00 in the morning after the had
13 shut down, but they were -- it's a tavern
14 license, so we heard a lot of that.

15 We heard over and over again about
16 parking. We had originally proposed for
17 parking to talk about, you know, getting valet
18 service, but we were told during the actual
19 ABC portion of our ANC license proceedings
20 that they said we shouldn't get valet parking,
21 because the valets were actually the ones who
22 were putting the cars in the streets.

1 MEMBER NOPHLIN: Madam Chair?

2 CHAIRPERSON MILLER: Okay. There
3 is a concern up here and I just want to air
4 it. I think this might be a different
5 situation, but before I had said that
6 negotiation was not admissible, so I think
7 that there might be something different. You
8 all can address it, too, whether there are
9 discussions with the ANC as opposed to, you
10 know, negotiations.

11 So maybe there isn't. I don't
12 know. It seems to me it's a public body and
13 there may be somewhat of a distinction here.
14 Do you want to address that?

15 MR. FONSECA: From my perspective,
16 that's why I just let it go on. And, frankly,
17 I was going to follow-up when I did some
18 cross-examination or redirect is that with the
19 ANC, there is always an ongoing public
20 dialogue.

21 CHAIRPERSON MILLER: Right.

22 MR. FONSECA: That's through

1 public notice. So that would be my position.
2 I don't think -- the fact that it ultimately
3 led into doing certain things that would
4 conform the design concepts, I just think
5 filters into the nature of a public dialogue.

6 CHAIRPERSON MILLER: Mr.
7 Silverstein, do you want to say something?

8 MEMBER SILVERSTEIN: Madam Chair,
9 the question would be what things did you
10 change because you spoke with or worked with
11 the ANC? The final product we can hear that.
12 We cannot statutorily hear about the
13 negotiations themselves. But the finished
14 product, what things did you change because of
15 dealings with the ANC and the community? You
16 can answer that and we would be happy to hear
17 that.

18 CHAIRPERSON MILLER: But I would
19 also say though a lot of what the ANC does is
20 public, so if it were public in some way, if
21 there was a public discussion, then I would
22 think it would be admissible, particularly if

1 no one is objecting to it.

2 So with those guidelines, you can
3 answer the question if you understand.

4 MEMBER JONES: So hold on. Madam
5 Chair, how are we defining what negotiations
6 are then?

7 CHAIRPERSON MILLER: I am saying
8 if it's -- the ANC is a public body. If it
9 was discussed or negotiated in public, then
10 there is no reason and an attorney is not
11 objecting to it or a party, then we can accept
12 it. If there were some kind of public
13 discussions that there is a concern where
14 private negotiations, then you might not want
15 to discuss them that way.

16 MEMBER JONES: So I think maybe we
17 -- I would be concerned about that and I would
18 like to get -- consult with legal on what the
19 definition of the negotiations are.

20 CHAIRPERSON MILLER: Oh, if
21 anybody from our legal staff wants to offer an
22 opinion?

1 MEMBER JONES: I think we should
2 probably do that in the back.

3 CHAIRPERSON MILLER: Okay. Fine.
4 I just -- I don't think we really have -- is
5 there something that you would or would not
6 say now because it's negotiated? You think it
7 might be negotiations?

8 What I have said is that ANC is a
9 public body. If there were negotiations in
10 public, then they are not protected, in my
11 understanding.

12 MEMBER JONES: So, Madam Chair,
13 are you denying my request?

14 CHAIRPERSON MILLER: Would you
15 like to go into closed meeting --

16 MEMBER JONES: Yes, I would like
17 to consult --

18 CHAIRPERSON MILLER: -- and
19 consult with legal?

20 MEMBER JONES: -- with legal.

21 CHAIRPERSON MILLER: I didn't --
22 oh, okay. I didn't appreciate it that that

1 was your request. How do I close the meeting?
2 I have to go get my closing the meeting
3 instructions.

4 MEMBER ALBERTI: One moment.

5 CHAIRPERSON MILLER: I think.

6 MEMBER ALBERTI: I'll find it for
7 you.

8 CHAIRPERSON MILLER: Okay. Okay.

9 As a Board Member has requested consultation
10 with legal counsel, I as Chairperson of the
11 Alcoholic Beverage Control Board for the
12 District of Columbia and in accordance with ^U
13 405 of the Open Meetings Amendment Act of 2010
14 move that the ABC Board hold a closed meeting
15 for the purpose of seeking legal advise from
16 our counsel on Case No. 11-PRO-00093 with
17 respect to the admission of certain testimony
18 in this case per ^U 405(b) of the Open Meetings
19 Amendment Act of 2010.

20 Do I have a second?

21 MEMBER BROOKS: Second.

22 CHAIRPERSON MILLER: Okay. Mr.

1 Nophlin, do you agree?

2 MEMBER NOPHLIN: I agree.

3 CHAIRPERSON MILLER: Mr. Brooks?

4 MEMBER BROOKS: I agree.

5 CHAIRPERSON MILLER: Mr. Alberti?

6 MEMBER ALBERTI: I agree.

7 CHAIRPERSON MILLER: Ms. Miller

8 agrees. Mr. Silverstein?

9 MEMBER SILVERSTEIN: I agree.

10 CHAIRPERSON MILLER: Ms. Mobley?

11 MEMBER MOBLEY: I agree.

12 CHAIRPERSON MILLER: And, Mr.

13 Jones?

14 MEMBER JONES: I agree.

15 CHAIRPERSON MILLER: Okay. So the

16 Board will take a short recess. If you all

17 want to take a short at least five minute

18 recess, feel free to, but just stay nearby.

19 Thank you.

20 (Whereupon, at 5:17 p.m. a recess

21 until 5:26 p.m.)

22 CHAIRPERSON MILLER: Okay. We are

1 back on the record. I really don't even
2 remember what the question was, but we did,
3 you know, discuss a little bit about what
4 might be admissible and what we are talking
5 about here.

6 And, therefore, we don't want to
7 let in testimony, you know, conducted as a
8 part of a negotiation. And my point before
9 was I know that the ANCs do much of their
10 business in public. And if you are going to
11 be talking about whatever went on in public
12 between the ANC and you, that would be okay.

13 Otherwise, we don't have an ANC
14 Commissioner participating right now who could
15 waive, you know, the privilege. So even
16 though I asked Mr. Fonseca, it's not -- we
17 don't have the other party here.

18 So with that, if that's clear at
19 all, you can pick up with the last question.
20 Mr. Nophlin started all this. Okay.

21 MR. FONSECA: It would be far from
22 us to suggest the Members should withdraw the

1 question.

2 CHAIRPERSON MILLER: Mr. Nophlin,
3 I don't know, do you want to ask any questions
4 on follow-up?

5 MEMBER NOPHLIN: No. As we
6 labeled this, I think I'll just withdraw my
7 question.

8 CHAIRPERSON MILLER: All right.
9 Okay. Any other questions? Okay. Mr. Jones,
10 you have a question or two?

11 MEMBER JONES: Thank you, Madam
12 Chair.

13 CHAIRPERSON MILLER: Yes.

14 MEMBER JONES: Just for
15 clarification purposes, what do you understand
16 the reasoning for why we are at this hearing
17 today? Answer it however as you see fit.

18 MR. SMITH: I think that we are
19 here because of a miscommunication between the
20 ANC and certain members of the community. And
21 I think I'll qualify that by saying that I
22 think the ANC has been working very hard.

1 They are in a community that is growing.
2 There are a lot of issues out there. There
3 are a lot of people who need to be heard from
4 the community.

5 And my understanding of it is
6 that, to a certain extent, this license is --
7 we are a large location and because of that,
8 there was some concern. I think that overall
9 if you want me to answer that globally, I
10 think there is a lot going on in the community
11 and I also think that as we walk through our
12 due diligence, which was normal for us,
13 through that progression, that time line that
14 we talked about, our understanding is we were
15 communicating effectively.

16 It came down to that communication
17 wasn't being effective and that's why I think
18 that we are here, in all honesty.

19 MEMBER JONES: Okay. And have you
20 had an opportunity to sit down with the
21 protestants that are here --

22 MR. SMITH: Yes.

1 MEMBER JONES: -- today to try and
2 come to some type of agreement?

3 MR. SMITH: Yes.

4 MEMBER JONES: Okay. In your --
5 what is your belief as to why an agreement was
6 not able to -- why an agreement wasn't able to
7 be reached with these particular protestants?

8 MR. SMITH: Um --

9 MEMBER JONES: Is there a
10 particular issue that is in contention?

11 MR. SMITH: Other than what is
12 listed there, none that jumps out.

13 MEMBER JONES: Okay. Is there --
14 do you believe there is anything that you
15 could do, in the nature of your operations,
16 that would address the concerns of the
17 protestants as you understand them?

18 MR. SMITH: I believe that we can
19 -- every concern that they have addressed, I
20 believe that we can help with those concerns
21 and we have.

22 MEMBER JONES: With these

1 particular protestants?

2 MR. SMITH: Yes, yes. So as far
3 as their concerns.

4 MEMBER JONES: Are there changes
5 that you can and are willing to make in your
6 operations to address their specific concerns,
7 as you understand them? Because if that's the
8 case, I'm not sure why we are here.

9 MR. SMITH: I'm not sure. Can you
10 ask that again, please?

11 MEMBER JONES: I'm sorry. Maybe
12 I'm -- I'm sorry. You had an opportunity to
13 sit down with these protestants?

14 MR. SMITH: Yes.

15 MEMBER JONES: And you had an
16 opportunity to hear what their concerns are
17 about you opening up your establishment and
18 operating your establishment in this
19 particular location?

20 MR. SMITH: That's correct.

21 MEMBER JONES: In those
22 discussions, I don't know -- I don't want to

1 know specifically what they were, I just want
2 to know do you have an understanding of what
3 their specific concerns were and/or are
4 regarding your business operations?

5 MR. SMITH: My walking out of
6 that, the specific concern was the issue about
7 the later hours or the applied for hours from
8 2:00 to 3:00 in the morning.

9 MEMBER JONES: Okay. So you --

10 MR. SMITH: That was made --

11 MEMBER JONES: -- have an
12 awareness of --

13 MR. SMITH: That's my
14 understanding.

15 MEMBER JONES: -- what --

16 MR. SMITH: Yes, my understanding.

17 MEMBER JONES: Okay. And I guess
18 my question was and is, at this point, is
19 there anything that you are willing to do to
20 change the nature of your operations in order
21 to address their concerns?

22 MR. SMITH: No.

1 MEMBER JONES: Okay. Cool. Fair
2 enough. And that's a more than fair answer.
3 So now, I'm trying to understand in your
4 business model, it apparently calls for you to
5 want to be open until those later hours for
6 full service across the board, correct?

7 MR. SMITH: Yes.

8 MEMBER JONES: Alcohol, food, the
9 whole nine.

10 MR. SMITH: Yes.

11 MEMBER JONES: As it stands today,
12 do you anticipate using those hours or do you
13 just want to have them available to you, so
14 you have maximum flexibility in your business
15 operations?

16 MR. SMITH: Maximum flexibility in
17 the business operations. We have to have
18 that, yes.

19 MEMBER JONES: Okay. Thank you.

20 MR. SMITH: That's why we applied
21 for that, yes.

22 MEMBER JONES: Appreciate it.

1 That's all I needed.

2 MR. SMITH: Yes.

3 MEMBER JONES: Thank you, Madam
4 Chair.

5 CHAIRPERSON MILLER: Okay. Mr.
6 Silverstein?

7 MEMBER SILVERSTEIN: This is
8 dragging on far too long, far too slow right
9 now, but I want a one minute answer to this
10 question.

11 Give me some things that you have
12 done after having worked with the neighbors
13 and the ANC to try to alleviate their
14 concerns.

15 MR. SMITH: We have had open
16 dialogue about the nature of how we conduct
17 ourselves. We have introduced them to the
18 principal players who will be in the
19 neighborhood. We've established points of
20 contact with general managers and the director
21 of operations as well.

22 We have provided, you know, again,

1 guidelines for them to come to us, platforms
2 for discussion, physical changes to the
3 building.

4 MEMBER SILVERSTEIN: Such as?

5 MR. SMITH: Such as again the
6 patio physically changed to address some
7 concerns and garbage are two of the bigger
8 ones. And then again, specifically, the labor
9 as well.

10 MEMBER SILVERSTEIN: Very well.

11 No further questions.

12 CHAIRPERSON MILLER: Thank you.

13 Others? I have a few questions. In your
14 testimony, I think you referred to Saint-Ex.
15 Is that right? Was there another -- what is
16 that? Can you explain that a little further?

17 MR. SMITH: Saint-Ex is the tavern
18 license holder directly across the street from
19 us on 14th -- I'm sorry, on T Street.

20 CHAIRPERSON MILLER: Okay.

21 MR. SMITH: So it would be the
22 commercial establishment directly south of us.

1 CHAIRPERSON MILLER: Okay. And do
2 they have a patio?

3 MR. SMITH: They do.

4 CHAIRPERSON MILLER: And do you
5 know what their hours are?

6 MR. SMITH: The hours are
7 identical to what we negotiated, which is a
8 12:00 close, obviously, 11:00 last seating,
9 12:00 close.

10 CHAIRPERSON MILLER: Okay. So the
11 same hours?

12 MR. SMITH: Um-hum.

13 CHAIRPERSON MILLER: And they are
14 a tavern?

15 MR. SMITH: Yes.

16 CHAIRPERSON MILLER: And I think
17 there was a reference to residences -- are
18 there residences above this tavern or just --

19 MR. SMITH: There are.

20 CHAIRPERSON MILLER: Above it?

21 MR. SMITH: To the best of my
22 knowledge, yes.

1 CHAIRPERSON MILLER: Okay. And to
2 the best of your knowledge, have there been
3 problems with that establishment because of
4 the hours or anything else?

5 MR. SMITH: I haven't heard of any
6 problems specifically. I haven't had a chance
7 to speak with the owner of that building and
8 their landlord. He didn't indicate that he
9 thought there were problems.

10 CHAIRPERSON MILLER: Okay. So
11 it's not like residents have said to you we
12 don't want you to have these hours because we
13 already have this tavern staying open until
14 these late hours and it's bothering us? You
15 didn't hear that?

16 MR. SMITH: No. But if I could go
17 back to an earlier answer, I had heard that
18 people were sitting on their patio when the
19 patio hours were finished, only because they
20 were closed. They just took up residence
21 there.

22 CHAIRPERSON MILLER: Oh.

1 MR. SMITH: It's the only
2 complaint.

3 CHAIRPERSON MILLER: They sat on
4 the patio because the seats were available
5 because the restaurant was -- because the
6 tavern was closed? Is that what you said?

7 MR. SMITH: Again, I have heard
8 that they do that because the patio is
9 essentially open to traffic.

10 CHAIRPERSON MILLER: Right.

11 MR. SMITH: It's not enclosed.

12 CHAIRPERSON MILLER: Okay. Do you
13 have an outdoor cafe at any of your other
14 Matchboxes?

15 MR. SMITH: We do. We have one in
16 Chinatown, Capitol Hill and also in Rockville.

17 CHAIRPERSON MILLER: Oh, okay. So
18 I think I heard you testify that there weren't
19 any problems or complaints related with your
20 establishment, so that would include the
21 sidewalk cafes as well?

22 MR. SMITH: That's correct.

1 CHAIRPERSON MILLER: And do they
2 stay open to the latest hours or to the hours
3 you negotiated with the ANC?

4 MR. SMITH: At times they have,
5 yes.

6 CHAIRPERSON MILLER: At times they
7 have stayed open until the hours --

8 MR. SMITH: Until the negotiated
9 hours, but that only applies for one location
10 on Capitol Hill. That's the only one.

11 CHAIRPERSON MILLER: Are there
12 residences near to those sidewalk cafes or
13 patios as in this case?

14 MR. SMITH: Um, there are -- from
15 a distant standpoint, there are residences
16 behind through an alley. And I believe again
17 on 8th Street there might be some up and down
18 the street. I can't say specifically. Not a
19 huge concentration, but, yes. I would say
20 yes.

21 CHAIRPERSON MILLER: Did you talk
22 to the residents individually who are located

1 closest to your establishment, your new
2 establishment that is at issue in this case?

3 MR. SMITH: I have spoken to
4 numerous individuals. I think the biggest
5 concentration of those people were at the U
6 Street Neighborhood Association meeting. I
7 have talked to business owners that are
8 around, also to managers that are around
9 there.

10 Nothing, you know, specific about
11 going door-to-door and knocking on doors and
12 talking to people, no. People in passing,
13 yes, who live on the street have stopped us
14 and asked us what we were doing.

15 CHAIRPERSON MILLER: And there was
16 a way for people to contact you as well,
17 right?

18 MR. SMITH: Yes.

19 CHAIRPERSON MILLER: Was that
20 email and through their ANC?

21 MR. SMITH: That's correct.

22 CHAIRPERSON MILLER: I wasn't sure

1 because you made reference to, I thought you
2 said, JBG was your landlord?

3 MR. SMITH: Yes.

4 CHAIRPERSON MILLER: But is it
5 your landlord for this new building that you
6 are building?

7 MR. SMITH: Well --

8 CHAIRPERSON MILLER: Do they own
9 the property?

10 MR. SMITH: -- no. They are the
11 owner of this building that we are rehabbing.

12 CHAIRPERSON MILLER: You are the
13 owner here?

14 MR. SMITH: No, they are the
15 owner.

16 CHAIRPERSON MILLER: They are the
17 owner?

18 MR. SMITH: JBG. We are the
19 tenant.

20 CHAIRPERSON MILLER: Okay. So
21 what you did to the building or whatever with
22 respect to soundproofing or anything like

1 that, is that also subject to their approval?

2 MR. SMITH: Anything that we do is
3 subject to their approval.

4 CHAIRPERSON MILLER: Right.

5 MR. SMITH: Yes.

6 CHAIRPERSON MILLER: Okay. Now,
7 you have also made reference to voluntary
8 agreement that you entered into with the ANC,
9 correct?

10 MR. SMITH: Yes.

11 CHAIRPERSON MILLER: But that
12 hasn't been approved by the Board yet. Isn't
13 that correct?

14 MR. SMITH: Yes.

15 CHAIRPERSON MILLER: Yes, it's
16 correct, right?

17 MR. SMITH: It's correct. It has
18 not been approved by you.

19 CHAIRPERSON MILLER: Okay. I just
20 wanted to let people know that for the record.

21 MR. SMITH: Um-hum.

22 CHAIRPERSON MILLER: All right.

1 Is there a provision in there that addresses
2 noise?

3 MR. SMITH: Um, I would have to
4 refer to the document. I believe there is a
5 general provision for peace, order and quiet
6 and making sure that we provide that for the
7 surrounding neighborhood, yes.

8 CHAIRPERSON MILLER: Some
9 voluntary agreements also talk about sound not
10 being heard in a residence nearby. Would you
11 know if that's in there?

12 MR. SMITH: Um, I can tell you
13 that any kind of outside provision for sound,
14 I don't know the answer to that. It was
15 addressed I believe through the no speakers or
16 playing of music or something out on the
17 patio.

18 CHAIRPERSON MILLER: Okay. I
19 think my last question is you talked about how
20 when a restaurant is compared to a bar or
21 whatever, there is a very organized control
22 with the staggering of people leaving the

1 restaurant.

2 Does that also relate to the patio
3 at all or not?

4 MR. SMITH: It does. I mean, what
5 we would -- and again, this is in the
6 voluntary agreement. We would have to stop
7 seating the patio at a given time to be able
8 to have it completely cleared by 12:00. So
9 guests would be cleared at that time. And we
10 would -- knowing that that had to be the case,
11 we most likely wouldn't be continuing to seat
12 people there if they couldn't get full service
13 up until the time we had to clear them, which
14 again is 12:00.

15 Did that answer the question?

16 CHAIRPERSON MILLER: No, that's
17 fine. I was just, you know, pondering. I
18 think I would like to ask one more question.

19 MR. SMITH: Okay.

20 CHAIRPERSON MILLER: Because I
21 think we have been told that the main issue in
22 this case is the hours or basically. Maybe

1 there are some other ones we are going to hear
2 when they put on their case and hours are
3 often related to noise at night or leaving at
4 3:00 in the morning or whatever.

5 So that's why I was asking about
6 the noise. It would seem to me that your
7 position would be that no, it's not the hours,
8 basically, because you think you should have
9 those maximum hours.

10 If the issue is noise, how do you
11 think that you are addressing that? A concern
12 about noise from the patio or from people
13 leaving late at night.

14 MR. SMITH: Well, specifically
15 again, for the patio, I think, the
16 modifications to the patio going back to some
17 earlier testimony when you asked questions
18 about the green space, when we were at Public
19 Space, they specifically talked about green
20 spaces and noise mitigation. And we talked
21 about being able to grow these hedges, so that
22 they will actually be higher than they are

1 represented in the photograph or the drawing.

2 That as an issue for us as well.

3 One thing from a design standpoint
4 that didn't get brought up as well, too, is
5 that the north wall of our -- as represented
6 in the drawings, there is no seating on that
7 north wall. So there is no seating abutting
8 any building that is there now or a building
9 that could be there in the future at all.

10 Everything is backed away from
11 that. So the seating is, for the most part,
12 concentrated on the south side of the
13 building. So in terms of the adjacent
14 property, no noise there. East side on the
15 alley, no noise from customers there. And
16 then you have that noise barrier on the south
17 side on the patio area. And then you have the
18 entry point which is on 14th Street. So
19 everything is channeled really out of that one
20 entry and exit point.

21 CHAIRPERSON MILLER: Okay. Okay.

22 Thank you very much. Are there other Board

1 questions? Okay. Is there redirect?

2 MR. FONSECA: Yes. I'll try to be
3 quick. Just two questions or matters on
4 redirect.

5 REDIRECT EXAMINATION

6 MR. FONSECA: You discussed four
7 separate ANC meetings. If I can reiterate,
8 you stated the design meeting of the committee
9 on November 3rd.

10 MR. SMITH: Yes.

11 MR. FONSECA: Was that a publicly
12 noticed meeting of that committee?

13 MR. SMITH: Yes.

14 MR. FONSECA: You then stated that
15 there was a November 17th full ANC meeting on
16 the design.

17 MR. SMITH: Yes.

18 MR. FONSECA: Was that a publicly
19 noticed meeting?

20 MR. SMITH: Yes.

21 MR. FONSECA: You stated you went
22 to the ANC's ABC Committee meeting in

1 December. Was that publicly noticed?

2 MR. SMITH: Yes.

3 MR. FONSECA: And followed by a
4 meeting later in December of the full ANC on
5 the ABC?

6 MR. SMITH: Yes.

7 MR. FONSECA: At that meeting, had
8 the voluntary agreement been negotiated yet?

9 MR. SMITH: Yes.

10 MR. FONSECA: Was it approved at
11 that December meeting of the ANC?

12 MR. SMITH: It was.

13 MR. FONSECA: In a publicly
14 noticed meeting?

15 MR. SMITH: Yes.

16 MR. FONSECA: Lastly, you
17 referenced that you distributed or mailed a
18 mailing -- I'm sorry. Let me give this. I
19 have marked for identification and I'm giving
20 to the protestants, applicant's Exhibit 3.

21 (Whereupon, the document was
22 marked as Applicant Exhibit 3 for

1 identification.)

2 MR. FONSECA: Would you identify
3 what that is?

4 MR. SMITH: This is the postcard
5 that we mailed out. I created this on
6 December 2nd.

7 MR. FONSECA: December 2nd.

8 MR. SMITH: Yes.

9 MR. FONSECA: Was it -- so it's a
10 fund-backed postcard?

11 MR. SMITH: Yes.

12 MR. FONSECA: And to whom was that
13 sent?

14 MR. SMITH: We specifically
15 targeted residents in the 14th and T Corridor.
16 I don't know what the exact ZIP Code is, but
17 that's where we found the USPS and they
18 concentrated that.

19 MR. FONSECA: Meaning? Would that
20 have been the four digit extension to the
21 20009 --

22 MR. SMITH: Yes.

1 MR. FONSECA: -- ZIP Code?

2 MR. SMITH: Yes.

3 MR. FONSECA: Okay. Hang on to
4 that.

5 MR. SMITH: Yes.

6 MR. FONSECA: If I may, absent
7 objection, have this entered into the record
8 as applicant's Exhibit No. 3.

9 CHAIRPERSON MILLER: Any
10 objection?

11 MR. FONSECA: I have made multiple
12 copies and the Board can look at it.

13 CHAIRPERSON MILLER: Okay. It's
14 admitted.

15 (Whereupon, the document marked as
16 Applicant Exhibit 3 was received
17 in evidence.)

18 MR. FONSECA: Thank you. I have
19 no further questions.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. Any other questions? Do you have
22 questions?

1 MR. McKAY: No, I just have one or
2 two more.

3 RECROSS-EXAMINATION

4 MR. McKAY: There are things that
5 the full operational hours are required to be
6 profitable and if you -- you know, at what
7 point does it not become profitable?

8 CHAIRPERSON MILLER: We can't hear
9 the question.

10 MR. McKAY: I said the question is
11 do you need the full hours to be profitable at
12 the new location? Do you need 2:00 and 3:00
13 in the morning to be profitable at any
14 location?

15 MR. SMITH: I would say yes to
16 that. I would say yes to that, yes.

17 MR. McKAY: Okay. And what plans
18 do you have for special events? You mentioned
19 that you are going to do some and you said New
20 Years.

21 CHAIRPERSON MILLER: Sorry. Can
22 you speak into the microphone more slowly?

1 MR. McKAY: Okay. So you
2 mentioned special events. And reasons to stay
3 open later. Are there any plans? What plans
4 do you have, other than New Years?

5 MR. SMITH: The only thing that we
6 have talked about specifically for later
7 events might be for a private party. If there
8 were a private party that stayed a bit later,
9 we have talked in our calendar specifically
10 about things that might come up, such as the
11 inauguration coming up.

12 And then there might be special
13 nights, you know, again, New Year's Eve. It
14 could be a bit later for Saint Patrick's Day.
15 That's really been the extent of our
16 discussions.

17 CHAIRPERSON MILLER: I just want
18 to say one thing though. These last few
19 questions just have to be limited to whatever
20 subjects came up in the Board's questions or
21 Mr. Fonseca's questions. Just wanted to
22 remind you.

1 MR. McKAY: Okay. Very good.
2 Okay. I'll stick to this one. This mailer,
3 you know, I'll read it here. It says we want
4 to let you know that we recently signed a
5 lease at T Street and are excited to begin
6 work on our newest location of Matchbox. It
7 doesn't say anything about other licenses. It
8 doesn't say anything about hours or impacts.

9 It really just is a nice -- no,
10 it's a nice card, but it -- my question is was
11 the intent to notify people about the
12 operation or just to do some marketing so they
13 would come to eat there?

14 MR. SMITH: Both.

15 MR. McKAY: Yes.

16 MR. SMITH: Both.

17 MR. McKAY: Okay. Thank you. Do
18 you think that someone reading this would
19 understand a significant amount about your
20 operation from this?

21 MR. SMITH: I would say yes,
22 between the front and the back it's visual in

1 the front and then the back with the
2 information, I would say yes, it's going to be
3 reasonably clear what it is.

4 MR. McKAY: Okay. No more
5 questions.

6 CHAIRPERSON MILLER: Okay. Thank
7 you, Mr. Smith.

8 MR. SMITH: Thank you.

9 (Whereupon, witness excused.)

10 MR. FONSECA: We will call our
11 last witness, which is Fred Herman.

12 Whereupon,

13 FRED HERMAN

14 was called as a witness by counsel for the
15 applicant, and having been first duly sworn,
16 assumed the witness stand and was examined and
17 testified as follows:

18 CHAIRPERSON MILLER: Okay. Thank
19 you very much. Have a seat.

20 DIRECT EXAMINATION

21 MR. FONSECA: Would you state your
22 full name for the record and your position

1 with Matchbox?

2 MR. HERMAN: Frederick David
3 Herman, Vice President of Operations.

4 MR. FONSECA: Not to have
5 repetitive testimony, I'm just going to --
6 although we will touch on a little bit, we had
7 planned on bringing it through Mr. Smith, but
8 probably --

9 CHAIRPERSON MILLER: Well, Mr.
10 Fonseca?

11 MR. FONSECA: Yes?

12 CHAIRPERSON MILLER: You have 12
13 minutes left.

14 MR. FONSECA: Okay. A little more
15 elaboration on how the operation, for example,
16 at Capitol Hill works and both the staffing
17 and on the way that you step down as the
18 evening grows later. First, would you start
19 with the latter?

20 On a given weekend night, for
21 example, would you go through how you staff
22 and particularly ramp down as the crowd

1 lessens.

2 MR. HERMAN: All our stores are
3 busy, so we fully staff up for every shift,
4 basically. And then as the night progresses,
5 we are thinking about things like labor costs
6 and we don't want to stay there longer than we
7 have to, so to reference your point about
8 operating hours, we like to have the luxury of
9 having those hours available, should business
10 dictate.

11 But of course, if the restaurant
12 is empty and deserted, we cut staff and we go
13 home. We have a relationship with our
14 management teams that we don't want you
15 staying there later than you have to. Go home
16 to your friends and families, you know.

17 So the hours of operation are
18 there. We operate within the parameters of
19 the hours of operation. Sometimes we use
20 them, sometimes we do not. It depends on the
21 time of the year, the weather, events and
22 those types of things. And it's a gradual

1 cutting of staff.

2 Like Perry said earlier, it's not
3 a college bar. We are not dumping 100 people
4 out onto the street at 3:00 a.m. In most of
5 our stores or in all of our stores, it's the
6 last remaining people, the dishwasher and the
7 manager that are leaving at those hours.

8 MR. FONSECA: Be a little more
9 specific though as you staff it down, because
10 you say you will have some employees leave,
11 those employees then cover a particular sector
12 of seating in the dining room?

13 MR. HERMAN: Yes. Typically, you
14 would have a server for 18 covers is the model
15 that we use. And as business dictates, you
16 would cut certain sections of the restaurant
17 and those employees would check out, do side
18 work, go home. Which means the customers that
19 they were serving are also departing at around
20 the same times, too. So it's a gradual turn
21 down of the volume and not lights fly up,
22 bouncers push people out the door, that type

1 of thing.

2 MR. FONSECA: Does it also then
3 begin to constrict or contract the area
4 seating? Are you still spreading people out
5 throughout the whole --

6 MR. HERMAN: It depends on where
7 the guest wants to sit. We try to put them --
8 because you want to have servers close by,
9 but, you know, certainly if a guest wants to
10 sit somewhere, we seat them there.

11 MR. FONSECA: Okay.

12 MR. HERMAN: It's a hospitality
13 business.

14 MR. FONSECA: All right. And
15 typically, if you are busy and you are getting
16 later into the evening, you still have a
17 decent crowd.

18 MR. HERMAN: Yes.

19 MR. FONSECA: What would you say
20 the last 30 minutes of the evening might you
21 have that you are putting out towards the very
22 end of the evening?

1 MR. HERMAN: Uh --

2 MR. FONSECA: In other words, on a
3 typical busy night where you may go up to 30
4 minutes before your normal closing time or you
5 are legally allowed normal time --

6 MR. HERMAN: Yes.

7 MR. FONSECA: -- 3:00 a.m., how
8 many individual patrons do you think --

9 MR. HERMAN: 20. I mean, even in
10 Chinatown when there is a Caps game, it's
11 typically 20 or 25 people. Some people are
12 having pizzas, other people are having beers.
13 It's not a rowdy ruckus crowd. It's even in
14 Chinatown with as crazy as it can be in that
15 area, it's just not the type of clientele we
16 attract.

17 And it's not our atmosphere. It's
18 not the way we operate. It's --

19 MR. FONSECA: So could you ever
20 envision 14th Street at 2:55 a.m. on a
21 Saturday night 100 patrons walking out at one
22 time?

1 MR. HERMAN: No. It would be
2 nice, but I really don't envision it. We
3 don't attract -- that's not our atmosphere.

4 MR. FONSECA: Okay. What about
5 employees and employment of residents of
6 nearby residential --

7 MR. HERMAN: Capitol Hill is --

8 MR. FONSECA: -- employees?

9 MR. HERMAN: -- almost exclusively
10 staffed with residents. And that's a great --
11 it's a good thing to have, because in our
12 industry, it's very fast-paced and you meet
13 people on the fly. So we give a call in there
14 and they are there immediately.

15 So Capitol Hill is mostly Capitol
16 Hill neighborhood folk. DC-3 is all Capitol
17 Hill residents. Chinatown is a mixture of
18 people from different parts and Rockville is
19 mixed also.

20 MR. FONSECA: Okay. So would you
21 envision a comparable mix at 14th and T?

22 MR. HERMAN: I would. I would

1 prefer it as an operator to have locals
2 working.

3 MR. FONSECA: At the other
4 locations, do you encourage public
5 transportation or Bikeshare?

6 MR. HERMAN: Yes.

7 MR. FONSECA: You do?

8 MR. HERMAN: Yes. It makes no
9 sense to -- and we tell our employees not to
10 drive to work, because they are going to be
11 late looking for a parking space in the
12 neighborhoods we operate in. The Metro is
13 reliable and they like to use Metro because
14 they like to use the excuse of I've got to get
15 on Metro, get me out of here. So I mean,
16 that's the reality of the way we operate.

17 MR. FONSECA: So they are the ones
18 their shift ends earlier?

19 MR. HERMAN: Yes.

20 MR. FONSECA: Okay.

21 MR. HERMAN: They get cut early.

22 MR. FONSECA: All right. I have

1 no further questions.

2 MR. HERMAN: Okay.

3 MR. McKAY: I have just a couple
4 questions.

5 CHAIRPERSON MILLER: Okay.

6 CROSS-EXAMINATION

7 MR. McKAY: If it did work out and
8 you were full at 3:00 a.m. on Saturday night,
9 you would stay open?

10 MR. HERMAN: If the law allowed us
11 to, yes.

12 MR. McKAY: All right. Okay.
13 And, you know, just another question on the
14 driving. You said that, you know, you
15 encourage folks to -- your employees to use
16 public transport.

17 MR. HERMAN: Yes.

18 MR. McKAY: Everyone uses that?

19 MR. HERMAN: I would say the
20 overwhelming majority because of where they
21 are in their life position do not own cars in
22 the District of Columbia.

1 MR. McKAY: Okay. No more
2 questions.

3 CHAIRPERSON MILLER: Board
4 questions? No questions. Thank you.

5 (Whereupon, witness excused.)

6 MR. FONSECA: We rest our case.

7 CHAIRPERSON MILLER: Okay. You
8 can have a few minutes. Okay.

9 MR. McKAY: Thank you.

10 MR. BROWNSTEIN: Thank you.

11 CHAIRPERSON MILLER: Is somebody
12 going to testify?

13 MR. BROWNSTEIN: Oh, okay, yes.

14 CHAIRPERSON MILLER: You need to
15 go to the -- go over here.

16 MR. BROWNSTEIN: You want me in
17 the well or in the box?

18 CHAIRPERSON MILLER: Okay. First
19 of all, I need you to raise your right hand.
20 Whereupon,

21 CRAIG BROWNSTEIN
22 was called as a witness by counsel for the

1 protestant, and having been first duly sworn,
2 assumed the witness stand and was examined and
3 testified as follows:

4 CHAIRPERSON MILLER: Okay. Good.

5 MR. BROWNSTEIN: I honestly did
6 work at C-SPAN. Just a couple brief remarks
7 to reiterate --

8 CHAIRPERSON MILLER: State your
9 name.

10 MR. BROWNSTEIN: I'm Craig
11 Brownstein, Wallach Place. I mean, we're not
12 protesting Perry or the application, but it is
13 a question of the hours. I'm a 20-some odd
14 year resident of Wallach Place. I moved there
15 in '89. And have seen the arc of the
16 transition over the course of, you know, over
17 20-some odd years of some of the first
18 proprietors opening establishments there going
19 back to the days when it was just Polly's and
20 Copi's and maybe Utopia and those folks who
21 took a chance on the neighborhood, much like
22 a lot of the residents did.

1 And, you know, as residents, we
2 invested certainly money, lives and in some
3 cases due to victims of crimes, we invested
4 blood in the neighborhood as well.

5 And now, lo and behold fast
6 forward 20-some odd years later and we are a
7 destination, an entertainment destination.
8 And because of that and similar to other
9 neighborhoods around the city, Adams Morgan
10 went through it.

11 I remember when I was a kid and
12 came around in the early '80s, 20-some odd
13 years old, Adams Morgan was a cool
14 neighborhood. And I got a feeling, you know,
15 that's the impression that 14th and U and the
16 U Street Corridor is now. It's the cool
17 neighborhood where everybody goes to party.

18 But that puts burdens on the
19 residents. And we live literally cheek by
20 jowl with a lot of these proprietors. I'm on
21 the north side of Wallach Place. 10 feet
22 across the alley from me are Pizza Hut's

1 dumpsters. We have got Tabaq. I have got
2 Rite Aid. I have got a number of other
3 establishments with ABC licenses.

4 So we are literally living on top
5 of each other. And because of that proximity
6 there, certain burdens are put on the
7 residents there, because we are not isolated.
8 And it's -- you know, the residents certainly
9 on Wallach and, in Daniel's case, on T Street
10 suffer the burden of these late night hours of
11 these establishments.

12 With those late hours comes --
13 well, with the establishment comes the
14 alcohol. With the alcohol comes volume. And
15 not a weekend night goes by where we are not
16 woken up by inebriates, loud people, folks
17 coming from a lot of these establishments in
18 the neighborhood, whether it is 11:00,
19 midnight, 2:00 in the morning, but we know
20 this because our bedroom windows are literally
21 on Wallach Place.

22 As the night progresses or from

1 midnight to 2:00 or 3:00 a.m. in the morning,
2 it gets louder. And it's not just residents
3 who look like me on Wallach, but it's a lot of
4 families now. And I think we have got, I
5 don't know about T Street, but, the better
6 part of 10 kids under 12 years-old on that
7 block now.

8 And, you know, it's part of the
9 burden. Another part of the burden is the
10 trash. It's the noise. I won't get too
11 graphic, but it's urination, defecation on our
12 front yards. People sitting on our porches,
13 you know, after last call and they come out of
14 these bars.

15 And as a point of comparison or
16 maybe an analogy is when we entertain, when
17 residents entertain and I send my guests home
18 at night, it's my responsibility to make sure
19 that they behave properly and do not disturb
20 the peace when leaving my house.

21 And until proprietors can come up
22 with some sort of solution on how to enforce

1 good behavior and manners on their guests, I'm
2 just going to have a hard time being able to
3 support later and later hours to bring more
4 and more noise to these residential blocks.

5 MR. McKAY: I want to ask a couple
6 of questions.

7 MR. BROWNSTEIN: Sure.

8 DIRECT EXAMINATION

9 MR. McKAY: Mr. Brownstein, so you
10 have given your testimony there now and we
11 heard from Tanya earlier. Do you think she is
12 a representative of the neighborhood that
13 people are excited about, you know, more and
14 more coming, it doesn't matter what it is if
15 it's in their front yard?

16 MR. BROWNSTEIN: Not a
17 representative of the neighbors I talked to.
18 I mean, Tanya is literally at the end of the
19 block. She is one entire city block away from
20 where Daniel is going to be, where a lot of
21 these places are.

22 MR. McKAY: Yes.

1 MR. BROWNSTEIN: Excuse me, where
2 Perry is going to be.

3 MR. McKAY: I guess the -- were
4 you or anyone you are aware of notified of the
5 ANC meetings that Mr. Smith indicated, you
6 know, for the ABC for that? Did you have any
7 idea that was going on?

8 MR. BROWNSTEIN: Yes. The ANC
9 meetings, yes, they are publicly noticed, but
10 ruthless inefficiency, except in this case of
11 many District Government operations. It is
12 really hard to keep track of or know exactly
13 when these meetings are, when the agendas are
14 and the function of at least specifically our
15 ANC leaves a lot to be desired.

16 They don't take minutes at the
17 meeting. Frequently there, the Commissioners
18 are not very responsive and it's ruthless
19 inefficiency, as we call it.

20 MR. McKAY: So you think in your
21 opinion, did that impact the communication and
22 the voluntary agreement which was negotiated

1 here?

2 MR. BROWNSTEIN: At least in my
3 case and my partner Doug's case. We -- and we
4 are pretty attuned to what goes on. We did
5 not -- it did not come across our radar that
6 that was in process. We might not have
7 haunted the listservs every day. I know Perry
8 said he sent out the postcards. Maybe we got
9 it. I can't recall. The mailing was back in
10 December. I just don't recall.

11 Certainly, at least from the copy
12 that I saw, you know, it didn't list any of
13 the procedural hearings that were going on, I
14 don't think.

15 MR. McKAY: Besides Tanya, do you
16 know anyone who is in support of the hours,
17 the full hours here for this type of
18 restaurant?

19 MR. BROWNSTEIN: You mean
20 residents?

21 MR. McKAY: Yes. You are pretty
22 active with the neighbors on Wallach Place and

1 probably know a few others around the
2 neighborhood. Do you know anyone who would --
3 who is in support, I should say?

4 MR. BROWNSTEIN: Not specifically
5 of this case. I think it's the general
6 consensus of the Wallach -- of the neighbors
7 on Wallach and I certainly don't know about
8 your block of T Street. But the noise has
9 gotten to be -- it's not unbearable, but it
10 has really become a burden.

11 Can we say that, you know, on the
12 record, every drunk walking down our street at
13 2:00 in the morning comes from one of these
14 establishments? We can't identify him, but
15 more than likely so.

16 MR. McKAY: That brings up a good
17 point. One of the things that has been
18 mentioned here is that there are no violations
19 for this applicant and that's great. But
20 let's say there were, would it be possible for
21 you or another resident to be able to say ah-
22 ha, that's a Matchbox patron who just came

1 down my street and is talking in front of my
2 window. Is that possible?

3 MR. BROWNSTEIN: Well, that's hard
4 to do at 2:00 in the morning. And, you know,
5 you are laying in bed or it's 1:00 in the
6 morning and you hear somebody either, you
7 know, making some noise out on the street or
8 causing a ruckus or horseplay. It's hard to
9 identify exactly where they came out, came
10 from or where they are going to.

11 In most cases, it's -- they are
12 taking a shortcut to get to the Metro. The
13 shortest distance is often to cut down Wallach
14 Place. I mean, it's a very narrow block and
15 noise echoes, you know, pretty easily.

16 MR. MCKAY: Have you -- do you
17 know of anyone or have you personally
18 contacted the police or ABRA about those kind
19 of things at all?

20 MR. BROWNSTEIN: A number of
21 incidents we have made calls to the police,
22 but it's usually when we think there is a

1 crime going on.

2 MR. McKAY: Okay.

3 MR. BROWNSTEIN: A car-break-in or
4 one thing or another.

5 MR. McKAY: So generally, those
6 kind of nuisance items are not reported. Is
7 that correct?

8 MR. BROWNSTEIN: Yes, we just hope
9 they pass and they walk along.

10 MR. McKAY: Okay. I think that's
11 no further questions.

12 CHAIRPERSON MILLER: Mr. Fonseca?

13 MR. FONSECA: One moment, please.

14 CHAIRPERSON MILLER: Okay.

15 MR. FONSECA: If I may?

16 CROSS-EXAMINATION

17 MR. FONSECA: I mean, I gather
18 from your testimony you are not particularly
19 enamored with this ANC for your area. But are
20 you familiar with their regular meeting
21 schedule?

22 MR. BROWNSTEIN: I'm becoming more

1 so.

2 MR. FONSECA: Okay. Are you aware
3 that it's the first Thursday of every month?

4 MR. BROWNSTEIN: Yes.

5 MR. FONSECA: Okay. Are you aware
6 that their meetings are in this building?

7 MR. BROWNSTEIN: Yes. In fact, I
8 have been to the last two.

9 MR. FONSECA: All right. In the
10 last two, did they not within the first two or
11 three agenda items approve the minutes of the
12 last meeting?

13 MR. BROWNSTEIN: I don't recall.

14 MR. FONSECA: Did you ever walk by
15 the Matchbox location and see the ABC
16 application public notice?

17 MR. BROWNSTEIN: The --

18 MR. FONSECA: The large placard.

19 MR. BROWNSTEIN: -- orange thing?

20 MR. FONSECA: Yes, the orange
21 thing, exactly.

22 MR. BROWNSTEIN: I'm sure I did.

1 I don't recall.

2 MR. FONSECA: Were you aware that
3 the petition date to file an objection was
4 December 27th?

5 MR. BROWNSTEIN: No.

6 MR. FONSECA: Okay. Do you avail
7 yourself of any location within a short walk
8 from your Wallach Place house for brunch in
9 the neighborhood? Are there many places?

10 MR. BROWNSTEIN: Do I patronize
11 some of the local establishments?

12 MR. FONSECA: Yes.

13 MR. BROWNSTEIN: I hate to admit
14 it, but I frequently order out from the Pizza
15 Hut. I went to Black & Orange for the first
16 time a couple of weeks ago. I went to Taylor
17 Gourmet about a week, week and a half ago.
18 I've been to Saint-Ex. Ben's, when Ben's used
19 to be the only thing open.

20 MR. FONSECA: Right.

21 MR. BROWNSTEIN: Once a week to
22 the Thai joint, Sala Thai. I've been to

1 Alero. We patronize consistently.

2 MR. FONSECA: I just noted or I'm
3 trying to ask you if you are familiar with the
4 standard brunch that they offer on the
5 weekends, not all the Matchbox locations.

6 MR. BROWNSTEIN: No. I don't do
7 brunch.

8 MR. FONSECA: You don't do brunch.
9 Okay. Would you consider that a more positive
10 impact than late night establishments that do
11 offer brunches?

12 MR. BROWNSTEIN: It's a wash.

13 MR. FONSECA: It's a wash? Is it
14 a fair statement to make that much of the U
15 Street establishments with ABC licenses don't
16 even open for lunch much less brunch on the
17 weekend?

18 MR. BROWNSTEIN: A couple of
19 places on the south side of U Street, I think,
20 Cream, Cream does, the Italian place. I don't
21 know if they are still open, Cristiano.
22 Brunch is just nothing I zero in on.

1 MR. FONSECA: All right. Okay.

2 No further questions.

3 CHAIRPERSON MILLER: Okay. Board
4 questions? Mr. Silverstein?

5 MEMBER SILVERSTEIN: Mr.
6 Brownstein, it sounds like the problems that
7 you have been talking about are serious
8 neighborhood nuisance problems. If I might
9 touch on something it seems that we both
10 share.

11 What makes Matchbox different or
12 in this case any worse than any other
13 establishment? Is there any particular
14 concern that you have there or is this simply
15 a generic problem?

16 MR. BROWNSTEIN: It's -- I think
17 the perfect way to describe it, it's generic.
18 And I think the later these establishments are
19 open, it means more alcohol is going to be
20 served and I think noise levels seem to be
21 commensurate without alcohol consumption.
22 That the later people are out, the more they

1 are going to drink, the louder they are
2 walking down the street.

3 MEMBER SILVERSTEIN: So you have
4 heard the testimony from some folks that
5 Matchbox, as a corporation, is a good and
6 trusted operator. It's not -- you don't have
7 any argument with that?

8 MR. BROWNSTEIN: None whatsoever.

9 MEMBER SILVERSTEIN: What do you
10 need? What -- assuming this is going to
11 happen, what would make it more tolerable for
12 you? What's number one on your list and
13 specifically what do you want?

14 MR. BROWNSTEIN: What's number
15 one? You know, I did have -- I guess Perry
16 and I chatted a number of weeks ago and I'll
17 say this, but I don't want you to run back
18 into Executive Session or anything.

19 And it gets back to, you know, it
20 was something I mentioned about what is the
21 role of the proprietors when their guests
22 leave their establishment? When I have

1 friends over, they walk out onto the street at
2 11:00 at night or midnight. They are not
3 screaming. They are not yelling.

4 We have got Matchbox. We have got
5 -- they will be coming in. We have got
6 Policy. We have got Orange & Black. We have
7 got Black Cat down the street. There is a
8 high concentration of people in a dozen
9 establishments within a two block radius. I
10 don't know the exact number.

11 And Perry and I had that -- you
12 know, I guess, a theoretical discussion on
13 what is the role of the proprietors, not just
14 at Matchbox, but at all of these places to
15 reinforce or enforce with their guests upon
16 departure about good behavior, good manners
17 and being responsible when they exit on their
18 way home if they are walking home or if they
19 are on their way to the Metro at 13th and U,
20 because they are passing through residential
21 neighborhoods.

22 Now, what's a theoretical

1 discussion? I'm sure this has come up in
2 Georgetown before. This has come up in Adams
3 Morgan. Of any destination entertainment
4 corridor that is literally on top of or cheek
5 by jowl with residential blocks.

6 And, you know, as I said before,
7 when guests leave my house, it's my
8 responsibility that they behave properly.
9 What is the responsibility of proprietors to
10 enforce that good behavior with their guests?
11 Probably outside of the bounds of ABRA or, you
12 know, a liquor license or anything like that,
13 but it still seems to us to be a
14 responsibility, so far unmet by a lot of the
15 proprietors in the neighborhood.

16 And, you know, as I told Perry, I
17 would love to see some leadership on behalf of
18 some of those proprietors working together
19 along the 14th Street Corridor, along the U
20 Street Corridor to somehow communicate with
21 patrons through signage, through the website,
22 social media one thing or another and that's

1 what we talked about.

2 And it was a nice theoretical
3 discussion and, you know, it's nothing that
4 can be legislated, but hopefully we can work
5 together with him and whoever opens up --
6 whoever else opens up in the neighborhood.

7 MEMBER SILVERSTEIN: But the
8 problem is that everything you said was very
9 kumbaya and is theoretical.

10 MR. BROWNSTEIN: Yes.

11 MEMBER SILVERSTEIN: And as a
12 Board charged with interpreting the law and
13 issuing an order, we can't propound theories.

14 MR. BROWNSTEIN: Correct.

15 MEMBER SILVERSTEIN: I mean --

16 MR. BROWNSTEIN: But is the Board
17 the --

18 MEMBER SILVERSTEIN: -- help me
19 out. If you were saying, please, do something
20 for me, something that will make my life
21 liveable, what is it? What do you want?

22 MR. BROWNSTEIN: The only recourse

1 I think that residents have in terms of this
2 protest is we can't keep these places out of
3 the neighborhood. We don't want to. We
4 patronize them. They should be able to serve
5 alcohol. But what recourse do we have other
6 than these theoretical discussions and asking,
7 you know, the proprietors to try and enforce
8 that sort of behavior.

9 The only, you know, recourse we
10 have or cause of action is to try and restrict
11 hours, as I see it.

12 MEMBER SILVERSTEIN: So what is it
13 you are trying to restrict? I mean, you are
14 not saying close at 9:00?

15 MR. BROWNSTEIN: No, we are not.
16 No, not close at 9:00. But, you know, if it's
17 closed at 2:00, that means hopefully less
18 noise at 3:00, rather than closing at 3:00,
19 which means there will be noise at 4:00.

20 MEMBER SILVERSTEIN: How about
21 outdoors?

22 MR. BROWNSTEIN: Outdoors? It's a

1 good question. We are in the middle of the
2 block. You know, I'm a half a block away.
3 I'm insulated from the patio, so I really
4 don't know what that is like. But I can
5 imagine it would be a challenge trying to like
6 find a nice spring evening, sleep with the
7 bedroom windows open across the street from a
8 patio that is fully operational until
9 midnight, without earplugs or sleep aids.

10 MEMBER SILVERSTEIN: Thank you.
11 No further questions.

12 CHAIRPERSON MILLER: Board
13 Members? Mr. Jones?

14 MEMBER JONES: Thank you, Madam
15 Chair. Just for clarification purposes, you
16 made a statement about if they closed at 1:00,
17 hopefully, there would be less noise at 3:00.
18 Did I say that correctly?

19 MR. BROWNSTEIN: My math might not
20 be right, but just a sliding scale that the
21 later they are going to be open, the -- what
22 I assume to be the later an establishment is

1 open, the later patrons will be out on the
2 street making noise.

3 MEMBER JONES: So is the crux of
4 your primary concern, your specific issue here
5 today related to patron noise?

6 MR. BROWNSTEIN: For me
7 specifically?

8 MEMBER JONES: Yes.

9 MR. BROWNSTEIN: Yes, sir.

10 MEMBER JONES: Okay. Are you
11 having that -- are you having an issue with
12 the general sense of patron noise outside in
13 the neighborhood as it stands today?

14 MR. BROWNSTEIN: Oh, yes.

15 MEMBER JONES: Okay.

16 MR. BROWNSTEIN: It has been a
17 problem for a number of years ever since the
18 neighborhood got very busy.

19 MEMBER JONES: Do you anticipate
20 the operation of this establishment will
21 significantly contribute more to that?

22 MR. BROWNSTEIN: A 300 seat

1 restaurant, I think, logic dictates more
2 people out on the street, more people
3 consuming alcohol, it only makes sense that it
4 would contribute to additional noise.

5 MEMBER JONES: Agreed. In your
6 estimation, do you think it will be a
7 significant increase, based on what you are
8 currently experiencing? So if you have X
9 number of establishments that have X number of
10 loud people/patrons that are in the
11 establishment up until closing, whatever those
12 hours are, and then they are out on the street
13 making noise, is the volume that we are
14 talking about at this establishment going to
15 be a significant contribution to the net
16 volume that you have in place currently or do
17 you see it as a small contributor to the
18 larger volume that you have in place already?

19 MR. BROWNSTEIN: I wouldn't feel
20 comfortable characterizing it as significant.
21 I would guess it would be noticeable.

22 MEMBER JONES: Okay.

1 MR. BROWNSTEIN: I mean, it's
2 conjecture, at this point.

3 MEMBER JONES: Because the --

4 MR. BROWNSTEIN: I have no idea.

5 MEMBER JONES: -- reason why I
6 asked that is the feel that I'm getting, and
7 I'm not saying you have actually stated this,
8 so, please, don't shoot me for characterizing
9 it this way, but the feel that I'm getting is
10 that you attempt here today is to make a stand
11 or make a statement to try and roll back the
12 hours across the neighborhood in order to
13 mitigate the noise at a later time. And that
14 this Matchbox establishment happens to be the
15 first opportunity that you have to execute
16 that plan or that desire.

17 MR. BROWNSTEIN: That's --

18 MR. McKAY: A point of
19 information. The -- most of the restaurant CR
20 Licenses do not have full hours.

21 MEMBER JONES: So just with all
22 due respect, I think I'm not trying to solicit

1 testimony.

2 CHAIRPERSON MILLER: Mr. McKay, he
3 is asking the witness.

4 MEMBER JONES: I'm asking this
5 individual a specific question.

6 MR. BROWNSTEIN: You are right.

7 MEMBER JONES: Okay. So that's
8 the crux, that's the intent of your desire
9 here today, as an overall arching -- I'm kind
10 of characterizing, but I'm trying to
11 characterize your sense.

12 Because I don't sense that you are
13 overtly concerned about the nature of the
14 operation of this establishment.

15 MR. BROWNSTEIN: No, I said, you
16 know, I think Perry is a good guy and I'm
17 comforted by some of the testimony and the
18 presentation. You know, I think they are
19 going to be bringing a certain kind of patron.
20 It's not a college bar. But it's still a
21 question of density and it is late night
22 partying and late night partying equals

1 volume.

2 MEMBER SILVERSTEIN: Understand.

3 MEMBER JONES: That's fair enough.

4 Thank you very much. Appreciate that.

5 MR. BROWNSTEIN: Thank you.

6 MEMBER JONES: Thank you, Madam

7 Chair.

8 CHAIRPERSON MILLER: You're

9 welcome. Other Board questions?

10 MEMBER MOBLEY: Madam Chair?

11 CHAIRPERSON MILLER: Yes.

12 MEMBER MOBLEY: Mr. Brownstein,

13 and I'm sorry, I just heard you interject to

14 the fact that with the restaurants in the

15 area, you don't have this much of a concern?

16 Is that what I heard? You just interjected

17 when Mr. Brownstein was speaking, sir?

18 MR. McKAY: Well, I think that the

19 point was about the hours. The comment was

20 that the goal of this is to make a stand and

21 roll back hours for this establishment and

22 that's not the point.

1 The point is to continue what has
2 been a standard for other establishments in
3 the neighborhood. And in fact because Mr.
4 Smith and their organization is so well-
5 renowned, that they seem to have this power
6 that no CR License has in their VA.

7 MEMBER MOBLEY: Mr. Brownstein, in
8 the 1901 and 1801 Block, which is close to
9 where this establishment is going to go, is it
10 mostly taverns or restaurants or a mix?

11 MR. BROWNSTEIN: You know, as a
12 regular old resident, I can't distinguish
13 between the two, you know, what
14 classification.

15 MEMBER MOBLEY: Well, I mean --

16 MR. BROWNSTEIN: What a Bar Pilar
17 has versus Saint-Ex versus what it takes to
18 run a place like Black Cat versus what Orange
19 & Black wants versus what is the process for
20 either Policy or new place Stubs going in. A
21 liquor license is a liquor license. If you
22 live in the neighborhood and it's not your

1 full-time job to decide these things.

2 So I can't really distinguish the
3 two.

4 MEMBER MOBLEY: Okay. But I heard
5 you indicate that patrons that probably would
6 patronize Matchbox would not necessarily be
7 the same patrons that would patronize Bar
8 Pilar or Black Cat or some of the other
9 places.

10 MR. BROWNSTEIN: No, that wasn't
11 my intent. I really don't know who is going
12 to patronize Matchbox. But it looks nice and
13 upscale. I think the testimony, you know,
14 from Perry and from counsel and from their
15 witnesses, it's not a college bar. So it's
16 not a college bar. It's clearly not a Black
17 Cat.

18 MEMBER MOBLEY: Right. It's not a
19 college bar.

20 MR. BROWNSTEIN: But it is not the
21 Prime Rib either.

22 MEMBER MOBLEY: Right. Okay. You

1 talked about -- Mr. Smith talked about his
2 staggered -- getting patrons out in a
3 staggered way. Is that something that would
4 be agreeable to you in terms of not letting
5 them out, people out on the street at the same
6 time?

7 MR. BROWNSTEIN: It sounds like it
8 is the nature of the operation and it's the
9 nature of the business that people don't, you
10 know, walk out of a restaurant at 2:00 in the
11 morning. And that, you know, they just don't
12 -- that he doesn't dump, you know, a couple
13 hundred patrons out onto the sidewalk. It's
14 good to know.

15 I'm not in restaurants at 2:00
16 a.m. or 1:00 a.m., generally, so I really
17 don't know how they operate or what they look
18 like or what they are serving, you know, in a
19 200- or 300-seat restaurant at 1:00 in the
20 morning. I mean, that's just -- I'm too old
21 for that.

22 MEMBER MOBLEY: Okay. All right.

1 Thank you. No more questions.

2 CHAIRPERSON MILLER: Others? Mr.
3 Brownstein, I have a few questions for you.

4 MR. BROWNSTEIN: Sure.

5 CHAIRPERSON MILLER: So would you
6 not object to a Prime Rib operating at that
7 location until 3:00 in the morning?

8 MR. BROWNSTEIN: Would I not
9 object to -- okay. Rephrase that, so you
10 don't confuse me.

11 CHAIRPERSON MILLER: The double
12 negative. Okay. In your previous testimony,
13 you said, "well, it's not a Prime Rib."

14 MR. BROWNSTEIN: Oh, if the Prime
15 Rib wanted --

16 CHAIRPERSON MILLER: If the Prime
17 Rib wanted to open up a restaurant there and
18 they --

19 MR. BROWNSTEIN: And serve until
20 3:00?

21 CHAIRPERSON MILLER: Yes.

22 MR. BROWNSTEIN: Probably protest

1 it.

2 CHAIRPERSON MILLER: But you see,
3 what's the difference that you are focusing
4 on?

5 MR. McKAY: That God awful piano.

6 MR. BROWNSTEIN: You know, I would
7 like to retract my answer. You know, I really
8 shouldn't, you know, try and answer a
9 theoretical or a hypothetical question like
10 that. No, whether or not the Prime Rib is
11 going to -- you know, there are going to be
12 upscale restaurants moving into that
13 neighborhood further on the block.

14 Perry has got one scheduled for
15 14th and S. There is another one coming in.
16 We are going to be seeing a number of those
17 come in, lots of -- you know, within a block
18 or two away. Prime Rib might not have been a
19 good example.

20 But I think the concern, overall
21 concern, at least for residents on my block,
22 3:00 a.m. is late, it's loud, it's just -- and

1 we also understand, we are not living on that
2 -- a leafy tree lined street in Bethesda or
3 Chevy Chase. We are a block away from an
4 entertainment zone, so we don't expect it to
5 be, you know, a sleepy primrose lane suburb or
6 anything like that. But --

7 CHAIRPERSON MILLER: Are you going
8 to -- were you implying that you were going to
9 protest all of the --

10 MR. BROWNSTEIN: Heavens no. I'm
11 just one man. No.

12 CHAIRPERSON MILLER: Do you
13 differentiate at all between the type of
14 establishment that wants to stay open until
15 late hours, for instance, you know, those that
16 put all 300 kids on the street at one time at
17 3:00 in the morning versus a restaurant whose
18 clientele is different from a bar like that.

19 MR. BROWNSTEIN: I'm sure you
20 could differentiate. I can't. You know, when
21 I'm lying in bed at 1:00 or 1:30, 3:00 in the
22 morning, I can't differentiate where they came

1 out of, whether it was the Black Cat or
2 whether it was Policy or even the Prime Rib.

3 CHAIRPERSON MILLER: Well, can you
4 -- because I want to narrow in on what is most
5 important to you. But because, you know, you
6 talked about drunks and urination and that
7 kind of stuff. And I, you know, can see how
8 that would upset you. And I can see how noise
9 would upset you.

10 But I don't think from what we
11 have heard about Matchbox that those are the
12 type of people that are going to be stumbling
13 out of Matchbox and making those loud noise as
14 people who are drunk from drunk bars. Would
15 you agree with that?

16 MR. BROWNSTEIN: Again, a
17 hypothetical. I would certainly hope so.

18 CHAIRPERSON MILLER: Okay.
19 Because sometimes, I mean, we have heard
20 people are disturbed just in general about
21 conversation late at night because it's noise.
22 So is that what you are concerned about? I

1 mean, like for instance with the patio are you
2 concerned about well, you won't be able to
3 sleep with your window open, because voices
4 travel.

5 MR. BROWNSTEIN: I'm a half a
6 block away from the patio, so the patio, I
7 mean, I'm sure it's not necessarily a concern
8 of mine.

9 CHAIRPERSON MILLER: Okay.

10 MR. BROWNSTEIN: More so of
11 patrons coming down the block after imbibing.

12 CHAIRPERSON MILLER: Okay. So
13 well --

14 MR. BROWNSTEIN: Because I don't
15 live adjacent to the patio or even -- I'm half
16 a block away on Wallach.

17 CHAIRPERSON MILLER: Okay. So you
18 are concerned about -- hey, what if they
19 weren't drinking, would you be concerned if
20 there wasn't an alcoholic establishment? I
21 mean, if they were late at night walking to
22 the Metro talking.

1 MR. BROWNSTEIN: And they were
2 just loud?

3 CHAIRPERSON MILLER: Talking. I
4 mean, yes.

5 MR. BROWNSTEIN: Yes, that sucks,
6 too.

7 CHAIRPERSON MILLER: Yes. So
8 that's basically -- is that basically what you
9 are worried about?

10 MR. BROWNSTEIN: Yes, yes.

11 CHAIRPERSON MILLER: Hearing the
12 noise of people traveling from the
13 establishment. And you are saying --

14 MR. BROWNSTEIN: With a little
15 regard that their trolling through a strictly
16 residential block.

17 CHAIRPERSON MILLER: Right. Okay.
18 And I think I heard you say theoretically
19 since the establishment could somehow get them
20 to behave with respect to their residence,
21 then there really wouldn't be a problem.

22 MR. BROWNSTEIN: Well, I think it

1 is -- would be a very interesting project and
2 I would like, you know, as I told Perry, to
3 work with him on it. And I said, you know,
4 irregardless of whether somebody walks out of
5 there at 11:00, 9:00, 1:00 a.m. --

6 CHAIRPERSON MILLER: Yes.

7 MR. BROWNSTEIN: It's still an
8 issue. And I think it would be a very good
9 experiment to work with Perry and the other
10 proprietors in the area all up and down 14th
11 Street, on both sides of 14th Street.

12 CHAIRPERSON MILLER: Okay. So
13 this is a little alley, right? And the only
14 reason people would be going down that alley
15 is to get to the Metro?

16 MR. BROWNSTEIN: Pretty much.

17 CHAIRPERSON MILLER: Is there
18 another way that they can go that is the main
19 roads?

20 MR. BROWNSTEIN: U Street.

21 CHAIRPERSON MILLER: U?

22 MR. BROWNSTEIN: Up to 14th, hang a

1 right, to go U.

2 CHAIRPERSON MILLER: Okay.

3 MR. BROWNSTEIN: Or T Street, but
4 that's on Daniel's block.

5 CHAIRPERSON MILLER: So, okay, he
6 could direct his patrons to go -- or he could
7 suggest that they go that way. He can't
8 control them.

9 MR. BROWNSTEIN: Exactly.

10 CHAIRPERSON MILLER: At this
11 point, yes.

12 MR. BROWNSTEIN: We're the
13 shortcut. And we are, you know, just a
14 charming little Washington Mews, who wouldn't
15 want to stroll down there?

16 CHAIRPERSON MILLER: Okay. So I
17 mean, I'm big on fresh air, so I can
18 understand your point about the windows. But
19 I do want to ask if you close your windows,
20 can you hear that noise?

21 MR. BROWNSTEIN: Yes, frequently,
22 you know. At some point during the summer,

1 windows have got to be closed just to fire up
2 the airco, air conditioning.

3 CHAIRPERSON MILLER: Right.

4 MR. BROWNSTEIN: And even with,
5 you know, double paned windows, it's still
6 pretty loud on some nights.

7 CHAIRPERSON MILLER: So it's --

8 MR. BROWNSTEIN: It's not just --

9 CHAIRPERSON MILLER: So you are --

10 MR. BROWNSTEIN: -- open windows.

11 CHAIRPERSON MILLER: You can't
12 sleep now?

13 MR. BROWNSTEIN: Oh, I can sleep,
14 but it's a question of getting woken up.

15 CHAIRPERSON MILLER: Okay. So
16 you're woken up.

17 MR. BROWNSTEIN: Or having
18 difficulty falling asleep and it's not just
19 me. It's my partner. It's some of the kids
20 on the block.

21 CHAIRPERSON MILLER: Okay.

22 MR. BROWNSTEIN: You know, the

1 little tykes out there.

2 CHAIRPERSON MILLER: So we heard
3 testimony, I think, and correct if I'm wrong
4 or you know otherwise, that the Saint-Ex place
5 or something, they stay open until 3:00? Do
6 you know?

7 MR. BROWNSTEIN: I seem to recall
8 the testimony. I've certainly never been
9 there. I have eaten there, but I have never
10 been there at 3:00 in the morning.

11 CHAIRPERSON MILLER: Okay. So you
12 already have the noise from those patrons,
13 right?

14 MR. BROWNSTEIN: Um-hum.

15 CHAIRPERSON MILLER: So if this
16 establishment doesn't stay open late, it's not
17 going to change that. You are still going to
18 have -- be bothered, right? Do you think that
19 this establishment if it stays open to the
20 hours requested is going to add significantly
21 to that noise that you are already
22 experiencing?

1 MR. BROWNSTEIN: Entirely
2 possible.

3 CHAIRPERSON MILLER: Do you know--
4 okay. Okay. So then you are not talking
5 about sidewalk cafes. You are only talking
6 about the late hours, right? So --

7 MR. BROWNSTEIN: Um-hum. The
8 patrons leaving.

9 CHAIRPERSON MILLER: Okay. Okay.
10 Anyone have any other questions? Any redirect
11 based on -- oh, I was going to -- I want to go
12 back to -- because I know that we had some
13 testimony from Mr. McKay and I didn't know at
14 some point if you needed to cross on that?

15 MR. FONSECA: I will.

16 CHAIRPERSON MILLER: Okay.

17 MR. FONSECA: If I may?

18 CHAIRPERSON MILLER: I'm not sure
19 whether Mr. McKay is going to take the stand
20 in general.

21 MEMBER ALBERTI: Well, Madam
22 Chair, may I point out that --

1 MR. McKAY: Yes, we have at least
2 an hour.

3 MEMBER ALBERTI: Madam Chair, may
4 I point out that Mr. McKay's testimony was not
5 under oath, so I don't believe it is subject
6 to cross-examination.

7 CHAIRPERSON MILLER: Oh.

8 MR. FONSECA: Yes, I would --

9 CHAIRPERSON MILLER: Oh, thank
10 you. Good point.

11 MR. FONSECA: Yes, I would
12 challenge the premise of the question which
13 asserted that there were -- that restaurants
14 were -- had earlier hours than full hours in
15 the neighborhood. That I would challenge.

16 CHAIRPERSON MILLER: Okay.

17 MR. FONSECA: But I'll leave that
18 until he chooses to testify to that under
19 oath.

20 CHAIRPERSON MILLER: All right.

21 MR. FONSECA: But I would do now,
22 if I could have --

1 CHAIRPERSON MILLER: Well, wait.

2 MR. FONSECA: -- just --

3 CHAIRPERSON MILLER: Mr. McKay, I
4 think we go to redirect.

5 MR. FONSECA: Oh, yes.

6 CHAIRPERSON MILLER: Okay. Did
7 you have anything? Any questions?

8 MR. MCKAY: No, no further
9 questions.

10 CHAIRPERSON MILLER: Okay.

11 MR. FONSECA: I have one line of
12 recross.

13 CHAIRPERSON MILLER: Okay.

14 MR. FONSECA: And this would go to
15 the comment of -- to Member Silverstein and
16 the witness.

17 RECROSS-EXAMINATION

18 MR. FONSECA: In these discussions
19 about -- with Perry here, Mr. Smith, in trying
20 to take leadership and assisting and not
21 having problems in the neighborhood with their
22 guests, did he not satisfy you with his

1 testimony as to the nature of -- a number of
2 things? I won't put them on there, but just
3 in general his testimony? I'll list what
4 those things -- items were.

5 Do you recall his testimony?

6 MR. BROWNSTEIN: I do, but refresh
7 my memory really quick.

8 MR. FONSECA: Okay. All the
9 social networks advising their patrons as to
10 ways -- where they can park, where the Metros
11 are.

12 MR. BROWNSTEIN: Right.

13 MR. FONSECA: About being quiet in
14 the neighborhood.

15 MR. BROWNSTEIN: I never got that
16 far with my chat with Perry about, our
17 theoretical conversation about, good guest
18 behavior and being good neighbors.

19 MR. FONSECA: But didn't he
20 address a lot of that in his testimony and
21 what he was going to do or the ownership of
22 Matchbox?

1 MR. BROWNSTEIN: Not a lot.

2 MR. FONSECA: Well, they were
3 going to put in writing information inside the
4 restaurant about this is a neighborhood and
5 when you are leaving here, remember you are in
6 a neighborhood.

7 MR. BROWNSTEIN: It's one thing to
8 put up table tents on a four-top or something
9 like that and it's another thing to really
10 make it a part of the culture.

11 MR. FONSECA: If a standard
12 operating procedure is to have a host or
13 hostess on the way out to make statements to
14 that effect, would that help you?

15 MR. BROWNSTEIN: Entirely
16 possible. In addition, probably seven or
17 eight, maybe 10 other elements without, you
18 know, being a school marm kind of restaurant,
19 whether it is printed out on the check,
20 whether it is your bouncer at the door,
21 whether it is your hostess, whether this
22 happens at 10:00, you know, 9:00 versus 1:00

1 in the morning.

2 I think there are a number of
3 things that -- you know, positive steps that
4 could be taken that could help alleviate some
5 of the noise on the guests departing.

6 MR. FONSECA: Do you all find any
7 of the steps that he outlined as being
8 positive?

9 MR. BROWNSTEIN: Perhaps they are
10 positive, but I think they --

11 CHAIRPERSON MILLER: Excuse me.

12 MR. BROWNSTEIN: -- could be --

13 CHAIRPERSON MILLER: I just want
14 to say --

15 MR. BROWNSTEIN: I think there
16 could be a lot more.

17 CHAIRPERSON MILLER: Okay. You
18 are close to two minutes.

19 MR. FONSECA: Fair enough. Thank
20 you.

21 CHAIRPERSON MILLER: That's it?

22 MR. FONSECA: No. Yes, no further

1 questions.

2 CHAIRPERSON MILLER: Oh, I'm sorry
3 to interrupt you. Okay.

4 MR. FONSECA: That's okay. I'll
5 save the two minutes for Mr. McKay.

6 CHAIRPERSON MILLER: Oh, true.
7 Okay. I guess then we are finished with your
8 testimony. Thank you very much.

9 MR. BROWNSTEIN: Thank you.

10 CHAIRPERSON MILLER: Okay.

11 (Whereupon, witness excused.)

12 CHAIRPERSON MILLER: All right.

13 MR. BROWNSTEIN: Thank you very
14 much. Bye-bye.

15 MR. MCKAY: And I have about three
16 hours worth of exhibits to review, so I hope
17 you don't mind.

18 CHAIRPERSON MILLER: Who is going
19 to ask you questions?

20 And would you raise your right
21 hand?

22 Whereupon,

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DANIEL McKAY

was called as a witness by counsel for the protestant, and having been first duly sworn, assumed the witness stand and was examined and testified as follows:

CHAIRPERSON MILLER: Okay. Thank you.

DIRECT EXAMINATION

MR. McKAY: I'm Dan McKay, 1315 T Street. I apologize for the monologue. I'm not a trained attorney, so I'm going to just try to go quickly through this, based on where we are in the day.

I had some questions, you know, why are we not -- you know, why are we here and why are we not here?

We're not here to try and block Perry from the neighborhood. We are excited he's coming. We're not here against the architectural improvements. We are not here to argue that the ANC-6B had a good experience with the restaurant in the Eastern Market,

1 Chinatown, but we think it's a little
2 different situation here.

3 We are not here for those things,
4 so, you know, I don't want you to waste your
5 time or take your time here that way, you
6 know, to make a stand as one of your
7 colleagues had said.

8 What we are seeking is commitment
9 for respectful hours for a 350 capacity
10 establishment, 350 people in a residential
11 neighborhood next to homes that are 20 feet
12 away. We've heard across the street, you
13 know, there is at least four or five homes
14 there, you know, within earshot for sure of
15 the outside space and then also for folks, you
16 know, coming and going.

17 And also seeking commitment for --
18 you know, commitment meaning in a voluntary
19 agreement or some agreement with either --
20 which is included in the ANC agreement or a
21 separate agreement to say that the hours are
22 reduced to respect that neighborhood. And

1 then also for a commitment for a responsible
2 parking plan.

3 You know, there are examples I had
4 mentioned earlier. The voluntary agreement
5 for other restaurants. The folks have in
6 their voluntary agreements commitments to use
7 a valet to alleviate parking issues. And
8 there are, in fact, several restaurants and
9 I'm not aware of any restaurant, CR License,
10 that has full hours.

11 Now, I'll give you a couple of
12 examples of folks that recently had received
13 their license. Policy at 1902-1906 14th
14 Street, they have a voluntary agreement, which
15 I received from ABRA, 1:00 a.m. on weekdays
16 and 2:00 a.m. weekends and they have further
17 reduced last call hours to 12:30 and 1:30.

18 So basically, a half an hour
19 before close they cut the bar off. All right.
20 And outdoor space 11:00 p.m. weekdays and
21 11:30 weekends. So, you know, that's a little
22 bit of a dial back from where the Matchbox

1 will start.

2 And Estadio a little further down
3 the street, 11:30/12:30 weekdays and 1:00
4 weekends.

5 So, you know, one or two hours
6 earlier than what is being requested in this
7 application. And my understanding, I didn't
8 want to, you know, generate a giant pile, but
9 there are examples and I'm not aware of any
10 that have full hours that are CR.

11 Now, the CTs, the taverns like
12 Saint-Ex, you know, has been given as an
13 example. That one is a different type of
14 license. And, in fact, they started as a
15 restaurant morphed into a tavern and that's
16 part of the concern with the folks here in
17 this protest.

18 So why should you listen to us?
19 You know, you heard that, you know, the ANC
20 has initiated and solidified a voluntary
21 agreement. In the submissions that I made
22 there, they are itemized.

1 The first one, Exhibit 1, is a
2 survey that was taken of folks on the
3 listserv, that was a listserv. That is a
4 Wallach Place, T Street email list that our
5 ANC-1B, Alex, I'll butcher her name, Zwerdling
6 uses to communicate to people.

7 I asked the folks on that listserv
8 to fill out an on-line survey and that's
9 included in there. 94 percent of the
10 residents, that's, you know, 40 people on the
11 list, about half of them -- I think 17 of them
12 responded. Only one of them was in support of
13 the hours that are on the application.

14 94 percent were either against or
15 wanted to protest the hours.

16 And I asked in that survey what
17 did they recommend. And there was, you know,
18 a variation, but it was actually substantially
19 less than even the restaurants are getting
20 now, you know, 11:00 weekdays, 11:30, you
21 know, midnight for this size of establishment.
22 And the data is in there. I can read one of

1 those here just to give you the actual number.

2 Okay. Yes, 47 percent 11:00 p.m.
3 weekdays; and midnight 35 percent; 10:30
4 Monday through Thursday, weekends 11:30; and
5 then others 11:30 Monday through Thursday and
6 12:30 Friday and Saturday.

7 So substantially less than even
8 some of the restaurants that are operating
9 now.

10 And also they were asked, you
11 know, if they felt that these hours were
12 representative of the restaurants in the
13 neighborhood and the majority of folks said
14 no. I think about 75 percent said no, they
15 don't represent what other restaurants have
16 for hours.

17 So now the issues with
18 communication with the ANC also, that was a
19 question. Did they receive adequate, you
20 know, warning about this particular license
21 and the communications in general. The
22 majority of folks in that survey said no, they

1 don't get that kind of information.

2 And just to comment about the, you
3 know, dates, I think that was a tough time for
4 -- our ANC was brand new on October and the
5 dates for the alcohol, the ABC, went in in
6 December, which is the holiday season and
7 virtually no one was there. So it was
8 probably there was an opportunity missed to
9 communicate to the residents, because people
10 just weren't around.

11 And then I think the other, you
12 know, points you just even make is even today,
13 I'm talking to people and there are folks that
14 aren't aware about the patio coming on
15 Matchbox. In fact, there is a neighbor, Ron
16 Renchard, who lives across the street from the
17 patio who I'll quote him and I quoted in this
18 -- in his email "I don't think any of my
19 neighbors are aware of the impact of Matchbox
20 outside seating nor the effect the seating
21 will have on the peace and quiet on their
22 block."

1 Fuja, which is Ms. Kim, she lives
2 adjacent to the patio and I'll try to show a
3 picture of that here for the folks that are on
4 the Board, if I have. That's this one for
5 your information. I have all colored.

6 CHAIRPERSON MILLER: Speak really
7 loud if you are not near a mike.

8 MR. McKAY: Okay.

9 CHAIRPERSON MILLER: Okay.
10 Thanks.

11 MR. McKAY: I will. So here is
12 the patio here. Matchbox restaurant patio and
13 this is where the impacted residents are
14 across the street, three or four of them, so
15 along here, which are directly impacted and
16 they are right across the street, so just to
17 show you.

18 CHAIRPERSON MILLER: Okay.

19 MR. McKAY: And there is the
20 residences.

21 CHAIRPERSON MILLER: Are you
22 putting that into evidence?

1 MR. McKAY: That's in evidence.

2 CHAIRPERSON MILLER: It's in
3 evidence?

4 MR. McKAY: Yes, you guys can see
5 it --

6 CHAIRPERSON MILLER: Okay.

7 MR. McKAY: -- if you like. And
8 this is the Cafe Saint-Ex that everyone has
9 been talking about and there is a little
10 coffee shop here.

11 CHAIRPERSON MILLER: Did you give
12 it to one of our staff?

13 MR. McKAY: Oh.

14 CHAIRPERSON MILLER: That's the
15 court reporter.

16 MR. McKAY: Oh, I'm sorry. Okay.

17 MEMBER ALBERTI: I have no idea
18 where we are. Has Mr. Fonseca objected to it?

19 MR. FONSECA: I have a --

20 MEMBER ALBERTI: I'm totally lost.

21 MR. FONSECA: I have an open
22 objection --

1 CHAIRPERSON MILLER: Me, too. Go
2 ahead.

3 MR. FONSECA: -- as to him reading
4 this without the ability to cross-examine it,
5 as to --

6 CHAIRPERSON MILLER: It's not into
7 evidence yet though.

8 MR. FONSECA: I know that.

9 CHAIRPERSON MILLER: Okay.

10 MR. FONSECA: No, I understand
11 that it's just being offered. Really as to
12 the ability to cross-examine, as to whether or
13 not any of this would be verified outside his
14 direct testimony.

15 CHAIRPERSON MILLER: Okay.

16 MR. FONSECA: And I'll just try to
17 deal with it in my cross and hope that it
18 leads to support of perhaps extending my two
19 minutes because of the nature of the number
20 exhibits he is putting in, because, frankly,
21 part of my own objection is I don't believe
22 there is one resident of the impacted area

1 that is here, other than Mr. McKay.

2 And clearly, the case with his
3 house is it appears to be at least 150 to 200
4 feet away from the patio.

5 CHAIRPERSON MILLER: Okay. I
6 don't even know what that document is, so I'm
7 going to let Mr. McKay proceed. And then if
8 you want to put it in evidence, you will have
9 to describe what it is.

10 MR. MCKAY: Okay. Okay. So to
11 get back to --

12 CHAIRPERSON MILLER: So for this
13 purpose, he only showed us a picture.

14 MR. MCKAY: No, I only showed
15 where the residents are across the street from
16 the patio. So their address is 1340 and above
17 all the way up to Saint-Ex, for the record.

18 CHAIRPERSON MILLER: 1340 what?

19 MR. MCKAY: T Street.

20 CHAIRPERSON MILLER: Thank you.

21 MR. MCKAY: Yes. Okay. So my
22 understanding here is that what our request or

1 the request, as I said, we want either an
2 extension or a voluntary agreement with
3 reduced hours and some real plan for the
4 parking.

5 And you know what is going to
6 happen if this is approved? My understanding
7 is that the applicant has testified that the
8 business will be significantly impacted by
9 reducing the hours, but that was not my
10 understanding in prior conversations.

11 But, you know, that said, other
12 operations are profitable working in those
13 locations.

14 MR. FONSECA: Objection. How in
15 the world can this witness know whether they
16 are profitable or not? Those restaurants are
17 in the red for two -- for the first two years
18 they are open. I mean, how -- I don't know
19 how he comes up with this.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. I heard your objection. I'll overrule
22 it. Go ahead.

1 MR. McKAY: Very good.

2 CHAIRPERSON MILLER: We will give
3 it the weight it deserves.

4 MR. McKAY: I appreciate that
5 consideration from the architect who has more
6 sense. Okay. I guess we will just make this
7 point and this one can be confirmed.

8 That right now, today, on T Street
9 and 14, there are over 1,000, I'll call them,
10 ABC seats. So what does that mean? If you
11 count up the capacity of the restaurants on
12 that corner and alcohol establishments,
13 taverns, etcetera, and that includes Saint-Ex
14 180 people, Policy 260 people, Stubs Tavern
15 195 people, Local 14 200 people and Matchbox
16 250 people.

17 And those -- most of those are
18 brand new. The Saint-Ex the 180, that one is
19 in existence. All of the other ones, the 800
20 or so are new. They are coming. And that's
21 the reason in large part for the concern about
22 the hours.

1 Number one, because it means that
2 there is a potential for, even if it's a
3 fraction of, those 1,000 people being on the
4 street at 3:00 in the morning.

5 And then number two, that the
6 other restaurant establishments, and there are
7 more coming, pattern agreements the way that
8 it was done here with the ANC. They look
9 across the street to the establishment that is
10 there and they want to have the same hours and
11 some of them are very good operators. Like
12 Mr. Smith, who is going to, I believe, do a
13 great job and others are less great.

14 But the bottom line is once that
15 common denominator is established for a set of
16 hours, then that becomes the standard, that
17 becomes the precedent.

18 And I guess I'll just make a few
19 points about some of the other exhibits there.
20 Exhibit 2 is a summary of -- from the SDCA,
21 which is resident association, just some data
22 that they collected on closing hours for

1 restaurants.

2 Exhibit 3 is a violent crime
3 incident report which show, you can look at
4 this and make your comments, but, a connection
5 between where all the ABC licenses are, 14th
6 Street and U Street, and, you know, the
7 violent crime.

8 Letters from prominent long-term
9 residents on T Street. I will read one of
10 them.

11 MR. FONSECA: Objection.

12 CHAIRPERSON MILLER: Okay. What's
13 your objection?

14 MR. FONSECA: Reading a letter
15 that -- I can't cross-examine the letter. He
16 reading it in is double hearsay, which I have
17 no ability to cross-examine.

18 CHAIRPERSON MILLER: I sustain
19 that, especially if it does come into
20 evidence. We don't need to have you read it.

21 MR. McKAY: Okay.

22 MR. FONSECA: And I might add, are

1 you talking particularly -- may I? Well, may
2 I voir dire the document?

3 CHAIRPERSON MILLER: This one
4 right now?

5 MR. FONSECA: I'm trying to figure
6 out, are you talking about your April 4 letter
7 which is unsigned from G. Ronald Renchard?

8 CHAIRPERSON MILLER: I think we
9 ought to --

10 MR. FONSECA: I'm not sure. I
11 mean, because this is a packet.

12 CHAIRPERSON MILLER: It's a
13 package. I mean, I'm wondering if he should
14 just, you know, go in order if he wants to
15 admit them and we can decide whether they
16 should be admitted.

17 MR. FONSECA: Well, I would love--

18 CHAIRPERSON MILLER: Because he is
19 not going to read the letter now, so --

20 MR. FONSECA: Well, I would love
21 to voir dire just so that you can get an idea
22 of what he is purporting to be put before this

1 Board. Because I will assert for the record
2 that this gentleman who lives on this street
3 is an absentee landlord. He does live there.
4 He works in North Carolina five days a week
5 and he is the landlord for Saint-Ex, Mr.
6 Renchard.

7 CHAIRPERSON MILLER: Okay.

8 MR. FONSECA: So I mean, you know,
9 this is just --

10 MR. McKAY: That's your opinion,
11 right? So do you have something written to
12 prove that? I mean --

13 CHAIRPERSON MILLER: Wait a
14 second.

15 MR. FONSECA: Well, that's the
16 kind of thing that goes on with this.

17 CHAIRPERSON MILLER: That's right.

18 MR. FONSECA: So I'll withdraw my
19 statement --

20 CHAIRPERSON MILLER: Well, let's--

21 MR. FONSECA: -- because that's
22 what we are dealing with here.

1 CHAIRPERSON MILLER: I'm trying to
2 find this letter. What exhibit number is
3 this?

4 MEMBER MOBLEY: 2.

5 CHAIRPERSON MILLER: What are you
6 talking about, No. 4?

7 MR. FONSECA: I don't know. He
8 doesn't cross-reference them. I mean, he has
9 his exhibit list, but then there is no way of
10 finding them.

11 MR. McKAY: No, each of the
12 exhibits has a cover sheet. So it's Exhibit
13 1, Exhibit 2, Exhibit 3, Exhibit 4. And I'm
14 sorry, I -- you know, maybe I don't know the
15 procedure, but I didn't ask your architect to
16 certify he is an architect. I didn't ask the
17 operation's guy to certify he is an operation
18 guy. I didn't ask, you know.

19 CHAIRPERSON MILLER: Yes, but he
20 is here. The architect was here and you --

21 MR. McKAY: Okay.

22 CHAIRPERSON MILLER: -- could

1 have.

2 MR. McKAY: Okay.

3 CHAIRPERSON MILLER: So he is
4 talking about a letter from someone who is not
5 here.

6 MR. FONSECA: Yes, that's --

7 CHAIRPERSON MILLER: Right.

8 MR. FONSECA: -- cover and Exhibit
9 4.

10 CHAIRPERSON MILLER: I'm looking
11 for that.

12 MR. FONSECA: The first thing I
13 see is this letter from G. Ronald Renchard,
14 which is not signed.

15 MEMBER ALBERTI: Madam Chair, may
16 I suggest that we accept these. I haven't
17 seen the documents.

18 CHAIRPERSON MILLER: You haven't
19 seen them?

20 MEMBER ALBERTI: I haven't seen
21 the documents.

22 CHAIRPERSON MILLER: All right.

1 MEMBER ALBERTI: But that we
2 potentially accept these into evidence and
3 then give them the weight that they deserve.
4 I mean, certainly the Board can view these
5 documents. We can discern whether or not they
6 are signed or not. That will certainly
7 influence how we treat them in our
8 deliberations.

9 But I would suggest that we accept
10 them into evidence, if I'm understanding the--
11 at least the letters from -- the letters that
12 are purportedly from the neighbors, all right?

13 I would suggest that we accept
14 them into evidence and then give them the
15 weight that they deserve.

16 CHAIRPERSON MILLER: Okay. I
17 would like to hear from Mr. Fonseca who has --
18 if he would like to make an objection to --

19 MR. FONSECA: Well, I still do,
20 because --

21 CHAIRPERSON MILLER: Yes.

22 MR. FONSECA: -- frankly, the

1 letter itself isn't even authenticated,
2 because it is not signed from Renchard. The
3 other one appears to be an email. So there is
4 two letters that come behind Exhibit Tab No.
5 4. So the --

6 MR. McKAY: You know, Ron Renchard
7 is at 1340 T Street and Cynthia Tweedie is my
8 neighbor who works at Andrews Air Force Base
9 and manages aircraft for the military. So I'm
10 sure if you asked her, she would authenticate
11 the letter. She is super busy.

12 CHAIRPERSON MILLER: We don't do
13 that though. I mean, we don't ask her after
14 the --

15 MR. McKAY: Okay.

16 CHAIRPERSON MILLER: -- this
17 hearing anything. Okay. Why do you object to
18 the first one? Because it's not signed? Is
19 that correct?

20 MR. FONSECA: Well --

21 CHAIRPERSON MILLER: Just so we
22 know for the record.

1 MR. FONSECA: The second has more
2 identifiable information. I don't know what
3 to say to that one, other than I have an
4 inability to cross-examine and I would have to
5 stand --

6 CHAIRPERSON MILLER: Okay.

7 MR. FONSECA: My standing
8 objection is --

9 CHAIRPERSON MILLER: Okay. Get
10 the objection on the record.

11 MR. FONSECA: -- the inability to
12 cross-examine a witness and taking a statement
13 which finds far -- even when the Board has
14 people here that they won't take testimony,
15 they will at least allow them to put their
16 name on the record and state whether they
17 support or oppose.

18 CHAIRPERSON MILLER: Okay. We
19 understand that.

20 MR. FONSECA: Yes.

21 CHAIRPERSON MILLER: And that's
22 why we often say that we'll give it the weight

1 that it deserves. I just wanted to know what
2 your objections were.

3 Now, this one is not signed, I'm
4 not sure what your objection is.

5 MR. FONSECA: Now, the other one--

6 CHAIRPERSON MILLER: Other than
7 they are not here to be cross-examined, which
8 we realize that.

9 MR. FONSECA: We will presume that
10 it came from her email address, so it's --

11 CHAIRPERSON MILLER: Right.

12 MR. FONSECA: -- at least it has
13 more weight as to authenticity.

14 CHAIRPERSON MILLER: Okay. Okay.
15 I am going to not admit the unsigned letter,
16 but I will admit the email, because it is from
17 the email address of the signature.

18 (Whereupon, the document was
19 marked for identification as
20 Protestant Exhibit 4 and was
21 received in evidence.)

22 CHAIRPERSON MILLER: Okay.

1 Anything else? Oh, I think he is looking.

2 Are you looking, Mr. Fonseca, to see if you
3 object to any of the other exhibits?

4 MR. FONSECA: Yes. Frankly, I'm a
5 little concerned although again, I'm sure the
6 Board is going to give it whatever weight --
7 Tabaq is at least in the neighborhood,
8 argumentatively speaking. India -- Heritage
9 India is on Connecticut Avenue. It's, for
10 lack of a better description, on the other
11 side of Dupont Circle.

12 MR. McKAY: I think the point of
13 that one is to show that even a well-run
14 establishment at 2:45 in the morning can have
15 a giant crisis. And while it is conjecture on
16 my part that the 2:45 is the reason why people
17 were shot and killed --

18 CHAIRPERSON MILLER: Yes.

19 MR. McKAY: -- and put in the
20 hospital, my conjecture and everyone can make
21 their own and just put the evidence out there
22 and --

1 MR. FONSECA: Objection.

2 MR. McKAY: We believe that that's
3 what it is.

4 CHAIRPERSON MILLER: And just --

5 MR. McKAY: And I as an
6 individual, I can make that --

7 CHAIRPERSON MILLER: This is a
8 news paper article? Is that correct? Is this
9 a newspaper article?

10 MR. McKAY: That's correct.

11 CHAIRPERSON MILLER: It's in the
12 public record, okay.

13 MR. McKAY: The Washington Post.

14 CHAIRPERSON MILLER: All right.
15 And I understand your purpose of the nice
16 restaurant can have problems late at night.
17 Okay.

18 MR. McKAY: That's --

19 CHAIRPERSON MILLER: The Board
20 will give it the weight it deserves.

21 MR. FONSECA: May I just -- I have
22 an objection as to whether any of these should

1 come in. If his basis is, as he stated on the
2 record, it's based on his conjecture. If you
3 are going to allow conjecture to come in to
4 assume that an establishment is a well-run
5 operation and it can happen there, when the
6 Board has been the trior of fact of what has
7 been going on at these establishments.

8 And you all know well, darn well
9 what is going on and that's -- it's just the
10 opposite. This is a well-run operation,
11 Matchbox. These places have problems when
12 they have promoters. They turn into
13 nightclubs. And to try to rush this as though
14 -- I mean, I -- you know, I know he is not an
15 attorney, but, I mean, he is really playing
16 the little doe lost in the woods getting this
17 stuff in the record.

18 I mean, really, it's outrageous.

19 MR. McKAY: You know, that's
20 conjecture on your part, too, you know.

21 CHAIRPERSON MILLER: Okay.

22 MR. McKAY: I certify that those

1 are not good operating establishments.

2 MR. FONSECA: Well, you haven't
3 done much research, sir. I'm sorry.

4 CHAIRPERSON MILLER: Okay. It's
5 getting late and I'm going to admit them for
6 the weight that it is worth.

7 MR. McKAY: Thank you.

8 CHAIRPERSON MILLER: We appreciate
9 the points you are making.

10 MR. FONSECA: I thank the Board
11 for allowing my observations.

12 CHAIRPERSON MILLER: So if it's
13 nothing that is, you know, totally unreliable
14 or, you know, prejudicial, it's going to come
15 in. So, okay. That's it on these exhibits,
16 correct?

17 MR. FONSECA: I think so.

18 CHAIRPERSON MILLER: Or no? Okay.
19 Do you have further testimony?

20 MR. McKAY: No, I'm done with the
21 testimony. Can I do a little close?

22 CHAIRPERSON MILLER: No. Let me

1 just see if there are any questions for you.

2 MR. McKAY: Sure.

3 MR. FONSECA: Yes, I have just a
4 couple. I'll keep it quick.

5 CHAIRPERSON MILLER: Okay.

6 MR. FONSECA: At this point.

7 CROSS-EXAMINATION

8 MR. FONSECA: You live at 1315?

9 MR. McKAY: That's correct, yes.

10 MR. FONSECA: All right.

11 MR. McKAY: Yes.

12 MR. FONSECA: How many houses away
13 from the corner of T -- of 13th Street are
14 you?

15 MR. McKAY: I would say it's about
16 8 or 10 houses from my house.

17 MR. FONSECA: 10 houses?

18 MR. McKAY: Yes.

19 MR. FONSECA: And they run
20 sequentially to numbers then?

21 MR. McKAY: Yes, I mean, I have to
22 count. I'm just guessing.

1 MR. FONSECA: All right.

2 MR. McKAY: Do you want it to be
3 an exact number, I'll count them. Yes.

4 MR. FONSECA: Okay. I'm just
5 trying to figure is it fair to say that you
6 probably would be at least about 150 feet at
7 best to the sidewalk cafe?

8 MR. McKAY: Yes, I would say it's
9 about between 100 to 150, yes.

10 MR. FONSECA: All right.

11 MR. McKAY: That's probably it.

12 MR. FONSECA: And in all fairness,
13 do you really think you are going to hear
14 folks on that sidewalk cafe in your house?

15 MR. McKAY: I think it's possible,
16 yes, because we heard folks -- we have heard
17 folks on the Saint-Ex Cafe at night and but I
18 think as Ron mentioned, I think the bigger
19 concern where I live is the folks, you know,
20 coming away. You know, it's like having a
21 chat.

22 As was mentioned by the Board,

1 it's not always someone, you know --

2 MR. FONSECA: Okay.

3 MR. McKAY: -- so drunk they are
4 doing stupid things. They are just having a
5 loud chat or even a happy one.

6 MR. FONSECA: Okay.

7 MR. McKAY: In front of the house.

8 MR. FONSECA: So the sidewalk cafe
9 isn't as big a problem.

10 MR. McKAY: Well, for me.

11 MR. FONSECA: It's the --

12 MR. McKAY: Like Ron Renchard, I
13 know you have some issues of him, but there is
14 also Fuja Kim, Mr. Smith that have also their
15 opposite to the --

16 MR. FONSECA: Okay.

17 MR. McKAY: -- thing and they --

18 MR. FONSECA: Well --

19 MR. McKAY: -- you know, have some
20 concerns.

21 MR. FONSECA: -- I'm asking you
22 questions about you and your address.

1 MR. McKAY: Okay. Yes.

2 MR. FONSECA: I mean, as a matter
3 of fact, why are any of these people here to
4 testify?

5 MR. McKAY: No, the first --
6 first, I just mentioned because of the
7 communication, they didn't even know until I
8 talked to them last week. All right?

9 MR. FONSECA: No, no, no, excuse
10 me. This hearing date was set over two months
11 ago. The mediation you knew when this hearing
12 date was.

13 MR. McKAY: All right. I'm
14 saying the people that I talked with -- now,
15 I didn't know Mr. Smith and I didn't know Ms.
16 Kim until I met them the other night for
17 another purpose. And they live there. Now,
18 no, they -- some of them are not even aware
19 that this is happening.

20 And it was mentioned, okay,
21 placarding is okay. It was mentioned public
22 notice. But frankly, you know, when it's time

1 to advertise for pizza and dinner, the signs
2 are big. When it's time to advertise for an
3 ABRA license, the sign is teeny-tiny.

4 And, in fact, when I first saw it,
5 I thought it was for the Arena Stage was doing
6 some permitting work. When I saw the
7 placarding, I thought that's what it was for.
8 The only reason I discovered this license was
9 under -- what was being requested was there
10 was another issue on another building that I
11 went to the ANC meeting for.

12 So there are people who don't even
13 know, that's the point. And they are going to
14 discover when the doors open.

15 MR. FONSECA: Okay. Okay. Now,
16 let's step back then.

17 MR. McKAY: Yes.

18 MR. FONSECA: You admit, you
19 acknowledge you were there at the December
20 meeting of the ANC. Is that correct?

21 MR. McKAY: Correct.

22 MR. FONSECA: And that December

1 meeting was the first Thursday of December?

2 MR. McKAY: Right.

3 MR. FONSECA: And from that time
4 until now, it took you until a couple of days
5 ago to get to the folks that live nearest to
6 the sidewalk cafe to see what their concerns
7 might be?

8 MR. McKAY: That's me and the
9 applicant never got to them.

10 MR. FONSECA: Oh, but they never
11 protested. And isn't it a fact that the
12 person who lives on the edge of the alley
13 which is the most nearly -- nearest resident
14 did not --

15 MR. McKAY: It should be --

16 MR. FONSECA: -- protest?

17 MR. McKAY: -- the most concerned,
18 yes, but --

19 MR. FONSECA: Did not protest. Is
20 that correct?

21 MR. McKAY: The one on the alley
22 did not. I'm not sure who lives there.

1 MR. FONSECA: And these others are
2 not here and are not expressing their own
3 opinion. So you are their leader, right? You
4 are speaking for them?

5 MR. McKAY: I'm speaking --

6 MR. FONSECA: Whether they
7 protested or not.

8 MR. McKAY: -- on behalf of them.

9 MR. FONSECA: Okay.

10 MR. McKAY: And no, I'm not
11 speaking for anyone who did not express an
12 interest in protesting. I have total person
13 now -- if you want to have the folks that are
14 on the list, you have the list of folks who
15 are formally on there. There is also a list
16 of folks on this survey that was prepared with
17 emails as well.

18 MR. FONSECA: Mr. McKay, I hear
19 you. You are the only person and Mr.
20 Brownstein that, you know, I was able to hear
21 and ask questions of.

22 MR. McKAY: Okay. And I'm --

1 MR. FONSECA: I mean, you don't
2 appear to be --

3 MR. McKAY: -- the only one here
4 who is not paid to be here.

5 MR. FONSECA: But you --

6 MR. McKAY: I'm the only one here
7 who is not paid to be here.

8 MR. FONSECA: Well --

9 MR. McKAY: Can I say it one more
10 time? I'm the only one here who is not paid
11 to be here.

12 MR. FONSECA: No, I'll say it for
13 you. You are paid to be here and I'm glad you
14 are here.

15 MR. McKAY: Yes.

16 MR. FONSECA: You clearly have a
17 commitment to be here.

18 MEMBER ALBERTI: Madam Chair, I've
19 got a problem with the discourse that is going
20 on. It's not question and answer. And I
21 would ask you, respectfully ask you, to
22 instruct the parties that the way we run these

1 hearings is the question and answer.

2 CHAIRPERSON MILLER: You were out
3 of the room. There was question and answer
4 going on.

5 MR. FONSECA: There was and he
6 hasn't been able to get the person -- the --

7 CHAIRPERSON MILLER: They can
8 finish.

9 MR. FONSECA: -- witness to answer
10 my questions as to his location, his home
11 without trying to weave in all the other
12 individuals on the street, because I can't
13 cross-examine them.

14 So again, you did acknowledge that
15 because of distance, you possibly could hear
16 the noises from the sidewalk cafe.

17 MR. McKAY: Correct.

18 MR. FONSECA: All right.

19 MR. McKAY: But only that extent.

20 MR. FONSECA: Then your concern
21 that I understood to reiterate because Member
22 Alberti was out of the room then, was your

1 concern was that the noise that would happen
2 when people were walking down the street by
3 your house?

4 MR. McKAY: That's right.

5 MR. FONSECA: That Matchbox
6 perhaps would have some of its patrons be
7 those individuals.

8 MR. McKAY: Correct.

9 MR. FONSECA: Okay. And you are
10 closer to 13th Street than you are to 14th
11 Street?

12 MR. McKAY: That's also correct.

13 MR. FONSECA: Okay. And you
14 cross-examined Tanya Evans and you suggested
15 that she was too far removed. Is that
16 correct?

17 MR. McKAY: That's correct.

18 MR. FONSECA: But you are
19 definitely in the impact zone. Is that
20 correct?

21 MR. McKAY: That's right.

22 MR. FONSECA: Okay. I have no

1 further questions.

2 CHAIRPERSON MILLER: Okay. Are
3 there Board questions?

4 MEMBER MOBLEY: No, Madam Chair.

5 CHAIRPERSON MILLER: There are no
6 Board questions. Thank you very much.

7 MR. McKAY: Thank you.

8 CHAIRPERSON MILLER: So that
9 brings us to closing. And whenever you are
10 ready, Mr. Fonseca.

11 MR. FONSECA: Certainly. Despite
12 not raising the negative impact on real
13 property values, I'll address the
14 appropriateness standards, the evidence
15 presented by applicant as it is to all of
16 those and including over-concentration, which
17 was raised in the protestant's protest.

18 As to not having a negative effect
19 on real property values, the record is before
20 the Board of a \$4 million renovation of the
21 building, both interior and exterior, bringing
22 a very fine, I believe, property back to the

1 historic essence that it had and something
2 that is very attractive that will without a
3 doubt not negatively effect in all very
4 likelihood and enhancement of real property
5 values of the immediate neighborhood.

6 As to peace, order and quiet, we
7 have put in evidence as to all the Matchbox
8 operations and the fact that this Matchbox
9 operationally will be just the same and that
10 there is no ABRA violations, other than for
11 quarterly reports being filed not timely.

12 That is to Capitol Hill the Single
13 Member Commissioner got a report from the 1st
14 District Commander or the Substation Commander
15 that there were no police incidents or calls
16 for service as a result of that Matchbox on
17 Capitol Hill.

18 And that in that Single Member
19 Commissioner's experience, there have been no
20 complaints as to issues with the Matchbox on
21 Capitol Hill.

22 So we believe they would not --

1 this establishment is not going to negatively
2 impact peace, order and quiet.

3 More so, we have shown how, in
4 general, there is a step down as the evening
5 goes with patronage at the existing
6 establishments and all those plans would play
7 here. So to the extent that full hours are
8 utilized, which are requested and which we
9 stand adamant in having approved, is even at
10 the latest hours, there would never be full
11 capacity.

12 I mean, perhaps one should never
13 say never, but it would be such a rare
14 occasion where the establishment will be at
15 full capacity, such that you would have a
16 release of some 250 from the interior,
17 remembering that before the Board.

18 And again another piece of
19 evidence that will go to peace, order and
20 quiet, there is a voluntary agreement for the
21 Board to still approve separate and apart from
22 making a decision on this case, which would

1 have a midnight closing with one hour earlier
2 being 11:00 p.m. for seating on the cafe and
3 midnight closing. Meaning patrons are off the
4 cafe. So that's in there.

5 There were efforts to help with
6 peace, order and quiet as to the trash and the
7 use of the alleyway and the fact that
8 deliveries would occur on 14th Street.

9 Lastly and the more difficult one,
10 the one that is acknowledged, residential
11 parking needs, pedestrian safety and vehicular
12 traffic.

13 Just like many of the strip zoning
14 in the District of Columbia where we do have
15 Commercial Districts that immediately come to
16 the rear of establishments that are Commercial
17 Districts -- Residential Districts, you have
18 residential parking problems.

19 Although it wasn't put in the
20 testimony here, it is clear when one walks
21 through this neighborhood they have zoned
22 permitting until 8:30, so it is a community

1 that by the sheer fact of having that zone
2 permitting to 8:30, this is a readily known
3 impact. We concede that.

4 There are efforts that are going
5 to be made and it's in the record as to trying
6 to get the patronage to understand the
7 neighborhood, understand parking is minimal,
8 which would in fact encourage other modes of
9 transportation by either public transportation
10 or taxi.

11 So we think though with the nature
12 of this operator and the track record before
13 this Board without having issues and not being
14 protested at their other locations, that there
15 would be those that would be the most likely
16 to help to alleviate this issue and encourage
17 their customers. So we think that is not to
18 impact residential parking. And they are
19 going to do that with their employees, as that
20 was brought out in the record.

21 We think in total, in summary,
22 that we have proven our burden that this is an

1 establishment that is appropriate for
2 licensure and is appropriate for full hours on
3 the interior and with the concession because
4 of the voluntary agreement with ANC-1B
5 midnight, seven days a week, on the sidewalk
6 cafe.

7 And we ask the Board to approve
8 the application as such.

9 CHAIRPERSON MILLER: Thank you.
10 Mr. McKay?

11 MR. MCKAY: Yes, thank you.
12 Thanks for sticking around. What we have
13 asked for is simple and might seem trivial.
14 And we have asked for reduced hours from the
15 maximum hours that is allowed by the ABRA
16 licensing for restaurants.

17 But we have asked for that based
18 on already established standards for other
19 restaurants that have been negotiated with
20 much shorter hours. And considering the
21 density that is coming to that exact corner,
22 as I mentioned, 1,000 alcohol seats, you know

1 that's -- everyone is not drinking, but there
2 is 1,000 people going to be there on that
3 corner in the next year.

4 And right now, there is 180 or so
5 seats. So it means the issues that Mr.
6 Brownstein talked about will be magnified by
7 order of magnitude. And while the Matchbox
8 folks are, you know, clearly good operators,
9 we clearly welcome them into the neighborhood,
10 we would also like to ask that they continue
11 to follow what we have -- what is not a
12 statutory standard, but it's an ANC-based
13 standard guideline to close the restaurants at
14 1:00 or at the latest 2:00 on weekends.

15 And so I've given examples of
16 restaurants here that support that. So we are
17 asking that we don't have an order of
18 magnitude problem for peace, order and quiet,
19 for traffic, which those folks aren't going to
20 be completely and solely responsible for, but
21 if they have those hours, they will be a
22 contributor and in a bigger way, there will

1 also be a precedent that is set for other
2 restaurants that come that are less well-
3 managed, that want full hours and will also be
4 looking for this resto-bar type of status and
5 become problematic for our neighborhood.

6 So we would like to encourage them
7 to support the reduced hours not only because
8 of the impact that their restaurant will have
9 directly, but also as a community impact for
10 others that are used as an example.

11 And as far as the parking
12 provisions, we do expect some increased load
13 and we have asked specifically for some
14 commitment to have some -- you know, Perry, as
15 he mentioned, is very proactive with ideas,
16 but we would like to have some commitment in
17 writing that says what the solution will be.
18 You know, some actionable thing.

19 Now, the example I give is that,
20 you know, the operational model here that they
21 have talked about, which is great and I
22 believe it is going to work that way. Bring

1 the restaurant down, less people at the end of
2 the night, there will only be a few left.

3 Some of those folks still may wake
4 some people up, but I really, you know,
5 encourage them and am excited about that idea.
6 You know, however, I don't think that some of
7 their colleagues or other restauranteurs will
8 necessarily, you know, follow those models.

9 And if for some reason in the
10 future that it becomes economically viable to
11 do a different model, there is nothing we can
12 point to that says, you know what, we agreed
13 or the Board agreed to this license based on
14 this model and now it has changed and there is
15 something we can do about it.

16 So I would like you to consider
17 that. And based on that, I would ask that you
18 strongly consider for this -- the safety and
19 security of that neighborhood, which will, I
20 fear, have more folks moving to the
21 designation and causing significant chaos in
22 the neighborhood.

1 So again, what we have asked for
2 is reduced hours at least by one or two hours.
3 And I think that can have a significant impact
4 on the neighborhood. It is not outside of
5 what has been done. It sets a good precedent
6 for the other restaurants and gives the ANC
7 Commissioners something to point to when they
8 are negotiating with folks who may not be such
9 a good operator.

10 And again, for the parking, we
11 have examples of folks who have committed to
12 valet services to alleviate parking issues.
13 I used to work -- live not too far down T
14 Street on T near 18 near Lauriol Plaza, the
15 same kind of a size restaurant as the one they
16 are proposing here, 300 folks.

17 They close at midnight. And they
18 had, you know, huge parking problems. They
19 have on-site 40 spots and 60 spots to park on
20 -- at Adams Morgan on 18th Street. And yet,
21 still those three or four blocks were filled
22 with cars. So I think that's a solution that

1 needs to be resolved and I would like to ask
2 for a formal commitment to do that.

3 CHAIRPERSON MILLER: Okay.

4 MR. FONSECA: If -- I apologize,
5 because in my outline before as I was doing my
6 closing, I did say I would address over-
7 concentration. Could I have at least a minute
8 on that, because it was raised and --

9 CHAIRPERSON MILLER: Okay. I'll
10 let you do it very briefly.

11 MR. FONSECA: I'll be very brief.
12 The issue of over-concentration, the mere fact
13 that a number of establishments within X has
14 been brought up, other than by itself, I would
15 hope would not just be some arbitrary number.
16 But I think we have an excellent opportunity
17 here as to this case making a decision on the
18 fact that the zoning overlay, which is for
19 Arts Overlay District, which is, you know,
20 establishment for retail entertainment/
21 residential use and pedestrian activity.

22 And which also has no portion of

1 any square as to have eating and drinking
2 establishments located on the ground floor,
3 which exceeds 50 percent.

4 The evidence came in through the
5 investigator and through common sense one --
6 you know, this is so close. We all know what
7 is on that block, that we aren't even remotely
8 close to that. So as to this square, there is
9 still future usage that could be here. There
10 is still the ability to slow this down.

11 And the other areas that are being
12 pointed out as problems are already beginning
13 to max out. So for over-concentration, we
14 have a built in zoning solution, which will
15 stop at 50 percent of every square, this
16 ability. So I ask that over-concentration not
17 be deemed as a default to rejecting this
18 application.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. All right. So unless there is anything
21 else?

22 MR. McKAY: No, Madam Chair,

1 nothing else.

2 CHAIRPERSON MILLER: Okay. Then
3 we are going to close the record then. That
4 means nothing else can come in for our
5 consideration on this case, except if the
6 parties want to have proposed findings of fact
7 and conclusion of law, based on the evidence
8 in the record or do you want to waive your
9 right to do so?

10 MR. FONSECA: Waive our right to?

11 CHAIRPERSON MILLER: File proposed
12 findings of fact and conclusions of law?

13 MR. FONSECA: We waive our right
14 to the proposed findings of fact.

15 MR. McKAY: We will as well, yes.

16 CHAIRPERSON MILLER: Okay. You
17 both do.

18 MR. FONSECA: We ask that the
19 Board make a decision as soon as possible.

20 CHAIRPERSON MILLER: All right.
21 The Board will make a decision certainly
22 within 90 days.

1 So that concludes this hearing.

2 Thank you very much. Have a good night.

3 MR. SMITH: Thank you.

4 MEMBER MOBLEY: Thank you.

5 CHAIRPERSON MILLER: Oh, do you
6 want these back?

7 MR. McKAY: Yes. Well, actually
8 he even took my copy.

9 CHAIRPERSON MILLER: Yes. Thank
10 you all.

11 (Whereupon, at 7:19 p.m. a recess
12 until 7:21 p.m.)

13 CHAIRPERSON MILLER: Okay. I've
14 got to close the meeting. As Chairperson of
15 the Alcoholic Beverage Control Board for the
16 District of Columbia and in accordance with ^U
17 405 of the Open Meetings Amendment Act of
18 2010, I move that the ABC Board hold a closed
19 meeting for the purpose of seeking legal
20 advice from our counsel on Case No. 11-PRO-
21 00093, Matchbox, per ^U 405(b)(4) of the Open
22 Meetings Amendment Act of 2010 and

1 deliberating upon Case No. 11-PRO-00093,
2 Matchbox, for the reasons cited in ^U
3 405(b)(13) of the Open Meetings Amendment Act
4 of 2010.

5 Is there a second?

6 MEMBER BROOKS: Second.

7 CHAIRPERSON MILLER: Now that it
8 has been seconded, I'll take a roll call on
9 the motion.

10 Mr. Nophlin?

11 MEMBER NOPHLIN: I agree.

12 CHAIRPERSON MILLER: Mr. Brooks?

13 MEMBER BROOKS: I agree.

14 CHAIRPERSON MILLER: Ms. Miller
15 agrees. Mr. Alberti?

16 MEMBER ALBERTI: I agree.

17 CHAIRPERSON MILLER: Ms. Mobley?

18 MEMBER MOBLEY: I agree.

19 CHAIRPERSON MILLER: Mr. Jones?

20 MEMBER JONES: I agree.

21 CHAIRPERSON MILLER: As it appears
22 that the motion has passed, I hereby give

1 notice that the ABC Board will recess this
2 proceeding to hold a closed meeting in the ABC
3 Board Conference Room pursuant to the Open
4 Meetings Amendment Act of 2010.

5 Okay.

6 (Whereupon, the Protest Hearing in
7 the above-entitled matter was concluded at
8 7:23 p.m.)

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